



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09400/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 11 March 2019

**Decision & Reasons
Promulgated
On 19 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MR NASIR MAHMOOD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Saifolahi of counsel, instructed by M&K Solicitors
For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Easterman, promulgated on 11 December 2018. In the First-tier Tribunal, the appellant was represented by Ms Saifolahi who again represents him today. The respondent was not represented.
2. The factual background can be shortly stated. The appellant was born on 6 September 1998 and is a citizen of Pakistan. He came to this country on 10 August 2009 with entry clearance as a visitor. In circumstances which I do not need to explore, his parents returned to Pakistan leaving him in the care of an uncle and aunt. At this stage he was some 10 years of age. He

has remained in the United Kingdom ever since, completing his secondary education.

3. The judge was invited to consider this matter under Immigration Rules FM and paragraph 276ADE in particular. Although other matters may have been raised in the alternative, the primary claim was under sub-paragraph (1)(iv) of 276ADE, under which the requirement is as follows.

“the appellant is under the age of 18 years and has lived continuously in the United Kingdom for at least seven years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the United Kingdom.” (emphasis added)

4. In addressing whether this appellant came within the terms of this requirement, the judge made the following findings at paragraph 56 of the determination:

“I find that the appellant does not meet the requirements of appendix FM or paragraph 276 ADE for the reasons given by the respondent. For the avoidance of doubt, I do not accept that there are insurmountable obstacles to the appellant integrating into his home country, particularly where he has his own parents and other family members there, and he speaks the language.” (emphasis added)

5. It is plain on any sensible reading of the determination that the introduction of the term “insurmountable obstacles” is highly suggestive of the judge mistakenly applying sub-paragraph (vi) rather than (iv) of 276ADE. This error might be explicable because although the application was lodged when the appellant was still 17 years of age, he had reached his majority by the time of the hearing. It is also of note that there is no specificity within paragraph 56 as to which of the component parts of paragraph 276ADE the judge is addressing.
6. With great fairness, Ms Jones accepted that in all the circumstances the judge’s decision cannot stand. There is a self-evident error of law in not applying the correct sub-paragraph of the Immigration Rules.
7. Accordingly I set aside the decision of the First-tier Tribunal.
8. With the concurrence of both representatives, I now re-make the decision. The background facts and issues involved are largely uncontentious. The sole matter which remains to be properly determined is the question of whether it would be reasonable for the appellant to leave the United Kingdom.
9. The refusal letter from the Secretary of State includes the following:

“At the time of application you were under the age of 18, you have lived continuously in the United Kingdom for at least 7 years but it would be reasonable for you to leave the United Kingdom. This is because you have lived the majority of your life in Pakistan, you

stated that your parents live in Pakistan and you would be able to return to your parents, you stated to speak English and Punjabi which are both recognised languages in Pakistan. Consequently you fail to meet the requirements of paragraph 276ADE(1)(iv) of the Immigration Rules.”

10. Ms Jones invites me to uphold that reasoning, pointing particularly to the fact that both the appellant’s parents reside in Pakistan, that he is a fit and healthy young man and someone who has clearly been educated to a good standard. The family members with whom he has lived in the United Kingdom are able, it would appear, to visit Pakistan reasonably regularly and for lengthy periods. The preponderance of the appellant’s time in the United Kingdom has been without permission and there was significant delay in making this application. He speaks some Urdu and any readjustment to living in Pakistan would be reasonably straightforward.
11. Ms Saifolahi draws my attention to factual matrix as recorded in the determination, refers me to relevant sections of the documentation that was before the First-tier Tribunal. The appellant arrived in this country at the age of 10 and has stayed here ever since. In large measure this has been against his will, or at least he has not been complicit in any decision to stay here. His mother felt she had to leave him in this country was that health concerns made it difficult for her to care for the appellant. To the extent that the appellant has been in the UK unlawfully, it has been the fault family members. It is well established that children should not be penalised for the wrong-doing of others, and thus any public interest considerations in ensuring immigration control carry far less weight.
12. In my judgment, an unduly formalistic approach was adopted by the Secretary of State as evidenced in the refusal letter. It is correct that at that time, more than half of the appellant’s life had been spent in Pakistan. But the reality is that in terms of influences and attachments, the period 0 to 10 years is much less significant than the period 10 to 17 years. This appellant has formed highly significant attachments to friends and the wider community during the time that he has lived here and although he could reintegrate into Pakistan if returned, I do not consider that it would not be reasonable to require him to do so having regard to the particular facts of his case. The United Kingdom is where he has lived the bulk of his adolescence and it is the country which he properly regards as his home.
13. This appeal succeeds under the Immigration Rules, and it is therefore unnecessary to consider the application of under Article 8 outside the Rules.

Notice of Decision

- (1) An error of law having been found, the decision of the First-tier Tribunal is set aside;

(2)The decision is remade, allowing the appellant's appeal under the Immigration Rules;

(3)No anonymity direction is made.

Signed *Mark Hill*

Date

18 March 2019

Deputy Upper Tribunal Judge Hill QC