



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006447
First-tier Tribunal Nos:
HU/56886/2021
IA/16017/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 May 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

SHAH MOHAMMAD SAMIUL KABIR CHOWDHURY
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Stedman, Imperium Chambers
For the Respondent: Mr S Walker, Home Office Presenting Officer

Heard at Field House on 27 April 2023

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh. His date of birth is 25 June 1983.
2. The Appellant was granted permission to appeal on 17 August 2020 by the First-tier Tribunal (Judge Parkes) against the decision of the First-tier Tribunal (Judge S Taylor) to dismiss his appeal against the decision of the Secretary of State on 21 October 2021 refusing his application for leave to remain.
3. The Appellant has a lengthy immigration history. He made an application on the basis of his lawful and continuous residence in the UK for a period of ten years (pursuant to paragraph 276B of the Immigration Rules). However the

Secretary of State did not accept that he had resided in the UK lawfully for a period of continuous ten years. Moreover, the Respondent refused the application with reference to the general grounds of refusal paragraph 322(2) of the Rules and 322(5) of the Rules on the basis that the Appellant had made false representations in relation to his application as a Tier 1 (Entrepreneur) on 26 November 2012.

4. The Respondent accepted that the Appellant had lived lawfully in the UK from 28 January 2009 until 20 December 2017 the date of a decision of the SSHD refusing the Appellant leave. Lawful leave ended on 20 December 2017 and therefore the Appellant could not meet the requirements of paragraph 276B(v).92
5. The judge found in favour of the Appellant in respect of para 322 (2). There is no cross challenge to this.
6. In relation to ten years' lawful residence the judge noted at paragraph 16:-

“The appellant has accepted that he is unable to demonstrate that he has had ten years of continuous lawful residence. The appellant is only able to demonstrate 7 years and 11 months of lawful residence, being the period from his arrival in January 2009 until the expiry of his lawful leave on 20th December 2017. As stated in the refusal letter, the appellant cannot rely on the period of the pre-action protocol, as this is not covered by S3C of the 1991 Act, and in any event the current application was made some two years later. I find that the appellant has failed to demonstrate that he qualifies for ILR on the grounds of ten years continuous residence”.

7. The judge went on to dismiss the appeal under Article 8.
8. The grounds comprise seven pages. The main thrust of which I will summarise in the light of Mr Walker's concession. It is asserted that the judge was unaware of a judicial review relating to this issue which led to the decision of 20 December 2017 being withdrawn and therefore the application made by the Appellant (on 28 April 2017) remained outstanding. On 25 June 2018 the Respondent agreed to reconsider the Appellant's application of 28 April 2017. The Appellant varied the application to an application to ILR on the basis of ten years' continuous lawful residence on 22 January 2019 (the date of the application which gave rise to the appeal) while he still had s.3C leave.

Error of Law

9. Mr Walker resiled from the Rule 24 response. On behalf of the SSHD he made a concession that the judge materially erred and asked me to allow the appeal outright under Article 8. He identified the error as the failure by the judge to appreciate that the decision of 20 December 2017 was withdrawn by the SSHD. On this basis he conceded that the Appellant had resided in the United Kingdom lawfully and continuously for ten years.
10. I find a material error of law in the decision of the First-tier Tribunal. However, I do not consider the judge is to blame for the error because neither party set out the case with sufficient clarity and informed the judge that the decision of 20

December had been withdrawn. The RFRL was not based on the correct facts and the judge was misled.

11. The decision to dismiss the appeal is set aside.
12. I remake the appeal and allow it under Article 8 ECHR.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 May 2023