



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-003946**  
**First-tier Tribunal No:**  
**HU/58435/2021**  
**LH/02009/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 24 April 2024**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**MR JUNAID UR-REHMAN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs M. A. Hodgson, Counsel instructed by Capital One Solicitors

For the Respondent: Ms H. Gilmour, Senior Home Office Presenting Officer

**Heard at Field House on 16 February 2024**

**DECISION AND REASONS**

***Introduction***

1. This appeal comes back before me following a decision that I and Deputy Upper Tribunal Shepherd made which was to find that the First-tier Tribunal (“FtT”), Judge Wright, erred in law in dismissing this appellant’s appeal against a decision to refuse his human rights claim. This hearing before me alone was for the re-making of the decision on appeal.
2. The appellant appealed to the FtT against the respondent’s decision of 19 December 2021 refusing his human rights claim, made on 22 July 2021. The human rights claim was an application for indefinite leave to remain (“ILR”), made on the basis that the appellant had accrued 10 years’ continuous lawful residence, having first entered the UK lawfully on 16 May 2011.

3. At [3] of the error of law decision the further background to the appeal is described thus:

“The Respondent refused the Appellant’s claim by letter dated 19 December 2021 (“the Refusal Letter”). The letter said that the Appellant did not meet the requirements of the immigration rules because he had submitted a TOEIC certificate in respect of a test taken at Universal Training Centre on 3 July 2013, which certificate had been declared as invalid. The submission of the certificate constituted making false representations and his presence in the UK was not conducive to the public good. He had not had any leave since 4 April 2015. He had also not paid two court orders for litigation costs in breach of the immigration rules. His application failed on the grounds of suitability. The letter considered there were no very significant obstacles to the Appellant’s integration into Pakistan pursuant to 276ADE and there were no exceptional circumstances.”

4. At [24] of his decision, Judge Wright found that the appellant “did not cheat on the TOEIC test and did not, therefore, make false representations in the application of 31 July 2013”. As we pointed out in the error of law decision, there has been no challenge to that finding.

5. We said the following in [25] and [26] of the error of law decision.

“25. As regards 276B, the wording of the rule in place at the time was set out in the Refusal Letter. It required that: the Appellant had at least 10 years’ continuous lawful residence in the UK: that, having regard to the public interest, there were no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account various factors; that he did not fall for refusal under the general grounds for refusal; that he had demonstrated sufficient knowledge of the English language and life in the UK in accordance with Appendix KoLL; and that he must not be in the UK in breach of immigration laws.

26. The Judge finds at [32] that the Appellant fails to meet these requirements, his reasons appearing to be that:

(a) whilst his starting point should be that the Appellant should be treated as if he has been here lawfully since 2011, there are some complicating factors [27], namely:

- (i) the Appellant has brought judicial reviews which have been unsuccessful and has made three unsuccessful applications for an EEA Residence Card before making the current application, such that there is a break in the chain of causation, and he would have been without leave in any event before reaching the ten-year mark [28];
- (ii) after revocation of his leave, the Appellant was encountered during an enforcement visit at a supermarket in Watford on 14 October 2014. Work was not permitted on his student visa and so, even if his leave had not been curtailed due to the allegations of

cheating, he was working unlawfully such that he would not have been granted further leave as a student in any event (and none of his said applications would have been granted) [29] [32];

(iii) even though they have since been paid, at the time of the application he also fell for refusal as he had two outstanding litigation debts [31].”

6. In our error of law decision we referred to Ahsan v Secretary of State for the Home Department (Rev 1) [2017] EWCA Civ 2009, in particular [120]-[121], and [132] in relation to what should follow from a finding that an appellant did not cheat in an English language test and as to the detriment suffered in terms of leave to remain. We also referred to Khan & Ors v Secretary of State for the Home Department [2018] EWCA Civ 1684 and the basis upon which the proceedings were compromised.

7. From [32] of the error of law decision we said as follows.

“32. It appears to us that in seeking to address the ‘complicating factors’ referred to in [27] of his decision, the Judge was referring to what he considered to have been agreed in Khan i.e. that any gaps in leave *caused* by an erroneous decision in relation to ETS would not be held against an applicant. In other words, he understood that there needed to be a causal relationship between the (A) the Respondent’s decision that the Appellant had cheated and (B) leave never having been granted to the Appellant thereafter.

33. Whilst this proposition appears sound in theory, and appears to be one of the reasons why Lord Justice Underhill said the Respondent exercising discretion in attempting to return someone to the position they would have been in “would not always be easy, since it is not always possible to reconstruct the world as it would have been”, it was not the Judge’s place to look for breaks in the chain of causation if none had been raised by the Respondent.

34. We can see no indication in the Refusal Letter, Respondent’s review, or the Judge’s description in his decision of the oral evidence and submissions made at the hearing (such as it is) that the Respondent argued there had been a break in the chain and if there had, that it was by reason of either the Appellant’s unlawful working or his previous applications. We cannot see that there was any documentary evidence of those previous applications before the Judge, and there only appears to be brief mention of the unlawful working in correspondence from the Respondent concerning bail in 2014. Ms Everett confirmed the same before us. In raising these points on his own initiative, and without affording the Appellant an opportunity to respond to them, we find the Judge fell into error. It was not for him to speculate whether leave would or would not have been granted due to these matters having taken place.

35. The Respondent’s review also stated at paragraph 8 that:

“It is acknowledged that the Appellant has now repaid his 2 litigation debts [AB/ N1-N4] and no longer falls for refusal on the basis of any outstanding litigation debts.”

36. The Respondent did not seek to argue that the litigation debts were still relevant due to having been paid late. It is therefore unclear why the Judge held this against the Appellant. We find he fell into error in doing so.
37. There are no reasons given by the Judge for the Appellant failing to meet 276B other than those which we have found to be erroneous. Therefore, it cannot be said that without them, the Judge would have reached the same conclusion. These errors are therefore material. We accept Ms Hodgson’s submission that, had the Judge found in favour of the Appellant on 276B, this would have fed into the article 8 balancing exercise as the Appellant meeting the requirements of the immigration rules would have been a weighty factor in his favour. The outcome of the proportionality exercise could therefore also have been different.
38. It follows that we find ground 2 to be made out. For the avoidance of doubt, this finding does not extend to us accepting that, based on the Judge’s undisturbed finding that the Appellant did not cheat in his English test, it would automatically follow that he would meet the requirements of 276B; that is a matter for the judge who remakes the decision (see below).
39. Ms Hodgson also submitted that, had the Judge found in favour of the Appellant on 276B, he may not have felt it necessary to go on to address 276ADE(1)(vi). We are not persuaded that this is correct. As this rule was put into issue by the Refusal Letter, and was maintained in the review, it was incumbent upon the Judge to address it given his duty to resolve all of the issues raised before him (sections 85 and 86 Nationality, Immigration and Asylum Act 2002).
40. Given that the focus of the test under 276ADE (1)(vi) is based on the Appellant’s likely circumstances on return to Pakistan, it is unclear how any of the above errors could have materially impacted the Judge’s findings in [34]-[37] concerning this rule (and indeed only the debt is taken into account along with several other, unchallenged, factors), and Ms Hodgson candidly accepted she could be in some difficulty on this. Having said that, the two rules are distinct from one another and the Appellant did not need to prove he met both in order to succeed in his appeal. Therefore, even if the Judge’s findings on 276ADE(1)(vi) are sound (on which point we do not consider we need to give a view given material error has already been found), it does not follow that the Appellant’s appeal would have fallen to be dismissed in any case.
41. We therefore find ground 3 is not made out insofar as it relates to the Judge’s overall findings on rule 276ADE. The remainder of ground 3 appears to be based on the misconception that the Judge did not find article 8 engaged by the Appellant’s private life, when the Judge actually finds that it is so engaged in [36].
42. It follows that ground 3 is not made out.

43. Turning to ground 1, we accept that, in light of the Judge's undisturbed finding that the Appellant did not cheat on his English test, his case may be described as involving "historical injustice" pursuant to Patel (historic injustice; NIAA Part 5A) [2020] UKUT 00351(IAC). The Upper Tribunal in Patel (since approved in Ahmed (historical injustice explained) [2023] UKUT 00165) said as follows:

"83. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. That statement cannot be overridden by a judicial decision. However, as we have seen in the cases of true "historic injustice", the weight to be given to the public interest can be so diminished that any private life which engages Article 8(1) will outweigh the diminished public interest.

84. We consider that in all cases in which, for whatever reason, the public interest falls to be given less than its ordinary weight, the usual course should be for the judge to so find in terms, when addressing section 117B(1). We accept, however, that the same result may be achieved, at least in some situations, by qualifying the consideration in section 117B(4) that little weight should be given to a private life formed when the person concerned is in the United Kingdom unlawfully. If, say, the respondent should for some reason have given an individual leave to remain, then one could perhaps give effect to that factor by ascribing more weight to his or her private life than would otherwise be mandated by section 117B(4). The important point, however, is that judicial fact-finders should avoid any recourse to double-counting, whereby not only is the weight to be given to effective immigration controls diminished but also, for the same reason, a private life is given more weight than would otherwise be possible by an undiluted application of section 117B(4)."

44. We were also referred to the decision of the Supreme Court in R (on the application of Agyarko) v SSHD [2017] UKSC 11, of which the following passage appears relevant:

"52. It is also necessary to bear in mind that the cogency of the public interest in the removal of a person living in the UK unlawfully is liable to diminish - or, looking at the matter from the opposite perspective, the weight to be given to precarious family life is liable to increase - if there is a protracted delay in the enforcement of immigration control. This point was made by Lord Bingham and Lord Brown of Eaton-under-Heywood in *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41; [2009] AC 1159, paras 15 and 37. It is also illustrated by the judgment of the European court in *Jeunesse*."

45. Ground 1 asserts that the Judge failed to properly factor into the proportionality assessment, concerning the section 117B factors in particular, the historical injustice that affected the Appellant.
46. We agree.
47. The relevant findings are in [38] – [45]. The Judge here again relies on the Appellant’s unlawful working and litigation debt, which factors we have already found to be erroneous. He takes the unlawful working further at [42] when he says:
- “The appellant wants me to take into account his time in detention, but I give little weight to this as his detention was also due to working in breach of conditions.”
48. As earlier, we cannot see what evidence there was that the detention was due to the unlawful working as opposed to the Appellant being detained due to a lack of immigration status; it may have been both. Either way, it does not appear to have been a point raised by the Respondent or put to the Appellant. It is therefore a continuance/repetition of the error already found above.
49. Whilst the Judge at [40] specifically notes “the lengthy time during which the respondent has treated the appellant as having cheated on the TOEIC exam”, he goes on in [41] to say:
- “Weighing against him is that, even if the leave was extant, he only ever had limited leave to remain and therefore his status was precarious, and I can only give limited weight to his private life (sic) developed during this time. I also note that he was working in breach of his conditions”.
50. The Judge does not appear to have appreciated that, in accordance with Patel, the public interest fell to be given less than its ordinary weight due to the historical injustice he finds earlier in the decision. Had the injustice not happened, the Judge would have been able to give at least some weight to the Appellant’s private life. Referring back, as he does, to the Appellant working in breach of conditions indicates that the Judge is again relying on his erroneous findings concerning a break in the chain of causation such that this finding is also infected.
51. It follows that we find ground 1 is made out.
52. We have found that the findings made in error informed and led to the Judge’s overall conclusions on both the immigration rules and article 8 ECHR. We therefore find the errors are material.

### **Conclusion**

53. We are satisfied the decision of the First-tier Tribunal did involve the making of errors of law.
54. We find that the errors infect all of the Judge’s findings made beyond [24] of his decision, save for [35]- [37] concerning very significant obstacles.
55. The Judge’s findings contained in [12] to [24] (inclusive) and [35] to [37] (inclusive) are preserved i.e. that the Appellant did not

cheat on the TOEIC test and did not make false representations in his application of 31 July 2013, and there would be no very significant obstacles to his integration on return to Pakistan.

56. We otherwise set aside the Judge's decision for remaking."

### ***Oral evidence***

8. At the hearing before me for the re-making of the decision, the appellant and his partner, Ayesha Shafi, gave oral evidence. The appellant adopted his witness statements in examination-in-chief. There was no cross-examination of the appellant.
9. Ayesha Shafi adopted her witness statement dated 29 January 2024 in examination-in-chief. She said that when her skilled worker visa expires in 2027 she intends to continue working for the same business that she is working for at the moment. She is happy with them and it gives her a great opportunity to refine her skills there. She intends to apply for further leave to remain and then indefinite leave to remain.
10. In cross-examination she said that before she came to the UK in 2019 she was living in Pakistan, in Lahore. She had always lived in Pakistan. Her parents are there but her husband and children are in the UK. She has siblings in Pakistan, and some in Japan and Sweden.
11. In re-examination she said that her siblings in Pakistan could not provide accommodation for her, her husband and children because there is no space for them. She and her husband do not have their own house in Pakistan.
12. In answer to questions from me Ms Shafi said that in Pakistan she has four sisters and one brother. She has an older brother in Japan and another older brother in Sweden.
13. In further cross-examination she said that her parents live in their own house in Pakistan. It is the family home that she lived in before she came to the UK.
14. In further re-examination she said that they would not be able to live with her parents. In their culture that is not allowed. They also have their own big family there and there is not enough space for them. It is a small house, shared by her parents and her siblings.

### ***Submissions***

15. Ms Gilmour relied on the decision letter dated 19 December 2021 and the respondent's review dated 19 January 2023, so far as relevant given the findings preserved from the decision of the FtT. It was accepted that in relation to the requirements of paragraph 276B(i) of the Immigration Rules

("the Rules") and the need for 10 years' continuous lawful residence there were now no suitability issues given the finding that the appellant did not cheat in the English language test.

16. It was submitted, however, that it was clear from the facts that the appellant could not establish 10 years' continuous lawful residence as his leave ran out in April 2015. The next application was made on 21 January 2016 (for an EEA residence card). There was thus a considerable gap in his lawful residence, and there was no possibility of any s.3(C) leave (Immigration Act 1971).
17. As regards Article 8, there is the preserved finding that there would not be very significant obstacles to his integration on return to Pakistan. The appellant did not rely on the fact of having a partner and children in the previous appeal.
18. As regards the further evidence from the parties today, that they do not wish to return to Pakistan, the appellant's wife is not a British citizen. It was submitted that the best interests of the children, who are very young, are to relocate with their parents. There would not be too much of an upheaval if they were to relocate to Pakistan with their parents. The appellant's wife accepts that she lived in Pakistan before coming to the UK and her formative years were there.
19. It was submitted that the appellant's wife was not entirely open about the family that she has in Pakistan. Initially she said that there was no one to support them there, but accepted that she lived with her parents before she came to the UK.
20. As regards proportionality under Article 8, there was the historical injustice because of the findings in relation to the English language test. However, otherwise the appellant has only had four years' lawful residence out of a total of 13 years in the UK. The majority of his stay here has been unlawful and there is a public interest in the maintenance of immigration control. Little weight is to be afforded to his private life given his precarious status. He had overstayed for a considerable period.
21. Ms Hodgson accepted that in the light of the preserved findings from the decision of the FtT, she was not able to pursue an argument about very significant obstacles to integration. As regards paragraph 276B, the suitability issue falls away, it was submitted.
22. It was further submitted that once there is the finding that the appellant did not cheat in the English language test, as advanced in the skeleton argument, the case law determines that he should be treated as having been in the UK lawfully since 2011. His visa expired in April 2015 but prior to that his leave was curtailed on 30 September 2014. He was served with an IS151A to the effect that he had obtained his leave by deception.



23. It was submitted that, according to the authorities, he should be put back in the position that he would otherwise have been in had there not been the finding of deception. Ms Hodgson pointed out that Judge Wright had said at [27] that the case law “strongly suggests” that the starting point should be that the appellant should be treated as if he had been here lawfully since 2011. It was submitted that the appellant could have applied for further leave in 2015 but his leave was unlawfully curtailed. Ms Hodgson submitted that both Ahsan and Khan indicate that the appellant should be put back in the position that he would have been in.
24. Ms Hodgson referred to [37] of Khan and the Secretary of State’s confirmation that gaps in leave caused by an erroneous decision in relation to deception in an English language test would not be held against an appellant. It was submitted that at the time of the instant application (22 July 2021) the appellant should be considered to have been in the UK lawfully, having entered lawfully in 2011.
25. It was further submitted that the public interest was diminished when proportionality is considered. Both Patel (historic injustice; NIAA Part 5A) [2020] UKUT 00351(IAC) and R (on the application of Agyarko) v Secretary of State for the Home Department [2017] UKSC 11 were relied on in this context. Ms Hodgson also relied on an unreported decision of the Upper Tribunal under case reference JR/1170/2020 dated 3 August 2020 in which the Secretary of State agreed that persons in a similar TOEIC position should be granted 2½ years’ leave to remain, in contrast to what was said at the earlier, error of law, hearing in this case, where the Secretary of State’s representative said that only six months’ leave would be granted.
26. I was reminded of the appellant’s wife’s evidence that the family home in Pakistan has her parents and siblings living there. She had explained why they could not support them if they returned to Pakistan. She had also explained her plans for the future. It was submitted that it was unreasonable to expect her to give all that up and return to Pakistan. The realistic scenario was that the appellant and his wife would be separated in that she would remain and he would leave. It was submitted that that was the effect of the evidence.
27. Ms Hodgson further relied on Mohibullah, R (on the application of) v Secretary of State for the Home Department (TOEIC - ETS - judicial review principles) [2016] UKUT 561, in particular at [79] in terms of the consequences for the appellant, for example being branded a fraudster, blighted academic and career prospects and so forth. The appellant was also detained. It was submitted that all this was relevant to proportionality.
28. The 10-year period that the appellant is entitled to rely on is that between 16 May 2011 (when he arrived) and 16 May 2021, it was submitted.

29. I raised with Ms Hodgson the question of whether the appellant being 'treated' as having had lawful residence is the same thing as actually having had it. Ms Hodgson submitted that any difference between them should not be overemphasised.

***Assessment and conclusions***

30. I am grateful to both parties for their very able submissions, and additionally to Ms Hodgson for her very helpful skeleton arguments.
31. It is now established that the decision of 30 September 2014 to curtail the appellant's leave was a decision made in error. It is a preserved finding of the FtT that the appellant did not cheat in the TOEIC test which supported his application for further leave to remain made on 31 July 2013.
32. As regards paragraph 276ADE of the Rules (leave to remain on the grounds of private life), it is also a preserved finding of the FtT that there would not be very significant obstacles to integration for the appellant on return to Pakistan. The oral evidence given before me does not affect that finding and indeed there was no basis upon which to revisit the finding made by the FtT in this respect.
33. As regards paragraph 276B (indefinite leave to remain on the ground of long residence), the issue clearly is that of the 10 years' continuous lawful residence. It is not said, with reference to paragraph 276B(iii), that any of the general grounds for refusal apply.
34. It was argued before me on behalf of the respondent that the appellant only had lawful leave until April 2015. It was also pointed out that the next application was only made in January 2016 (an EEA application). On behalf of the appellant it is said that in the light of the authorities referred to, he should be treated as if the error had not been made, i.e. as if the leave to remain had not been invalidated (appellant's skeleton argument 8 February 2024).
35. In Khan, the respondent's approach to cases of wrongful invalidation of leave is explained at [37] with reference to a response, or note, provided to the Court. It states, in part, that:
- “(ii) For those whose leave has been curtailed, and where the leave would in any event have expired without any further application being made, the Respondent will provide a further opportunity for the individuals to obtain leave with the safeguards in paragraph (iii) below.”
36. The note also states that:
- “(iii) In all cases, the Respondent confirms that in making any future decision he will not hold any previous gap in leave caused by any erroneous decision in relation to ETS against the relevant applicant, and will have to take into account all the circumstances of each case.”

37. The case of this appellant does not appear to me to be one of the “straightforward” cases referred to by Underhill LJ in Ahsan. This appellant must be treated as if his leave to remain had not been invalidated. However, it does not seem to me that this means that he must be treated as if he has been continuously lawfully resident in the UK *for the purposes of* paragraph 276B.
38. In a sense, residence in the UK is either lawful or it is not. If the appellant is to be treated as if he has been lawfully resident in the UK, that could be said to provide a short route to success under paragraph 276B on the facts of this case (where no public interest issue is said to arise and overstaying would be disregarded, presumably, on the authorities).
39. However, the phrase I use in the above paragraph, qualifying lawful residence *for the purposes of* paragraph 276B is apposite when consideration is given to the meaning of lawful residence in 276B. Paragraph 276A(b) defines ‘lawful residence’ for the purpose of paragraph 276B, so far as relevant to this appeal as:
- “...residence which is continuous residence pursuant to:
- (i) existing leave to enter or remain; or
- ...”
40. Although the parties did not address me on the meaning of lawful residence within the Rules, the question of whether being treated as having lawful residence and actually having it is the same, was a matter that I raised with Ms Hodgson during the course of her submissions. Understandably, I was invited not to overemphasise any such difference.
41. However, notwithstanding the respects in which the authorities to which I was referred do assist the appellant, I cannot see that the appellant can be said to have accrued at least 10 years’ lawful residence within the meaning of paragraph 276B. His leave was wrongly curtailed in 2014 but it is nevertheless a fact that the leave that he had expired in April 2015 in any event. He did not, therefore, have existing leave to remain from that point onwards.
42. As to Article 8 generally, outside the confines of the Rules, it is necessary to consider ss.117A-B of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). In particular, the public interest in the maintenance of immigration control must be considered.
43. No issues are said to arise with regard to s.117B(2)-(3) (ability to speak English and financial independence). These are ‘neutral’ factors. There is evidence in relation to the appellant’s partner’s employment and income.
44. Subject to further observations below, the “little weight” provision in the terms of s.117B(5) applies in relation to the appellant’s private life given

that his immigration status has always been precarious, in the sense that he has only had limited leave to remain at best.

45. I bear in mind, however, that this is a case of historical injustice. In Patel the UT Presidential panel gave guidance on the assessment of the public interest where there has been a historical injustice. In the error of law decision at [43]-[44] (see above) we quoted from both Patel and Agyarko in relation to the weight to be afforded to the public interest, but Patel is the more apposite in terms of historical injustice cases.
46. In Ahmed (historical injustice explained) Bangladesh [2023] UKUT 165 (IAC) the UT said that an appellant would have to show that they had suffered as a result of the wrongful operation by the respondent of her immigration functions. It was not suggested on behalf of the respondent that the appellant had not suffered as a result of the wrongful curtailment of his leave. At the very least, the appellant would have been unable to make further applications for leave to remain because any such application would likely have been refused given the respondent's decision that the appellant had obtained earlier leave by deception. Whether or not the applications made for a residence card under the EEA Regulations were refused, at least in part, for the same reason is not apparent because those decisions are not before me.
47. It is, however, evident that the appellant did make efforts to regularise his stay after the wrongful curtailment of his leave.
48. Furthermore, in relation to another aspect of the UT's decision in Ahmed, that a failure to take steps to mitigate the prejudice can be taken into account under Article 8 in terms of the public interest assessment, it does appear that the appellant sought to challenge the decision to curtail his leave by way of judicial review.
49. Applying the guidance in Patel at [83]-[84], I am satisfied that the public interest is to be given significantly less than its ordinary weight given the historical injustice.
50. In the overall proportionality assessment, it is also relevant to take into account the appellant's family life. It has not been disputed by the respondent that the appellant has family life with his partner and their two children. I accept the evidence that the appellant's partner intends to apply for further leave to remain when her current leave expires in 2027, and that she then intends to apply for indefinite leave to remain.
51. On the other hand, the appellant and his partner cannot have assumed that she would be permitted to remain in the UK permanently. They entered into their relationship in that knowledge.
52. Their children are not British citizens and are young enough (born in 2020 and 2023) to adapt to life in Pakistan. Their best interests are to remain with their parents, wherever they may be.

53. I do not accept the suggestion made on behalf of the appellant that unless the appellant succeeds in his Article 8 appeal he would be separated from his family. As I indicated to Ms Hodgson during the course of her submissions, that contention is an unwarranted extrapolation from the evidence that she gave. I do, nevertheless, accept that she would prefer to remain in the UK and that she intends in due course to apply for ILR.
54. It is also to be remembered that it is a preserved finding that there would not be very significant obstacles to the appellant's integration on return to Pakistan. Even accepting that they would not be able to live in Pakistan with her family, there is no reasonable basis from which to conclude that they could not continue their family life in Pakistan.
55. Nevertheless, the appellant has been in the UK for almost 13 years now. Although he does not meet the requirements of paragraph 276B, for the reasons I have explained, it is relevant in the proportionality assessment that he has been in the UK for over the 10 years required for a grant of ILR under paragraph 276B. His residence has not been unlawful. It is to be treated as lawful residence. He has made efforts to regularise his stay and attempted to challenge the decision to curtail his leave.
56. At [35] above I refer to what was said in Khan about the Secretary of State giving an individual whose situation is similar to that of this appellant, an opportunity to obtain further leave. The respondent's approach in other cases is relevant to my assessment of proportionality.
57. Considering all the circumstances, I am satisfied that weight to be attributed to the public interest is diminished in this case to such an extent that the decision to refuse leave to remain amounts to a disproportionate interference with the appellant's Article 8 rights in terms of his private and family life. The interference with his family life is on the basis of the inevitable disruption to the family of having to uproot and re-establish their family life in Pakistan.
58. Ms Hodgson invited me to find both that the requirements of paragraph 276B are met and that the decision to refuse the human rights claim is disproportionate in Article 8 terms. For the reasons I have given, I am not satisfied that the requirements of paragraph 276B are met. I am satisfied that the decision is disproportionate in Article 8 terms.
59. It will be a matter for the respondent to consider what period of leave should be granted to the appellant in the light of my decision.

### ***Decision***

60. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the decision is re-made, allowing the appeal under Article 8 of the ECHR.

**Case No: UI-2023-003946**  
**First-tier Tribunal No: HU/58435/2021**  
**LH/02009/2023**

A.M. Kopieczek

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**12/04/2024**