



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000957
FtT No: HU/51868/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 11th of September 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**MUHAMMAD NADEEM IQBAL
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan, Counsel, instructed by Synthesis Chambers
Solicitors

For the Respondent: Mr P Deller, Senior Presenting Officer

Heard at Field House on 7 May 2024 and 22 August 2024

DECISION AND REASONS

Introduction

1. The appellant appeals with permission a decision of Judge of the First-tier Tribunal Dineen (“the Judge”), sent to the parties on 28 January 2024. The Judge dismissed the appellant’s human rights (article 8 ECHR) appeal.

Relevant Facts

2. The appellant is a national of Pakistan and presently aged 54. He was granted entry clearance as a Tier 1 partner valid from 8 April 2009 until 8 April 2012. He entered the United Kingdom on 22 May 2009. Three days after his leave expired, he applied for further leave to remain on 11 April

2012. The respondent refused this application by a decision dated 20 June 2012.

3. The applicant was encountered working in a shop on 4 September 2013. He was subsequently served with removal papers and, as accepted by Mr Deller on behalf of the respondent at the hearing, additionally served with an IS96 confirming that he was granted temporary admission.
4. On 5 December 2014 the appellant applied for leave to remain. The date of the subsequent grant of leave was not identified by the respondent before the Judge, nor by the appellant in these proceedings. Mr Deller confirmed on the second day of the hearing that leave was granted on 6 March 2015. From that time onwards he made several variation applications which were granted until an application made for leave to remain under the Immigration Rules as a family member (parent) was refused by a decision dated 27 January 2023.

The First-tier Tribunal Decision

5. The appeal came before the Judge sitting at Hatton Cross on 9 January 2024. The appellant filed an appellant's skeleton argument prepared by his present legal representatives dated 2 June 2023. As is clear from paragraph 6 of the document the issues identified as arising in the appeal related to family and private life rights. No reference was made in this document as to the appellant advancing a case on ten-year lawful residence grounds. This is unsurprising. He reached on his own case the time requirement of the ten-year residence rule in September 2023.
6. After the hearing, and following directions issued by the Judge, the appellant filed written submissions prepared by Mr Khan, dated 9 January 2024. In this document it was submitted that the appellant had been lawfully resident in this country since his arrival in 2009. In the alternative it was submitted that in accordance with paragraph 276B of the Rules he had been lawfully resident in the United Kingdom from 4 September 2013 as he had enjoyed temporary residence until he was granted leave to remain on 6 March 2015. It was contended that the appellant's article 8 appeal should be allowed as he satisfied the long-residence rule.
7. The respondent, represented before the Judge by Mr Mustafa, Counsel, filed written submissions dated 9 January 2024 in accordance with directions. It was said that the appellant did not meet the definition of lawful residence as he had been an overstayer from 8 April 2012 to 6 September 2017. It was further submitted that the appellant "has not adduced anything concrete to show that he was granted temporary admission and that it continued until 6 September 2017". The reference to 6 September 2017 is unfortunate. It relates to the observation in the respondent's decision letter that having applied for leave to remain on 5 December 2014, the appellant was "was granted leave until 06 September 2017." It should have been clear to Mr Mustafa, and subsequently the

Judge, that the appellant was granted lawful leave prior to its expiry on 6 September 2017.

8. By a short decision sent to the parties on 28 January 2024 the Judge dismissed the appellant's human rights appeal advanced on family and private life grounds. In respect of the private life submission concerning long residence the Judge concluded, in brief terms:

"23. The appellant's application of 11/04/12 was rejected rather than refused on 20/6/12. The result of this is that he was an overstayer from 08/04/12 until 06/09/17.

24. He therefore cannot satisfy the requirement of continuous lawful residence [as required by paragraph 276B(1)(a) of the Rules, then in force]."

9. I observe that the Judge did not engage with the appellant's express contention, advanced in the directed written submissions, that having subsequently been granted leave to remain, the period of lawful residence required by the Rules commenced from the grant of temporary admission on 4 September 2013.

Grounds of Appeal

10. The appellant relied upon four grounds of appeal drafted by Mr Khan. Permission to appeal on grounds 1 and 4 was refused by Judge of the First-tier Tribunal Lodato (as he then was) by a decision dated 7 March 2024. Permission to appeal was granted on grounds 2 and 3 which are addressed below.

Discussion

11. During the second day of this hearing what had proven to be an opaque identification of ground 3 became clearer as Mr Khan developed his oral submission. For the reasons detailed below Mr Deller accepted that the Judge had materially erred in not considering the temporary admission point and its relationship with paragraph 276B of the Rules as advanced by Mr Khan in the directed written submissions before the Judge. Mr Deller accepted that [23] and [24] of the Judge's decision should properly be set aside.
12. Turning to ground 2, I conclude that there was no merit at all to this ground. The ground as advanced in writing by Mr Khan was that the appellant enjoyed section 3C leave under the Immigration Act 1971 during the three days between his leave expiring in April 2012 and an application for further leave to remain being made. On the first day of this hearing Mr Khan relied upon paragraph 39E of the Rules as establishing that section 3C leave was enjoyed. His attention was drawn to the fact that section 39E did not enter the Rules as an amendment until 6 July 2018, some years after the dates relevant to the appeal. The hearing was adjourned to permit Mr Khan time to perfect the appellant's submission on this ground.

13. On the second day of hearing, Mr Khan sought to rely upon the explanatory memorandum to the Statement of Changes which introduced paragraph 39E into the Rules. The Statement identified a historical situation that any period of overstaying for 28 days or less would not be a ground of refusal when a further leave to remain application was made. He directed me to an Immigration Directorate Instruction (“IDI”) on long residence dated April 2009 and in particular paragraph 2.3.3. concerned with breaks in lawful residence and the use of discretion. This was said to establish that the appellant enjoyed section 3C leave during the three days between the expiry of his initial leave and the application for further leave in April 2012. Mr Khan was unable to cogently explain how an IDI from April 2009 could aid in establishing the position in April 2012 in circumstances where Mr Khan conceded that he did not know if this was the relevant IDI at the time(s) pertinent to this appeal. I was asked to assume that it was. The request to proceed by assumption is not one that should have been made before this Tribunal. In simple terms, the appellant has been entirely unable to establish what policy was in place at the relevant time.
14. Additionally, the submission advanced entirely fails to grasp its fundamental failing. Section 3C leave is concerned with the continuation of leave when a valid application has been made in time. The IDI relied upon by the appellant expressly states that it is concerned with a break in lawful residence. Its foundation is that a party should not be adversely affected by a short break in lawful leave. On its face the policy cannot establish what Mr Khan sought for it to establish, namely that the appellant enjoyed lawful leave between 8 April 2012 and 11 April 2012. This ground simply enjoys no merits at all and should not have been advanced.

Re-making the Decision

15. Mr Deller accepted that the Upper Tribunal should proceed to re-make the decision and allow the appellant’s article 8 private life appeal on the basis that following the grant of temporary admission on 4 September 2013 the appellant had enjoyed ten years’ continuous lawful residence by the date of the hearing before the Judge in January 2024. Mr Deller accepted this position, having aided the Upper Tribunal by investigating the respondent’s database and establishing that temporary admission had been granted to the appellant on 4 September 2013. It is unfortunate that Mr Mustafa was not provided with this information by the respondent when he settled his written submissions to the Judge’s direction in January 2024.
16. In the circumstances, Mr Deller properly accepted on behalf of the respondent that the appellant satisfied the requirements of paragraph 276A of the Immigration Rules, concerned with long residence, at the date of the hearing before the Judge and continues to satisfy the requirements of Appendix Long Residence which replaced the provisions in Part 7 (rules 276A-276D) of the Rules on 11 April 2024. In making this concession, he expressly accepted that the appellant met the requirement of “lawful

residence” which means residence which is continuous residence pursuant to temporary admission within section 11 of the 1971 Act where leave to enter or remain is subsequently granted.

17. In the circumstances I allow the appellant’s human rights appeal on article 8 private life grounds under the Immigration Rules.
18. I wish to thank Mr Deller for his considerable efforts in this matter in ascertaining the true factual history and so enabling this Tribunal to deal justly with the appellant’s appeal.

Notice of Decision

19. The decision of the First-tier Tribunal sent to the parties on 28 January 2024 is subject to material error of law in respect of [23] and [24]. These paragraphs are set aside as is the decision to refuse the appellant’s human rights appeal on article 8 private life rights. The remainder of the decision including the decision to refuse the appeal on family life grounds stands.
20. The human rights (article 8 private life) appeal is re-made. The appellant’s appeal is allowed on private life grounds under the Immigration Rules.

D O’Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 August 2024