



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/10493/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 7 November 2013
Prepared 7 November 2013**

Determination

**Promulgated
On 29 November 2013**

Before

**LORD BOYD
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE MCGEACHY**

Between

BASHARAT UL FAROOQ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Professor W M Rees, instructed by Messrs Haq Hamilton Solicitors

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Pakistan appeals, with permission, against a decision of Judge of the First-tier Tribunal McIntosh who in a determination promulgated on 3 September 2013 dismissed the appellant's appeal against a decision of the Secretary of State to refuse him leave to remain under the long residence Rules.

2. The appellant's application was made on 3 July 2012 before the coming into force of the new Rules and was therefore dealt with under the provisions of paragraphs 276B(i)(a) and (i)(b) of HC 395. The appellant did not contend that he had lived for ten years legally in Britain but rather that he had lived here without permission for fourteen years.
3. The judge, having noted the evidence of the appellant stated in paragraph 24 of the determination that she had considered the rights of the appellant to remain under paragraph 276B(i)(a) and found that he had not done so. It was of course never claimed by the appellant that he had done so.
4. In the following paragraph the judge stated that she considered the rights of the appellant to remain in Britain pursuant to Article 8 of the ECHR and in that regard had considered the appellant's right to private life under paragraph 276ADE of the Immigration Rules. She found that the appellant could not succeed under that Rule.
5. With regard to the issue of the appellant's rights under Article 8 she stated that:-

"26. With regard to the appellant's claim to an established private life; I find that if the appellant has been in the UK since 2000 and has worked intermittently during that period that he has established a private life in the United Kingdom, however I find that the decision to refuse the appellant leave to remain is a lawful decision which interferes with the appellant's private life. I also find that the interference is reasonable and proportionate and that there are no compelling grounds for the appellant to remain in the United Kingdom. The appellant is a mature adult male who spent the majority of his adult life in Pakistan. I find at its highest, that the appellant's case is that he has been in the UK since 2000 and is able to return to Pakistan to re-establish his life there."

6. The grounds of appeal claim that the judge had not considered the rights of the appellant under paragraph 276B(i)(b) - the paragraph on which the appellant had based his claim. It was further argued that her analysis of the Article 8 rights of the appellant was insufficient given the fact that there was evidence before her that the appellant had lived and worked in Britain for many years and there were statements from a number of friends here.
7. The grounds also allege that the judge had not adjourned the claim when the appellant's representative withdrew from acting and the appellant had asked for an adjournment. Finally they commented on the fact that the judge had placed weight on the fact that the appellant had, at the beginning of the hearing stated that he adopted his statement then had later stated that the application form had been submitted without being read over to him. It was argued that the judge had been wrong to have relied on these two statements and concluded that the appellant's evidence was inconsistent.

8. We have considerable sympathy with the judge as it was clear that the circumstances of the appellant's appeal were far from satisfactory. Nevertheless, we conclude that there were material errors of law in the determination in that the judge, although it is correct that she made certain findings throughout the determination which related to the appellant's claim to have lived in Britain for fourteen years, did not clearly focus on that issue. Furthermore, we consider that her approach to the issue of the appellant's rights under Article 8 was in error given the totality of the appellant's evidence and the fact that she did not weigh up that evidence and consider whether or not removal of the appellant would be disproportionate.
9. We therefore set aside the decision of the First-tier Tribunal Judge. It is our conclusion that it would be appropriate for the appeal to proceed to a hearing afresh in the First-tier as we are satisfied that this is an appeal where the requirements of the Senior President's Practice Statement, paragraph 7.2(a) are met.
10. We therefore allow the appeal before the Upper Tribunal to the limited extent that it is remitted to the First-tier Tribunal to be heard afresh.

Directions

1. This appeal is to proceed to a hearing on all issues in the First-tier Tribunal at Taylor House on 3 January 2014.
2. An Urdu interpreter is required.
3. The appellant's representatives will prepare and serve an indexed and paginated bundle of all documents on which they wish to rely at the hearing.

Signed

Date

Upper Tribunal Judge McGeachy