



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

Appeal Number: IA/10629/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 30 October 2013**

**Determination
Promulgated
On 22 January 2014**
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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MUHAMMAD RASHEED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Hashmi, instructed by Kingswell Watts, Solicitors
For the Respondent: Mr S Spence, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Muhammad Rasheed, was born on 8 June 1976 and is a male citizen of Pakistan. The appellant had appealed to the First-tier Tribunal (Judge Reed) against the decision of the respondent to remove him from the United Kingdom as an illegal entrant. The first-tier Tribunal

dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal make a number of challenges to the First-tier Tribunal's determination. First, it is asserted that the judge reached perverse and irrational findings and failed to give adequate reasons for findings on material matters. This appellant claims to have entered the United Kingdom in November 1997 and, on 6 June 2012, he made an application for indefinite leave to remain on the basis that he had been living in this country for more than fourteen years. His application had been refused and the decision taken to remove him. The application to the respondent had been made under paragraph 276B of HC 395 (as amended):

276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

(i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom.

(ii) having regard to the public interest there are 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 his:

(a) age; and

(b) strength of connections in the United Kingdom; and

(c) personal history, including character, conduct, associations and employment record; and

(d) domestic circumstances; and

(e) compassionate circumstances; and

(f) any representations received on the person's behalf; and

(iii) the applicant does not fall for refusal under the general grounds for refusal.

(iv) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL.

(v) the applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded, as will any period of overstaying between periods of entry clearance, leave to enter or leave to remain of up to 28 days and any period of overstaying pending the determination of an application made within that 28 day period.

3. Paragraph 276A provides:

276A. For the purposes of paragraphs 276B to 276D and 276ADE and 399A.

(a) "continuous residence" means residence in the United Kingdom for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the United Kingdom for a period of 6 months or less at any one time, provided that the applicant in question has existing limited leave to enter or remain upon their departure and return, but shall be considered to have been broken if the applicant:

(i) has been removed under Schedule 2 of the 1971 Act, section 10 of the 1999 Act, has been deported or has left the United Kingdom having been refused leave to enter or remain here; or

(ii) has left the United Kingdom and, on doing so, evidenced a clear intention not to return; or

(iii) left the United Kingdom in circumstances in which he could have had no reasonable expectation at the time of leaving that he would lawfully be able to return; or

(iv) has been convicted of an offence and was sentenced to a period of imprisonment or was directed to be detained in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), provided that the sentence in question was not a suspended sentence; or

(v) has spent a total of more than 18 months absent from the United Kingdom during the period in question.

(b) "lawful residence" means residence which is continuous residence pursuant to:

(i) existing leave to enter or remain; or

(ii) temporary admission within section 11 of the 1971 Act where leave to enter or remain is subsequently granted; or

(iii) an exemption from immigration control, including where an exemption ceases to apply if it is immediately followed by a grant of leave to enter or remain.

(c) 'lived continuously' and 'living continuously' mean 'continuous residence', except that paragraph 276A(a)(iv) shall not apply.

4. The judge considered various items of documentary evidence and heard oral evidence from the appellant and from his witnesses, Messrs Choudhry, Mohommed and Ahmed.
5. At [32] the judge found that, “Although the appellant may well have come to the UK initially as long ago as 1997, he has failed to show that he has been continuously here since then and has not left the UK in the meantime.” The grounds assert that the appellant and his witnesses were not directly challenged as to “when, how and for how long the appellant left the United Kingdom.” It was never put to the appellant that he had not obtained a travel document.
6. At [23], the judge noted that the appellant had been

asked in cross-examination if he had been back to Pakistan and he said he had not. Bearing in mind the contents of the refusal letter, which clearly set out the respondent’s view that the appellant had not demonstrated continuous residence in the UK, I do not see there to have been any need for Mrs Fell [the Presenting Officer] to labour the issue as to whether or not the appellant had been back to Pakistan since he arrived here.

I find that this ground of appeal has no merit. It was not for the respondent to prove that the appellant had left the United Kingdom; it was for the appellant, upon whom rested the burden of proof, to prove that he had remained continuously in the United Kingdom in accordance with the Rules. Further, it is not clear what would have been gained by further cross-examination of the appellant as to when, how and for how long he had left the United Kingdom when he had clearly stated in evidence that he had not left. The judge’s finding that the appellant had not discharged the burden of proving that he had remained continuously in the United Kingdom is in no way undermined by the failure of the Presenting Officer to put to the appellant the questions suggested in the grounds of appeal the answers to which would have been obvious to all, given the appellant’s assertion that he had not left the United Kingdom. Further, the judge went on in detail to examine the evidence from employers, the mosque and tenancy agreements at [28-30]. The judge found at [31] that the appellant had been an “evasive witness” and that he had failed to be “straightforward about facts such as his knowledge of the passport that he used to enter the UK.” Crucially, the judge also found that the appellant had not been “straightforward with his own witnesses” noting that one of the witnesses had been “clearly surprised to learn that the appellant was here illegally.” All of the witnesses had been unaware that the appellant had used a false passport to enter the United Kingdom. Whilst the judge accepted that the witnesses were “decent members of the community” he gave little weight to their various assertions that the appellant was a “honest and trustworthy” individual given that they had been “kept in the dark about his background.” Those are findings which are clearly open to

the judge on the evidence before him. The judge did not ignore evidence which was pertinent to the question of the appellant's residence nor did he have regard to irrelevant evidence. Whilst another judge, faced with the same documentary and oral evidence, may well have concluded that the appellant satisfied the requirements of the Rules, the evidence adduced did not compel such an outcome. I can identify no perversity in the judge's approach to and analysis of this evidence.

7. The grounds assert that the judge failed to approach Rule 276A and B in accordance with existing jurisprudence, in particular **ZH (Bangladesh) [2009] EWCA Civ 818**. I find that that ground of appeal is misguided also. The Court of Appeal in **ZH** dealt with the public interest which was satisfied where an individual proved that he or she had remained in the United Kingdom for more than fourteen years; the judge was not so satisfied in this appeal. The court warned against an overemphasis upon the use of a false identity or illegal work; whilst those factors were legitimately considered by the judge in the appeal there was no suggestion that they were decisive and other factors (such as the appellant's willingness to mislead witnesses who had attended to support his appeal and the appellant's experience in the use of false travel documents) were also in play.
8. Finally, then the grounds assert that the judge failed to adopt the correct approach to the Article 8 ECHR appeal. At [37], Judge Reed noted that the public interest which lies in the exclusion of those who "enter the country illegally and support themselves through illegal work". I do not consider that finding is contrary to the guidance offered by **ZH** because it was linked in the judge's analysis to his clear finding that the appellant had "pursued a false claim of entitlement" to remain in the United Kingdom, that is that he had sought to deceive his witnesses and give false evidence about the period during which he claimed to have resided continuously in this country.
9. The judge acknowledged that the appellant had produced documentary evidence which indicated that he had been in the United Kingdom for at least some of the years which comprised the period of residence required by the Rules. Whilst that evidence may have supported that appellant's case, it was not decisive. I find that it was open to the judge to take, as he did, a very dim view of the appellant's credibility and to find that the evidence was insufficient to discharge the burden of proof which rested on the appellant. That conclusion was not perverse nor was it attained in the face of evidence which compelled a particular outcome in the appeal. Consequently, I find that the judge has not erred in law such that his determination falls to be set aside.

DECISION

10. This appeal is dismissed.

Signed

Upper Tribunal Judge Clive Lane