



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

Appeal Numbers: IA/43944/2013
IA/09174/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5th December 2014**

**Determination
Promulgated
On 12th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR FAISAL ANSAR
MRS SAFIA SYED**

Respondents

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondents: Mr S Muquit, Counsel instructed by Farani Javid Taylor
Solicitors

DETERMINATION AND REASONS

1. Mr Ansar and his wife, Mrs Syed, are citizens of Pakistan whose dates of birth are recorded respectively as 14th February 1981 and 5th February 1984. In February 2013, Mr Ansar made application for an extension of his leave as a Tier 1 Migrant. On 9th October 2013 the Secretary of State refused the application. There were, according to the Determination of Judge Shamash, who was to hear the appeal, two refusal letters in this

case in relation to the Appellants. The first was dated 9th October 2013; that related to Mr Ansar and in relation to Mrs Syed, and her application, one dated 5th February 2014. In each case the refusals were accompanied by decisions to remove pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006. Mr Ansar and Mrs Syed appealed and as I have already indicated their appeals were heard in the First-tier Tribunal by Judge Shamash.

2. However before the appeals were heard, the applications were varied in order that Ansar could argue that he was entitled to indefinite leave to remain in the United Kingdom on the basis of ten years' continuous lawful residence, having regard to paragraph 276B of HC 395 (as amended). Mrs Syed purported to seek leave on the basis of being dependent upon her husband's 276B application. I say "purported" because for reasons which are set out below, that was not an avenue that was open to her.
3. Judge Shamash found in favour of Mr Ansar and Mrs Syed in respect of the ten years' continuous residence point and so did not go on to make full findings in respect of the points-based case that was before her.
4. Not content with the determination of Judge Shamash, by Notice dated 26th September 2014 the Secretary of State made application for permission to appeal to the Upper Tribunal.
5. There were a number of grounds. It was submitted that the Judge had failed to find whether Mr Ansar had demonstrated at least ten years' continuous lawful residence in the United Kingdom and in any event had not made a finding whether he had sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom having regard to paragraph 276B(a)(iv) on the immigration rules. It was also said that there was no sufficient evidence that an English language test had been completed as required and further there were no sufficient findings in relation to continuity of residence.
6. In respect of Mrs Syed, the grounds submit that there are no dependency provisions under paragraph 276B so that it was not open to the judge to make the finding that she did to the effect that she could succeed as a dependent of her husband. The grounds further submit that the judge did not make formal findings with regard to the points based aspect of the appeals, having regard to paragraph 245C, which clearly the Judge did not do. She says as much at paragraph 36 of the Determination.
7. On 3rd November 2014 Judge P J G White granted permission. Mr Muquit who represents Mr Ansar and Mrs Syed accepts that there is no dependency provision with respect to the ten year continuous residence rule and therefore to that extent concedes the Respondent's appeal. However, he did draw to my attention that within the Appellants' bundle which was before the First-tier Tribunal there was a Pass Notification Letter in respect of the life in the United Kingdom test.

8. The issues which remained live and maintained by the Secretary of State were whether or not Mr Ansar had established, on balance of probabilities, that he had ten years' continuous residence in the United Kingdom and whether the judge had given adequate reasoning for the decision which she had made based upon sufficient evidence.
9. Mr Avery for the Secretary of State took me through the Determination and in particular paragraph 33 in which Judge Shamash says:

"I accept that [Mr Ansar] came to the United Kingdom as a student at the age of 22 with no expectation that he would be able to remain in the United Kingdom. However he has now lived in the UK for over ten years and is not a burden on the state."

The determination then goes on to other matters. Mr Avery submits that there is simply insufficient reasoning.

Is there an error of law?

10. The Determination has to be read as a whole. It is clear from paragraphs 12 and 13 of the Determination that the Judge was aware that there was a requirement that Mr Ansar needed to prove ten years' continuous lawful residence in the United Kingdom; the determination sets out the requirements. The Judge was also aware that certain periods of absence would not break the period of continuity, as to which see paragraphs 15 and 16 of the determination.
11. It was Mr Ansar's contention that he had been resident in the United Kingdom between December 2003 and July 2014 (there is an obvious typing error at paragraph 18 of the Determination where it reads 2004), a period of over ten years and met all of the requirements under the long residence requirements. That was the evidence before the Judge as recorded by her.
12. In my judgment reading the determination as a whole it is clear that the Judge found that Mr Ansar was credible and met the required standard of proof. It may be that there might have been better evidence. It may be that Mr Ansar should have produced his passport, though both parties agree that in fact that was, and remains, in the possession of the Secretary of State.
13. Mr Avery is not able to point to any cross-examination which challenged Mr Ansar's evidence relating to ten years' continuous residence. He is right when he says that the burden of proof remained on the Appellant in the First-tier Tribunal and that it was not for the Secretary of State to prove the negative but in my judgment, reading the determination as a whole, there was sufficient evidence for the Judge to find, absent any challenge, as she did.
14. It cannot be said that the determination was perverse or irrational nor can it be said that there was no sufficient evidence for her to make the finding

that she did. It may be that she would have been helped if the Secretary of State had chosen to cross-examine on the point but that does not appear to have happened. As it is therefore the Secretary of State's appeal on that point is dismissed.

15. The question now arises is what should happen with this appeal. It was conceded as I have already said that the Mrs Syed was not entitled to succeed on the basis upon which the judge found that she did. In that respect there is a material error of law such that the determination in respect of Mrs Syed is to be set aside to be re-made. It is also the case that no sufficient findings have been made in respect of Mr Ansar's appeal, which are required if the dependency aspect of Mrs Syed's appeal is to be determined.
16. Given that Judge Shamash had, with respect to the points-based appeal that was before her, almost completed the task but simply said that she did not make formal findings, both parties agree that the best course is for the appeal to be remitted to Judge Shamash to complete the task which lay before her. I am told that Judge Shamash is not a salaried judge and it may not be possible therefore, having regard to the overriding objective, to have the matter listed before her within a reasonable time. If that is so then it would be a matter for the Resident Upper Tribunal Judge at the centre to which this appeal is remitted to decide which Judge should hear the appeal. However, it would be my preference for the appeal to be heard by Judge Shamash and so I direct that the matter should be heard by Judge Shamash unless it is not possible for that to be done within a reasonable period of time. It follows that this matter is to be put before the Resident Judge at Taylor House for further directions.
17. In remitting this appeal I have had regard to the Senior President's guidelines.

Decision

The appeal to the Upper Tribunal is allowed. The matter is remitted to the First-tier Tribunal.

Signed

Date **5th December 2014**

Deputy Upper Tribunal Judge Zucker