Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/19415/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 December 2014	**On 5 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

FAISAL IFTIKHAR
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam, Counsel, instructed by Hartley Bain Solicitors
For the Respondent: Mr T Melvyn, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Following a hearing at Field House on 10 July 2014 I set aside a decision dismissing this appeal. My reasons for doing so, along with an outline of the immigration history, was set out in the following error of law decision, which was sent to the parties on 18 July 2014.

(i). *The appellant is a citizen of Pakistan, aged 27, who claims that he was brought to the UK as a 13 year old child, and has remained here since then. An application was made on long residence grounds on 30 July 2012. This was shortly after the Long Residence Rules were changed by the introduction of Appendix FM, and shortly after the appellant's 25th birthday (this is relevant to the reference in paragraph 276ADE(v) to those who could show that they had been in the UK for half their lives, and were under 25 at date of application). The appellant's application was refused on 16 May 2013, and his appeal was dismissed by Judge of the First-tier Tribunal K W Brown, following a hearing at Taylor House on 10 March 2014. The determination was promulgated on 18 April 2014.*

(ii) *Permission to appeal was granted by Judge of the First-tier Tribunal McDade on 22 May 2014. The grounds seeking permission to appeal were concerned with two issues. The first was the judge's approach to the evidence of two witnesses who claimed to have taken care of the appellant between his arrival in 1999 and 2004. The second concerned the judge's approach to the question of whether the appellant had no ties to Pakistan, and failure to follow the Home Office guidance and the case of* ***Ogundimu*** ***(Article 8 – new Rules) Nigeria [2013] UKUT 60 (IAC)****.*

(iii) *In granting permission to appeal Judge McDade appeared to open an additional ground, in that he referred to it being arguable that the judge's assessment of Article 8 was inadequate and insufficiently reasoned.*

The Hearing

(iv) *The appellant and his partner were both present at the hearing.*

(v) *Mr Aslam, for the appellant, started with the ground about "no ties" in paragraph 276ADE(vi) of the Rules. Detailed guidance as well as* ***Ogundimu*** *had been put before the judge, and extracts of these had been in the skeleton argument. The* ***Ogundimu*** *approach showed that there was a need for an ongoing connection between the appellant and the country of origin. The judge had erred in not carrying out the assessment required. The challenge therefore was that the reasoning at paragraph 29 of the determination, in support of the conclusion that the appellant still had both cultural and family ties to Pakistan, was inadequate. In relation to the first ground the submission was that the reasons given for rejecting the evidence of the two men that looked after the appellant was inadequate and insufficient. It was submitted that the reasoning was contradictory in that the only reason given for rejecting the evidence was that the two men could not be trusted given that they had not informed Social Services about the illegal presence of a child. The inconsistency was that the judge's own finding was that the appellant had not in fact been in the UK at that time. Mr Aslam also made submissions on Article 8, noting that the judge had accepted that there was family life with the appellant's Indian partner, and that his removal would separate the couple. Given these factual*

findings the reasoning at paragraph 33 was inadequate, and the proportionality assessment was conducted on the wrong factual basis.

(vi) *Mr Bramble, for the respondent, questioned whether Article 8 should be considered at all, given that there had been no application to vary the grounds. The judge had noted that the first sponsor or guardian of the appellant had not given oral evidence. The judge had been entitled to find against him on long residence, and to find that he had not lost ties to Pakistan, given the finding that he had a sister there. It was also significant that the appellant had had no documentary evidence to show his presence in the UK between 1999 and 2007.*

Error of Law

(vii) *As I indicated at the hearing I have decided that there was a material error of law in the determination. I have decided that grounds 1 and 2 are made out. The length of residence was a crucial factual dispute. The only reasoning put forward for rejecting the evidence of the two "guardians" was at paragraph 11 of the determination. I accept the submission that it is difficult to regard this as having been properly conducted on a hypothetical basis. There is nothing in the determination to suggest that this was in the judge's mind, and even if it was on such a basis there would be no remaining reasoning if the finding went against the appellant, as it did. As a result there is a clear contradiction between the judge's finding that the appellant had not been in the UK between 1999 and 2007, on the one hand, and his reasoning, based on the failure of the two guardians to contact the Home Office or Social Services in this period, on the other. The issue may not have been fatal if there had been any other reasons put forward for rejecting this evidence, but this was the only reason. On that basis I conclude that the reasoning for rejecting the evidence was inadequate, and that the judge erred in law in this respect.*

(viii) *The second ground also appears to me to be made out. The judge, in the determination, notes that he was referred to the guidance and to the* ***Ogundimu*** *case. Having done so, however, he then does not go on to follow the guidance in* ***Ogundimu****, or refer to the Home Office guidance in any way. The consideration of whether the appellant has ties to Pakistan is restricted to a single narrow point, namely that he has a sister in that country. It is also the case that the judge refers to the appellant's length of residence, and if that point falls away due to an error of law, then the consideration of whether there were ties to Pakistan has been conducted on an incorrect factual basis.*

(ix) *Without having to decide whether the judge granting permission to appeal did intentionally broaden the points raised in the grounds the same issue applies in relation to Article 8. The Article 8 proportionality assessment has been conducted on the basis that the appellant was not brought to the UK as a child, and that he has been in the UK for considerably less time than he has claimed. The length of residence, and the age on arrival, would be a key fact both for assessing ties within paragraph 276ADE, and also for considering Article 8 outside the Rules. It is also the case that there is no reference within the*

determination to any recent case law on the relationship between Article 8 in Appendix FM, and Article 8 outside the Rules. Neither is there any reference to the partner provisions in Appendix FM, or within the points-based system student dependant Rules. On the factual matrix point alone the Article 8 conclusion cannot be separated once the long residence findings are set aside.

(x) For these reasons I have decided that the judge's decision has to be set aside, and that it needs to be re-made.

(xi) The parties both agreed to a re-making in the Upper Tribunal. It was also agreed that there was a need for the matter to be adjourned. I have considered the relevant Practice Direction, and the agreement of the parties, and it does not appear to me to be necessary to depart from the normal expectation that a re-making would be in the Upper Tribunal.

(xii) An error of law having been found the appeal will be listed for a re-making hearing in the Upper Tribunal, with no findings preserved.

2. The remaking hearing was adjourned part-heard on 1 September 2014. On that date there was oral evidence, including cross-examination, from the appellant and two further witnesses. The matter was adjourned part-heard for lack of time at 5.15pm, with one further witness to be heard, followed by submissions.

3. After some listing difficulties that led to an adjournment the matter resumed on 18 December 2014. The appellant and the three witnesses were again present, but the only oral evidence was from the last remaining witness. Mr Melvyn, for the respondent, provided written submissions in advance of the hearing, and added to these with oral submissions after the evidence. At the end of the submissions from both sides I reserved my decision.

Summary of the Evidence

4. In outline, the evidence was as follows. The appellant was brought to the UK by his father in 1999, at the age of 12 (the reference to 13 in the error of law decision is less likely since he turned 13 in December 1999). The appellant's father left him with Mr H, and returned to Pakistan. The appellant was not aware of the travel arrangements, but it appears likely that entry to the UK was on a false document. Mr H took the appellant into his household and looked after him. This arrangement was based on his longstanding friendship with the appellant's father in Pakistan. At first it was suggested that this was to be temporary, but the appellant's father in fact never returned, and in 2001 Mr H informed the appellant that both his father and mother had been killed in a traffic accident. The appellant has one sibling, a younger sister. He last spoke to her in 2000. Mr H heard that she was married in 2006, but the appellant has not retained any contact with her and is now unaware of her whereabouts.

5. Mr H treated the appellant well, as part of his family, but did not send him to school, did not register him with a GP, and made no contact with the Home Office, or any other official bodies, about the appellant's presence. The appellant's education was limited to classes in the local mosque.

6. In 2002, when the appellant was 15, he was transferred to another family, that of Mr S. He was a friend of Mr H, and had come to know the appellant through being a frequent visitor at Mr H's restaurant in East London. He became fond of the boy, and he and his wife, who had two daughters who were then toddlers, agreed to take him in. Mr S was a market trader in East Ham. The same arrangements about not going to school, and not contacting the authorities, and only having education at the mosque, continued as before. Mr S came to regard the appellant as a son, and thought highly of him.

7. In 2004, at the age of 17, the appellant moved to Scotland. He had been offered a job, with accommodation, in a restaurant. On arrival he registered, for the first time, with a GP, and with a library. He continued to live and work in Scotland until 2007 (about three years), by which time he was 20 years old. In 2007 he was detected by the Home Office as a result of an intelligence led enforcement visit to the takeaway restaurant where he was working. He initially gave a false name and claimed to have a work permit, but the appellant's employer and his wife later went to the police station and admitted that they knew the appellant was in the UK illegally. The appellant, according to an extract from Home Office records, then said in an interview that he had only come to the UK a year previously, and had paid £8,000 to an agent. This is disputed by the appellant, whose evidence was that he said no such thing.

8. The appellant was served with a notice as an illegal entrant, and given reporting conditions, but he left Scotland and returned to London, as a result being listed as an absconder. He then resumed life in East Ham, until he was arrested again in 2010, again working in a restaurant. Since that date he has been reporting continuously. After the 2010 detention he obtained legal advice, and was told that there was no application that he could make, but that he might have a chance of succeeding if he could remain illegally in the UK for fourteen years (it is not clear if he was given detailed advice about the impact of the illegal entrant notice served on him in 2007). It then appears that the appellant continued to report, and no attempt was made to remove him, until July 2012, when he was detained on reporting. It was then that the application that has generated the current appeal was made. The Immigration Rules changed on 9 July 2012, withdrawing the fourteen year rule. The appellant paid the relevant fee (£991) and made an application on Article 8 grounds, with reference to paragraph 276ADE of the Immigration Rules, as well as Article 8 outside the Rules. This application was refused on 15 May 2013, and was accompanied by a removal decision under section 10 of the Immigration and Asylum Act 1999.

9. Although no reference to it was made in the 2012 application, by the time of the preparation of documents for the appeal the appellant introduced an additional

element, namely his relationship with an Indian citizen who was in the UK as a student. He indicated that he had been living with her since 2009, and that the couple had gone through a religious marriage ceremony in January 2014.

10. Documentary evidence in support of the appellant's claim was extremely limited. Mr H and Mr S both said that they had had no contact with any official bodies, and they also both said that they had not taken any photographs of the appellant in the years between 1999 and 2004. The appellant said that the Home Office had taken his health and library registration documents in Scotland in 2007, and he had not seen them since. No documents were put forward to support the claim that the appellant's parents had died in 2001, or that his sister had married in 2006. No documents were provided from the mosque that he was said to have attended in East Ham. The respondent did not provide any record of the interview in 2007 referred to in the Home Office records. The documents in the appellant's bundle all dated from 2011 onwards.

11. The evidence about the appellant's relationship with his partner was that they met in East Ham in 2009, and started their relationship in 2010. They have been living together since the end of that year. The appellant's partner is currently applying for further leave as a student. At the hearing on 18 December 2014 I was told that she continued to await the outcome of her latest application. In her evidence she described a dilemma in relation to the attitude of her parents. She has not told them about the relationship. The difficulty would flow from the fact that she is a Sikh, and the appellant is a Muslim. She anticipates difficulties when she does tell her parents. She made some enquiries with the Indian Embassy about whether he could obtain a visa to accompany her to India, and was given a negative response. The appellant himself, on advice, made an approach to the Pakistan High Commission, who produced a letter, in March 2014, stating that the appellant could not be issued with a travel document because he had failed to produce any Pakistani identity documents. As a result the evidence of both the appellant and his partner was that they would face difficulties in attempting to establish themselves either in Pakistan or India. The appellant's partner has plans to establish herself in business at the end of her studies, with the support of her family, and hopes that it might be possible for this to take place in the UK rather than in India. She supports the appellant's attempts to regularise his status.

Credibility Submissions

12. The submissions by Mr Melvyn, for the respondent, in relation to credibility, can be summarised as follows. There were no documents to show presence in the UK before 2007; there were no documents from the mosque; no official documents from the time with Mr H and Mr S; no photographs of him with either family; no documentary evidence about the death of his parents. In addition the appellant had made no attempt to regularise his status even when he turned 18 in 2004, and he gave a false name on detection in 2007, and then absconded. No weight should be placed on the evidence of Mr H, which was without credibility. He had given no

proper explanation of the actions of the appellant's father in leaving the appellant with him, or his own actions in not contacting the authorities or arranging education. In oral evidence Mr H was wrong about the relative ages of the appellant and one of his sons with whom the appellant had shared a room, and the nickname that he gave for his daughter did not match that given by the appellant. Interpretation difficulties were mentioned but these should not be used to give him the benefit of any doubt.

13. The evidence of the appellant's partner was also without credibility, because this relationship had not been mentioned in the July 2012 application for settlement, and this was not adequately explained by either the appellant or his partner; she had not informed her parents about the relationship; and the only evidence about the response of the Indian authorities was her oral evidence about a telephone call. Although it was accepted that there were photographs of the couple together, and documentary evidence to show that they lived together, the relationship could not be accepted without further supporting evidence.

14. In oral submissions Mr Melvyn added that the evidence of Mr S was also not reliable. His claim to have harboured the appellant between 2002 and 2004 was implausible. If the appellant had really been in the UK at this time Mr S would have made some attempts to regularise his status. The evidence of Mr S was also vague on the subject of exactly what the appellant was doing in that period.

15. Mr Aslam, for the appellant, made submissions on credibility as follows. The two witnesses, Mr H and Mr S, had come to give evidence on a number of occasions. This indicated a close relationship, and it was not clear what motive they would have to lie on the appellant's behalf. They were also running a substantial risk of getting into trouble. For Mr S, who worked on a self-employed basis as a market trader, this was the fourth time that he had come to give evidence. To go to all this trouble, for a person with whom there was not the close relationship described, established during his childhood, was implausible. All three witnesses had been consistent. The Home Office computer record had not been supported by a record of the interview under caution. The appellant had made it clear that he was not accepting the aspect about £8,000 or having entered in 2006. The burden in this respect was on the respondent, and it had not been discharged. It was accepted that there was a lack of documentary evidence, but that was made up by the oral evidence of the appellant and the two witnesses. In cases where people had been in the UK unlawfully it was highly likely that they would not have paperwork, especially for a person who had come as a child. In this case there was therefore a reasonable explanation for the lack of official documents. The appellant had made some effort to get the Scottish health records, but had been unable to do so without a Scottish address, and without an identity document.

Findings

16. Having considered all of the evidence as a whole, and the written and oral submissions made by both sides, I have decided that the appellant has established

the majority of the account that he has given, and in particular that he has established the claimed length of continuous residence in the UK.

17. I have given these findings very careful thought. Cases of this sort, where appellants claim to have been in the UK illegally for lengthy periods, pose particular credibility problems. A straightforward approach of rejecting the credibility of an account given solely or mainly because it is not supported by official documents is not appropriate in such cases. This is because, where a person accepts that he or she has been in the country illegally for a long period, it will nearly always be the case that the kind of contact with official bodies that would generate such documentation will have been avoided. The difficulty, obviously, is that it is an easy thing for a person caught in the UK to make up their date of entry, in an attempt to establish a longer period of unlawful residence than has actually been the case. Where a person has entered illegally, and there is therefore no official record of entry, it may be difficult to disprove the claimed entry date. It is therefore important to be alert to the motivation for putting forward a false date of entry, and also the difficulties of disproving it where there is an explanation available for the lack of documentary support.

18. At times issues such as this will turn on the oral evidence of witnesses. It is far from an easy task to assess such evidence, but in a case of this sort, as with many asylum claims, the entire outcome turns on such an assessment, and I have the unenviable task of assessing whether the appellant and the witnesses called on his behalf were being truthful or not.

19. The general plausibility or implausibility of an account is dangerous territory in the process of credibility assessment. Having said that I would remark, without it being a matter on which I would place great weight, that the overall account did not appear to me to be implausible. This would certainly not be the first time that a parent in Pakistan, India, or Bangladesh decided to bypass immigration controls in this way and leave a child with a family friend or relative in the UK. When asked to speculate on his father's motivation, the appellant suggested that his father might have been hoping that his son would have a better life here. I heard nothing about the appellant's parents' overall circumstances in Pakistan, but it does not appear to me implausible that the appellant's father might have acted in this way, with this general motivation.

20. It appears to me to be likely that the arrangement between the appellant's father and Mr H was more explicit than Mr H has suggested. It appears to me that Mr H wanted to sweeten the pill of the nature of his involvement, by suggesting that at first the appellant's father left him behind when he returned to Pakistan for some unspecified emergency, and that at first the arrangement was only meant to be temporary. In my view it is more likely, based on their old friendship, that the appellant's father was more direct about his request to Mr H. Similarly it seems to me that both Mr H and Mr S would have been aware of the potential consequences if the appellant's presence came to be known. The two witnesses, it appears to me,

probably avoided contact with schools or any other officials because they had some idea of what might happen if the appellant's illegal presence came to light (even if this was not detailed, or based on any legal advice).

21. A potentially powerful piece of evidence against the appellant's central claim was the reference to an admission by him made in an interview under caution in 2007, that he had in fact entered illegally in about 2006. On this point, however, I accept the submission made on the appellant's behalf that, once it was clear that this was contested, it was for the respondent to provide evidence of the interview. The distinction between Home Office records on the one hand, and the evidence on which they are based on the other, is an important one. Records can contain errors. It is not clear whether the appellant was the only person arrested during the enforcement visit. The respondent had time to obtain the interview record, and would have been aware of its importance. Whilst I would say that this was the matter that gave rise to the greatest level of doubt in my mind, and that led me to approach the oral evidence with scepticism, nevertheless I have come to the conclusion that I can only place very limited weight on the record, given the manner in which it has been contested, where the interview record and other documentary evidence has not been produced.

22. My overall impression of the two witnesses, Mr H and Mr S, was that they were relatively unsophisticated, but appeared to me to be broadly honest and truthful. My reservations relate to specific areas. I have already mentioned my reservation about Mr H's account of his interaction with the appellant's father. For Mr S my reservation is that it appears to me likely that the appellant helped Mr S on his stall, but that, in his evidence, Mr S was keen not to disclose this, presumably on the basis that this would show him in a bad light, or that the issue of employing an illegal entrant might be a more serious matter than providing accommodation to one. Apart from those points, however, having given the matter careful thought, I came to the conclusion that these were both truthful witnesses. It is certainly the case that they acted unlawfully in keeping the presence of a child who had been brought to the UK illegally, and remained illegally, from the knowledge of the authorities. In other similar cases, where children are trafficked to the UK and then badly treated in various ways, this could be an extremely serious matter indeed. As it is, despite the fact that they appear to have suffered no legal consequences, they would have been liable to face prosecution for immigration offences. The appellant emphasised that his relationship with both men was entirely positive, and that both had treated him extremely well. This is therefore very far from a case of a trafficked child in that sense, but the seriousness of what they did flows from the fact that children brought to the UK in this way, who remain in the UK unlawfully, are highly vulnerable for a number of reasons.

23. Having said all of that I accept that, within their own frame of reference, both men considered that they were being helpful to the appellant, and acted from broadly positive motives.

24. The evidence of the two witnesses was consistent. The account given has remained consistent throughout. I did not see anything in the minor discrepancy about the age of one of Mr H's children. Overall it appeared to me that the evidence given by both witnesses, and by the appellant, came across as truthful in most respects.

25. I have taken account of the appellant's immigration history. This clearly has negative aspects which lead to approaching any of his evidence with caution. Although he cannot be held responsible for the actions of his father in bringing him to the UK illegally and then leaving him here, nevertheless he made choices from the age of 17 onward that included working illegally, giving a false name when initially detected, leaving Scotland when he was on reporting conditions and not bringing himself to the attention of the authorities again until 2010, and continuing to work illegally between 2007 and 2010.

26. I note that the appellant provided two other letters from men in East Ham, saying that they had known him in that area from about 2000, but it appears to me that I can place much less weight on these letters given that neither of these men were called as witnesses.

27. I did not see any proper reasons to reject the evidence of the appellant's partner as lacking in credibility, although I note that she had no knowledge of the appellant's presence in the UK before 2009, and she therefore offered no support on the central contested issue. I have considered the point made about the relationship not being mentioned in the 2012 application. Having listened to the explanation given by both the appellant and his partner this does not appear to be as damaging as might otherwise be the case. In the 2012 application the appellant was acting on advice. The advice that he had been following since 2010 had focused on the issue of long residence and private life. The appellant's partner's presence was temporary, as a student, and any competent legal advisor would have noted that the relationship did not therefore assist. It also appears to me to be plausible that the appellant would have wanted to pursue the matter on his own behalf, without involving his partner. It is also plausible that this may have changed as time progressed, and the relationship became more established.

28. For all of these reasons my finding is that the appellant has established that he was brought to the UK, and left here, in 1999, and that he was looked after in the households of Mr H and Mr S as described. I therefore find that he has been continuously in the UK from 1999, when he would have been 12. He has now just turned 28. I also find that he is in a genuine committed relationship with his partner, that they have been living together since 2009, and that they did go through an Islamic wedding ceremony in 2014.

29. The subject of the death of the appellant's parents appears to me to be a particularly difficult one on which to make a finding. On the one hand I can accept that both Mr H and the appellant are relatively unsophisticated, in terms of education, and that there may have been difficulties in making whatever written enquiries would have

been required to obtain death certificates. On the other hand Mr H appears to live in a community where he would have contact with people who travel to Pakistan, or have relatives and friends there, and it could be said that it would not have been that difficult to obtain death certificates. There is also an obvious motivation for the appellant to say that his parents were killed, because this would make it more likely that he would eventually be allowed to stay in the UK. The absence of any letter from his sister, and the loss of contact, on the other hand, appears to me to be less significant. It would not appear to me to be surprising that a younger sister who had not seen her brother for many years, and had then been absorbed into her husband's household, would be difficult to trace, and would not, in any event, be expected to retain ties. In the end the matter appears to me to follow in line with my overall assessment of the credibility and reliability of the appellant and of Mr H. Given that I have found Mr H to be credible in most respects it appears to me to follow that his account of having been informed of the death of the appellant's parents in 2001 is also more likely than not to be truthful.

Decision and Reasons

30. I have decided to allow the appeal under paragraph 276ADE of the Immigration Rules.

31. There was some discussion at the hearing about which version of paragraph 276ADE was applicable. That paragraph was changed by HC 532, which brought in changes that had effect, for the most part, on 28 July 2014. At the initial hearing it was agreed, tentatively, that the applicable version of paragraph 276ADE was the one that predated the HC 532 changes. At the hearing on 18 December, however, Mr Melvyn made a contrary submission, to the effect that the new version of paragraph 276ADE was the one applicable. He helpfully provided a copy of HC 532, along with a Home Office training note which indicated that there were no transitional arrangements. It was this that he relied upon in his submission.

32. I have decided, however, that the applicable version of 276ADE is the one that was in force when this decision was taken. This is because HC 532 has, at page 2, a section concerned with implementation. Within that section the third implementation paragraph deals with the changes to paragraphs 276ADE to 276DH and Appendix FM. The implementation, apart for Article 8 claims from foreign criminals, where the changes were immediate, only applied to decisions taken on or after 28 July 2014. This decision was taken in May 2013, and the applicable version of paragraph 276ADE was therefore the one in force at that date.

33. Looking at paragraph 276ADE it was accepted on the appellant's behalf that he had not lived continuously in the UK for at least twenty years. By the date of the hearing he had been in the UK for about fifteen years, five years short of that figure. The unlawful residence requirement was increased from fourteen years to twenty years in July 2012, shortly before the appellant's application was made.

34. It was also accepted that the appellant had not lived continuously in the UK for at least seven years before he turned 18. By the time he turned 18 in 2004 he had been in the UK for five years, not seven. In any event the requirement in 276ADE(iv) is in the present sense, and the appellant was well over 18 by the date of this application.

35. It was also accepted by the appellant's representative that the appellant was not able to meet the requirement in 276ADE(v), of being between 18 and 25 years in age and having spent at least half his life residing continuously in the UK. The appellant turned 25 in December 2011, and this rule was not introduced until July 2012. By the time this application was made he was therefore over 25.

36. The only remaining aspect of paragraph 276ADE, therefore, was 276ADE(vi) which was as follows:

> "(vi) is aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK."

37. The key issue, therefore, is whether the appellant has established that he has no ties to Pakistan. The meaning of "no ties" within paragraph 276ADE was considered in **Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC)**, by the then President of the Upper Tribunal, Blake J. At paragraph 14 of that decision reference was made to Home Office written submissions on the point. The no ties test, in that case in paragraph 399A of the Rules, was said to mean "taking account of their background as a whole, the person has so little connection with that country as to mean that the consequences for them establishing a private life there would be unjustifiably harsh." There was also a reference to an IDI stating that consideration should be given to whether a person had sufficient knowledge of or connections to the country of origin to be able to form an adequate private life there. At paragraphs 122 to 125 of the decision general guidance was given on the no ties test, also with reference to paragraph 276ADE. Ties were said to involve something more than merely remote and abstract links. There needed to be a continued connection to life in the country; something that tied the claimant to his or her country of origin. It was recognised that the test under the Rules was an exacting one. The assessment must be a rounded one, considering all the relevant circumstances, and not limited only to social, cultural and family circumstances. The Tribunal also observed that each case would turn on its own facts. In that particular case they decided, in the context of deportation, that a person who was now 28, and had come to the UK as a 6 year old, did not retain any ties to Nigeria.

38. This particular case appears to me to fall in more of a borderline area than the facts considered in **Ogundimu**, but nevertheless I have decided that the appellant does meet the test of having no ties to Pakistan. The length of residence in the UK and the age at which he arrived appears to me to be central. Having arrived as a 12 year old his formative years have all been in the UK. It is clear from his level of English, and

the photographs with his partner, that he is highly westernised. It is true that he has lived within Asian communities in London and Scotland, that he continues to be able to speak Urdu and Punjabi, and that he therefore retains significant links to a community in the UK that shares cultural and linguistic reference points with Pakistan. Having said that, however, he has departed in a very significant way from his culture by establishing a relationship with an Indian national who is a Sikh, and it would also be a mistake to draw a direct link between British Asian communities on the one hand and communities in the Indian subcontinent on the other.

39. In East London the appellant will have grown up in a culturally diverse environment, mixing with people of many different backgrounds, all using English as a common language. The fact that he is a practising Muslim, with strong links with Asian families, should not in my view be regarded as a matter that somehow makes him less integrated in the UK. In London in particular, but also in other parts of the UK, Asian and other minority ethnic communities are an important part of the fabric of British life.

40. Despite the reservations expressed above I have accepted that the appellant's parents were killed in 2001. I have also accepted that he has lost all contact with his only sibling. In any event, given the role and status of women in Pakistan, his sister will have been absorbed into her husband's household, and would not be in a position to offer support or accommodation to the appellant. Overall, taking all of the circumstances into account, it therefore appears to me that the consequences for this appellant in seeking to establish private life in Pakistan at the age of 28, after around fifteen years' residence in the United Kingdom, having been brought here as a 12 year old child, would be unjustifiably harsh, bearing in mind in particular the lack of contact with any relatives or friends in that country.

41. Turning to the public interest factors in the new part 5A of the 2002 Act (inserted by section 19 of the Immigration Act 2014), 117B(1) counts against the appellant to a significant extent. This is because he entered illegally, and has remained illegally over a lengthy period. The one proviso is that he could not be held responsible, as a 12 year old child, for the actions of his father, or his father's friend. As for 117B(2) the appellant's English was good. There are certificates showing that he has taken some English courses. His level of English reflects the long period that he has spent in the UK, and this is not therefore a factor that counts against him.

42. As for 117B(3) the appellant appears not to have been a financial drain during his time in the UK. He appears to have been willing to work. He is in good health, despite having had to have a minor operation recently. Overall it appears likely that, if permitted to do so, the appellant would, based on his past actions, work and be financially independent.

43. 117B(iv) indicates that little weight should be given to a private life or a relationship established when a person is in the UK unlawfully. This applies to and counts against the appellant, but paragraph 276ADE represents the Secretary of State's view

of those circumstances in which applicants can succeed on private life grounds. Both 117B(iv) and 117B(v) cannot be interpreted as having the effect of counteracting or reversing the Immigration Rules, and it appears to me that the matters here do not alter the outcome under paragraph 276ADE.

44. It has not been suggested at any stage that the appellant has been involved in any criminal activity, or that there are any issues giving rise to the application of the public interest factors relevant to deportation.

45. In relation to the appellant's relationship with his partner it appears to me that this adds little either way. If the appellant succeeds in his own right on the basis of having no ties to Pakistan, under paragraph 276ADE, then he is not seeking to rely on this relationship. In any event his partner's presence in the UK is temporary. It is not clear whether she will be given further leave as a student. If the situation changes in the future, then the relationship may become the central issue, from the perspective of either the appellant or his partner, but at present I have decided that the case turns on the appellant's private life, through paragraph 276ADE.

46. It has not been suggested that there is any need for anonymity in this appeal, and I make no such order. Neither side made any mention of any fee award. It is not clear whether a fee was paid. In any event, even if one was paid, I would not make a fee award because the outcome turned on oral evidence.

Notice of Decision

47. The decision dismissing the appellant's appeal is set aside for the reasons given above. The decision in the appeal is remade as follows.

48. The appeal is allowed under the Immigration Rules, with reference to paragraph 276ADE.

Signed Date

Deputy Upper Tribunal Judge Gibb