



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

Appeal Number: OA/00089/2014

THE IMMIGRATION ACTS

Heard at Birmingham

On 5th February 2015

**Decision & Reasons
Promulgated**

On 13th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

**MUHAMMAD SHAFI
(NO ANONYMITY ORDER MADE)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ON BEHALF OF ECO ISLAMABAD)**

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 20th November 1943. He appeals with permission against a decision of Judge of the First-tier Tribunal Pacey, promulgated on 11th September 2014, dismissing his appeal against refusal of his application for leave to come to the United Kingdom as a returning resident. The judge found that the Appellant did not meet the requirements of either paragraph 18 or paragraph 19 of the Immigration Rules. He had been away from the United Kingdom for

almost twenty years and did not establish on the balance of probabilities that he intended to return for the purpose of settlement. He had not sought to return on the death of his mother in Pakistan, which had occurred in 2009.

2. In the grounds it is submitted that the Appellant had in fact left his wife in Pakistan as he wished to settle in the United Kingdom and then apply for his wife to join him. He had not realised earlier that he was able to apply as a returning resident and had he known that he would have applied on the death of his mother. It would make no sense for him to go to the lengths of seeking to enter as a returning resident if he did not intend to settle. The decision was harsh. Those grounds, although handwritten, appear to have been submitted by solicitors on behalf of the Appellant. Following the grant of permission the Respondent filed a notice under Upper Tribunal Procedure Rule 24 opposing the appeal and submitting that the judge had reasoned correctly. The Appellant had established a new family in Pakistan with whom he remained.
3. The appeal had been listed for hearing at 2pm. It was called on at 2.35pm but there was no attendance by or on behalf of the Appellant, either by representatives or by the Sponsor, who had attended the hearing before the First-tier Tribunal. I was satisfied that notice of hearing had been duly given to the Appellant and his representatives, and to the Sponsor by a letters dated 12th January 2015. The notices of hearing had not been returned by the Post Office and there had been no explanation received for the failure to attend. Having regard to rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I was satisfied that notice of the hearing had been duly given and I was of the view that it was in the interests of justice to proceed with the hearing.
4. Mr Mills for the Respondent relied upon the rule 24 response. The fact that the Appellant stated that he had not realised that he could apply sooner really added nothing to the substance of the case. The decision of Judge Pacey gave clear reasons as to why she found that the Appellant was not in fact seeking to enter for settlement. Even if he were entering for settlement Mr Mills pointed out there would have been no reasonable prospect that discretion under paragraph 19 of the Rules would have been exercised in the Appellant's favour and he referred to the guidance in that regard. The further beyond a two year absence in any particular case the less likely it was that leave would be granted. This Appellant, the judge had found, had been absent for almost twenty years and had remained for five years after the death of his mother. He submitted that the judge could not have found that discretion should have been exercised differently and there was no material error in the decision.
5. Having considered the original decision and reasons, the application and grant, the Respondent's response and the submissions made to me, I have come to the view that there was no material error of law in the decision of Judge Pacey. She heard oral evidence from the Appellant's son. It was not in dispute that he had been absent for almost twenty years and he could

not therefore satisfy the mandatory requirements of paragraph 18(ii). However another mandatory requirement is that an applicant should be seeking admission for the purpose of settlement. The judge noted (at paragraph 11 of her decision) that the Appellant was leaving behind his wife in Pakistan. She acknowledged that this in itself was no bar to a person seeking to resettle but the oral evidence of the son was that he did not know why the Appellant's wife was not accompanying him. The son did not know the intentions of the father and who he would stay with in the UK. The judge expressed the opinion (at paragraph 12) that it was highly unlikely that if the Appellant in reality planned to settle again in the UK he would not have had a discussion with his son as to the accommodation arrangements to be made. It was also the case that the son had clearly said that his father would return to Pakistan because he had relatives there. He had not said that his father would visit Pakistan but that he would return there. The judge then went on (at paragraph 14) to state, "In my view the oral and documentary evidence is that, on the balance of probabilities, the Appellant intends simply to visit the UK and not in fact to settle as a returning resident."

6. The reasons the judge gave for the core finding that the Appellant was not seeking to come to this country to settle were adequate and sufficient. They were not irrational or perverse and the Appellant will have been well aware of the why he lost his appeal. No error on a point of law which could possibly be material to the outcome is apparent.

Decision

There was no material error of law in the original decision made by the Judge of the First-tier Tribunal and her decision, that the Appellant's appeal be dismissed, therefore stands.

No anonymity order was requested and none is made.

Signed

Date 12 February 2015

Deputy Upper Tribunal Judge French