



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: IA/34312/2014

THE IMMIGRATION ACT

Heard at Manchester

Decision & Reasons Promulgated

On 22nd September 2017

On 06th October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Chaudhary Faisal Iqbal Cheema

Appellant

and

The Secretary of State for the Home Department

(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Brown instructed by Arshed & Co Solicitors

For the Respondent : Mrs Petterson Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mr Chaudhary Faisal Iqbal Cheema date of birth 4th April 1975 is a citizen of Pakistan. Having considered all the

circumstances, I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Simpson promulgated on 5th December 2016 whereby the judge dismissed the appellant's appeal against the decision of the Secretary of State for the Home Department. The Secretary of State had refused the appellant indefinite leave to remain in the United Kingdom on the basis of 10 years continuous lawful residence in the UK and thereby refused the appellant's application under Article 8 of the ECHR, family and private life.
3. By a decision of 17th May 2017 First-tier Tribunal Judge Gibb granted permission to appeal to the Upper Tribunal. Thus the case appeared before me to decide whether there was an error of law in the original decision. In granting leave Judge Gibb merely stated that the grounds are arguable.
4. The first issue raised in the grounds is that the judge failed to give adequate reasons or make clear findings on the evidence submitted to establish that the appellant was in the United Kingdom between May 2005 and May 2008. In essence the appellant was seeking to assert that he had been resident in the UK during that time and as a result period there was no break in the continuity of residence.
5. It has to be noted with regard to that there had been a previous determination in which it had been found that the appellant have been absent from the United Kingdom during the period 2005 to 2008. According to the evidence submitted at that stage the appellant was proved to have left the UK and arrived in Pakistan on the 2nd May 2005. Further documents produced established that the appellant had travelled a number of times between Pakistan and the United Arab Emirates during that time. There were stamps in the appellant's passport to confirm the details. I take that there were no stamps in the appellant's passport to indicate that he had entered the UK.
6. However the issue of whether the appellant had been in the UK may not be crucial. The appellant not only needed to be in the UK but also needed to be in the lawfully in the UK.
7. Examination of the chronology of leave discloses breaks in the leave. The appellant had first entered the United Kingdom on 16 September 2002 with leave as a student valid until 31 October 2003. The appellant's leave was extended on several occasions until the 31 January 2009. On 26 January 2009 the appellant made an application for his leave to be extended but that application was refused as of April 2010. The next application by the appellant was in May 2012.

8. With regard to the decision in April 2010 it does not appear that there was any appeal against that decision. Thus whatever can be said the appellant did not have lawful leave after April 2010. By that time the appellant had only had lawful leave and therefore lawful residence to be in the United Kingdom for a period of 8 years.
9. Whatever the period of residence by the appellant, the appellant was not lawfully resident in the UK after April 2010 and the appellant could not have acquired ten years continuous lawful residence. The appellant therefore does not meet the requirements of the rule.
10. As referred to above on 24 May 2012 the appellant made an application for indefinite leave on the basis of 10 years continuous lawful residence. The appellant appealed against the refusal. His appeal was dismissed on 26 March 2013. By 22 January 2014 he was appeal rights exhausted.
11. On 12 February 2014 the appellant submitted the current application again on the basis of 10 years continuous lawful residence in the United Kingdom. For the reasons set out that application cannot succeed under the rules. Accordingly there is no material error of law in the judge's assessment of that part of the decision.
12. The second issue raised by the appellant relates to the approach to be taken with regard to the appellant's medical condition. According to the documentation submitted the appellant was diagnosed with leukaemia in early 2013. As acknowledged in the decision the appellant has had chemotherapy and a bone marrow transplant in the UK. There are references from page 41 onwards to ongoing medical treatment and the fact that the appellant is not fit to attend to give evidence. It is suggested that he is currently still receiving chemotherapy, although there is no confirmation of that from the hospital treating him. Whilst there are reports from a general practitioner, there do not appear to be any reports from the hospital that is dealing with the chemotherapy. There are any report from that source as to a future prognosis or likely future treatment.
13. The judge at the time made reference to the case of GS (India) and others v SSHD [2015] EWCA Civ 40 and D v UK. At the same time as the case was promulgated the decision in the case of Paposhvili v Belgium (2016) ECtHR 1113 was issued. The approach of the judge in the instant case is not in line with the guidance given in Paposhvili. Insofar as the judge's decision is not in accord with the case of Paposhvili I find that there is a material error of law in the judgement.
14. With that in mind the parties agreed that the matter would have to be returned to the First-tier Tribunal for a further hearing to determine the relevant facts pertinent to the case law set out.

15. With that in mind directions had been drafted and are appended hereto as to what further evidence is to be submitted. The parties are also required to lodge skeleton arguments setting out the legal framework to be applied by the First-tier Tribunal.
16. In the circumstances I find that there is a material error of law in the decision by the First-tier Tribunal. I set the decision aside and remit the case back to the First-tier Tribunal.

Notice of Decision

17. I allow the appeal to the extent that the appeal is remitted back to the First-tier Tribunal.
18. I do not make an anonymity direction

Signed
Deputy Upper Tribunal Judge McClure

Date 05 October 2017



Upper Tribunal

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Directions

- 1) The matter is to be remitted back to the First-tier Tribunal for rehearing.
- 2) The respondent is within 28 days of receiving the Upper Tribunal decision to provide a skeleton argument setting out the legal framework to be applied in assessing whether or not the appellant's medical condition engages Article 3 or Article 8 in light of the decisions in the cases of *Paposhvili v Belgium* 2016 ECtHR 1113 and *GS (India) and others v SSHD* 2015 EWCA Civ 40.
- 3) The appellant within 28 days thereafter is to file and serve any further medical evidence and background material to be relied upon including a chronological table of medical treatment received in respect of his leukaemia or any other relevant medical condition and of the future medical treatment planned to deal with his condition.
- 4) If the respondent seeks to rely upon evidence with regard to the availability of treatment in Pakistan, leave is given to submit background evidence to deal with the issue.

Signed

Date 05 October 2017

Deputy Upper Tribunal Judge McClure