



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

Appeal Number: HU/10046/2017

THE IMMIGRATION ACTS

**Heard at: Field House
On: 1 October 2018**

**Decision & Reasons
Promulgated
On: 25 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR MUHAMMAD SALAAH UDDIN
Appellant
(anonymity direction not made)**

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent**

Representation:

For the appellant: Mr A Slater of Counsel

For the respondent: Mr Candola, Senior Presenting Officer

DECISION AND REASONS

1. The appellant born on 1 January 1949, a citizen of Pakistan appealed against the decision of the Secretary of State dated 1 June 1995 refusing his application based on his long residence in the United Kingdom. First-tier Tribunal Judge PS Aujla dismissed the appellant's appeal on human rights grounds in a decision promulgated on 26 June 2018.

2. Permission to appeal was granted by First-tier Tribunal Judge Saffer who stated that it is arguable that the Judge materially erred in not considering the 22-year delay by the respondent to execute his deportation decision and did not consider this aspect within the balancing exercise. The appellant has spent 26 years in this country and the impact this has on the public interest in his removal should have been considered.
3. The First-tier Tribunal Judge dismissed the appellant's appeal under Article 8 of the European Convention on Human Rights which was the only issue in the appeal. He stated that it was conceded on behalf of the appellant that he did not satisfy the requirements in paragraph 276 ADE on stability grounds as he was still subject to a deportation order, albeit made 22 years ago.
4. The Judge stated that the respondent did not dispute that the appellant has lived continuously in the United Kingdom since he first arrived on 30 June 1992, (26 years ago). Therefore, he has established private life in this country. The interference will be caused by his removal engages the operation of Article 8. In determining proportionality, the appellant's favourable circumstances must be balanced against the need for his removal as someone who is without leave. The appellant came to this country when he was 43 years old and he is now 69 years old. He has been absent from this country of nationality for 36 years old and will have difficulties settling in Pakistan. This appears to be the sum total of the strength of the appellant's private life in the United Kingdom. The Judge concluded that the appellant's exclusion from the United Kingdom is proportionate.
5. The grounds of appeal state that the Judge failed to assess the appellant's human rights through the lens of the immigration rules and distinguish between deportation order for a foreign criminal on conducive grounds and the old-style deportation order for those who had overstayed visas and who would now be subject to administrative removal under of the Immigration and Asylum Act 1999. The appellant was subject to a 22-year-old deportation order which was not based on any criminality on his part. The Judge failed to acknowledge this critical distinction.
6. I find that this is a material error of law in the decision of the First-tier Tribunal because the Judge did not give due weight to the fact that the appellant has been in this country for 26 years. If there was not a deportation order made against the appellant in 1996, he would have succeeded, under the immigration rules on the bases of his long albeit unlawful residence in this country.
7. I said to the parties at the hearing after finding that there is material error of law in the decision of the First-tier Tribunal that I would not send the appeal back to the First-tier Tribunal but retain it in the Upper Tribunal and invite submissions as the deportation order's continuing effect, if any. The appellant has not made an application to set aside the deportation order, so it technically still stands.

8. I however see no purpose in asking the parties to submit submissions on this issue because inevitably the result would be that the appellant cannot be removed from this country. I therefore take a practical approach and take into account the public interest not to waste judicial resources.
9. I cannot see any circumstance under which the appellant would be required to leave the United Kingdom given his long residence in this country. Fairness demands that respondent cannot hold a deportation order over a person indefinitely. Although it would have greatly assisted the appellant if he had made an application to revoke the deportation order, but be that as it may, I shall conduct a proportionality exercise required under Article 8 of the European Convention on Human Rights.
10. The appellant has developed a private life in this country which will be breached by his removal and there is no dispute about that. I consider the respondent's delay in executing the deportation order is so excessive and inordinate that it demonstrates a complete breakdown in the system of immigration control. The delay remains unexplained and entirely the fault of the respondent. I also find that the delay has had very substantial effect in the appellant's case as it has allowed him to build a substantial private life in this country. The respondent cannot now rely on his interest in a fair, effective and orderly immigration control.
11. The deportation order was made in 1996, the appellant made further applications to remain in this country. The appellant's applications of 2007, 2014, 2016 demonstrates that the appellant was willing to bring himself to the attention of the respondent. This still did not prod the respondent into action. This is a highly unusual case where someone has remained in this country for 22 years after a deportation order has been issued.
12. I take the point made on behalf of the appellant that the appellant's deportation was not based on any criminality but because he overstayed his visitor visa and as of the current law, only liable to administrative removal. The delay has been so inordinate that the law has substantially changed regarding deportation.
13. Given my remarks above, I set aside the decision of the First-tier Tribunal and remake the decision and allow the appellant's appeal under Article 8.

DECISION

The appellant's appeal is allowed under the Article 8 of the European Convention on Human Rights.

Signed by

Ms S Chana
A Deputy Judge of the Upper Tribunal

Dated this 20th day of October 2018