



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/17829/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12<sup>th</sup> June 2018

Determination Promulgated  
On 21st June 2018

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

REHAN IQBAL  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Salam of Salam & Co Solicitors Ltd  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Pakistan born on 11<sup>th</sup> June 1979. He arrived in the UK on 10<sup>th</sup> January 2006 with entry clearance as a student valid until 30<sup>th</sup> April 2007. He then, it is accepted by the respondent, had leave to remain as a student until 30<sup>th</sup> April 2014 with no gaps greater than 28 days. He made an application to extend his leave in this capacity on 30<sup>th</sup> April 2014, but, according to the respondent, this

application was refused with a right of appeal on 18<sup>th</sup> May 2015. The appellant did not appeal this decision: he says this was because he did not receive it. On 16<sup>th</sup> March 2016 the appellant applied for indefinite leave to remain on the basis of ten years lawful residence and his human right, which was refused in a decision of the respondent dated 7<sup>th</sup> July 2016. His appeal against the decision was dismissed by First-tier Tribunal Judge Young-Henry in a determination promulgated on the 9<sup>th</sup> October 2017.

2. Permission to appeal was granted on the basis that it was arguable that the First-tier judge had erred in law in finding that the refusal of the 18<sup>th</sup> May 2015 was properly served on the appellant.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions – Error of Law*

4. The grounds argue that the decision of the First-tier Tribunal was irrational in finding that the decision of 18<sup>th</sup> May 2015 was validly served on the appellant and thus that he had overstayed since the time for appealing this decision elapsed.
5. It is contended that the First-tier Tribunal irrationally found that the appellant received the decision refusing his 30<sup>th</sup> April 2014 application and chose to ignore it and dishonestly wrote to his MP about the delay so his s.3C 1971 Act leave would continue, when if he had lodged an appeal that would equally have extended his leave to remain under s.3C of the 1971 Act.
6. Further, it is argued, the Home Office evidence does not show that they properly served the decision (it was despatched to a bag to address “exception” according to their records and not sent to an address). In addition, the Home Office Presenting Officer said to the First-tier Tribunal that the decision of 18<sup>th</sup> May 2015 was not available in the physical files or in the electronic records and no one had a copy or had seen it. Further, the Home Office wrote to the appellant’s MP on 29<sup>th</sup> June 2015 stating that the application was with a team for consideration, which could not be the case if it had been refused on 18<sup>th</sup> May 2015. The First-tier Tribunal erred by failing to give any weight or consideration to this relevant evidence.
7. The First-tier Tribunal took into account irrelevant and improper evidence regarding the appellant’s change of address from a hostile previous solicitor; and similarly wrongly found that the appellant was in breach of the Immigration Rules at paragraph 22 of the decision for not studying when he had leave as a student, when there is nothing in the Immigration Rules which says the appellant cannot legitimately make another application if he does not study and simply state that his leave may be curtailed if he does not study.
8. Mr Tufan provided a copy of the decision of 18<sup>th</sup> May 2015, which the Presenting Officer had been unable to locate for the hearing before the First-tier Tribunal. After I had taken him to the evidence of the MP correspondence (the letter in the

respondent's bundle from Rob Wilson MP to the appellant and the letter from the respondent to the MP dated 29<sup>th</sup> June 2015 set out in the respondent's case record sheets at page 31 of the appellant's bundle) Mr Tufan accepted that the First-tier Tribunal had erred in law in failing to consider this evidence going to whether the decision of the 18<sup>th</sup> May 2015 had been served on the appellant. I therefore set aside the decision of the First-tier Tribunal in its entirety.

9. Both parties were happy to proceed immediately with the remaking hearing, and accepted that the only issue in this appeal was the service of the decision of 18<sup>th</sup> May 2015 and thus whether the appellant had been in the UK lawfully for ten years or more. Mr Tufan initially raised an issue of whether the appellant had a criminal conviction as a result of proceedings in Berkshire Magistrates Court in September 2017, but the appellant was able to show, by producing a letter to that effect from Reading Crown Court dated 26<sup>th</sup> October 2017, that whilst he had been convicted his appeal to the Reading Crown Court against conviction and sentence had been allowed. As a result, it was accepted for the respondent that this was not a relevant matter. Mr Tufan also accepted that the caution the appellant received in 2009 was not relevant as this was not mentioned in the refusal letter under appeal.
10. Mr Salam produced evidence, through a "track and trace" internet response communication, that the delivery number said to have been used for the decision of 18<sup>th</sup> May 2015 was not a recorded delivery number recognised by the Royal Mail; a letter dated 5<sup>th</sup> June 2018 by which Salam Immigration had asked the respondent to explain the meaning of despatched "by bag" and delivery address "exception" and to which they had received no reply; and a copy of the application form for the application of 30<sup>th</sup> April 2014.
11. At the end of the remaking hearing I informed the parties that I would be allowing the appeal but would send my reasons in writing.

#### *Conclusions – Error of Law*

12. The First-tier Tribunal found that the appellant did receive the refusal of the 18<sup>th</sup> May 2015 because of evidence from his former representative, Mr Waqar regarding a notification that the appellant had changed address which was sent to the respondent on 13<sup>th</sup> April 2015, this is set out in the decision at paragraph 18. It is also found by the First-tier Tribunal that the appellant was vague about where he was living in May 2015 in his evidence, see paragraph 19 of the decision. No other matters are considered when assessing whether this decision was properly served.
13. The finding that the decision of 18<sup>th</sup> May 2015 was properly served erred in law as it failed to consider relevant evidence as outlined in the appellant's grounds of appeal, particularly the letter to the appellant's MP and the Home Office records which do not record an address for service or a method of service for this decision and record the application being pending for consideration after this date. It is also very unclear from the decision of the First-tier Tribunal at paragraph 20 why the change of address by the appellant is of any relevance to the issue of proper service of the decision of the 18<sup>th</sup> May 2015.

14. I also find that it was of no relevance to the legality of the appellant's presence whether he studied during this period of leave from 2012 to 2014 as is asserted at paragraph 22 of the decision. As set out in the grounds not studying meant that his leave was liable to be curtailed, but this was not effectively carried out by the respondent, so the appellant remained lawfully present in the UK during this period of time. A failure to attend college was not breach of the terms of his leave which rendered him unlawfully present but simply made him liable to a curtailment procedure.
15. I therefore find that the decision of the First-tier Tribunal relating to the requirements of paragraph 276B of the Immigration Rules was one infected with material errors of law, and therefore that it must be set aside in its entirety and remade.

#### *Evidence and Submissions - Remaking*

16. The appellant adopted his statement and confirmed that it was true and correct and his evidence to the Upper Tribunal. In short summary the statement with respect to the application of 30<sup>th</sup> April 2014 states as follows. He made this application and followed up the delays in decision making through his MP Mr Rob Wilson, who wrote to the Home Office in June 2015, and then back to him about the Home Office response on 29<sup>th</sup> June 2015 stating that his application was still pending with a team for consideration. As he received no response from the Home Office he made a long residence application on 16<sup>th</sup> March 2016 when he had completed ten years of lawful residence. He was shocked when this application was refused on 7<sup>th</sup> July 2016 on the basis that the April 2015 application to remain as a student had in fact been refused on 18<sup>th</sup> May 2015. He sought advice from new solicitors and they obtained the Home Office file via a subject access request. He had always kept the Home Office informed of his address, and there was no reason why this refusal could not have been served on his solicitors as he had always given his solicitors' address as the one for correspondence. Further it would not seem likely that the Home Office would have lied to his MP that the application of April 2014 was still pending in June 2015 if they had refused it and sent out the refusal in May 2015.
17. In evidence in chief and re-examination the appellant said that his old representative's (Go global) address was 162 Plashat Road, Upton Park, and that this address is clearly on the application form for the April 2014 application as the one for correspondence, and that he had always given his representative as his correspondence address. He said that he had seen the refusal decision of 18<sup>th</sup> May 2015 for the first time yesterday when it was emailed to him by Salam & Co. He said he had lived at the address [ - ], Reading (the address on the decision of 18<sup>th</sup> May 2015) between April and July 2015, and that he had contacted his old representative and properly updated the Home Office with this change of residential address, but had not received any refusal notice to this address during this time.

18. Mr Tufan submitted that the only issue was whether the letter of 18<sup>th</sup> May 2015 had been properly served on the appellant. There was a delivery number. The appellant had been a student who had failed to attend college after 2011, and he should have told the Home Office that he was not doing so and as a result his evidence that he did not receive the letter of 18<sup>th</sup> May 2015 was not as strong as it might otherwise have been.
19. Mr Salam submitted that there was no explanation from the respondent as to what despatched by bag to address exception, as set out in the respondent's records at paragraph 24, meant. It was clear it did not mean sent to the representative's address, as this is set out at page 27 with the subsequent decision under challenge. Royal Mail's evidence is that the delivery number is not a recorded delivery number – and this is also clear as all such numbers have GB at the end. The fact that the appellant's MP was told that the application was pending with a team on 29<sup>th</sup> June 2015 is also indicative that the decision of 18<sup>th</sup> May 2015 was not served properly on the appellant on 19<sup>th</sup> May 2015 as claimed by the respondent. This decision letter was, in reality, first served on the appellant by being sent to Salam & Co yesterday by email.
20. The appellant's evidence before the First-tier Tribunal about his studies between 2011 and 2012 was that he found the administrative staff rude and the teaching was often cancelled and as the college demanded more money he stopped attending and started the quest to find a new college. He had completed three courses successfully between 2006 and 2011 but as he had not finished his course at St Peter's College he found it difficult to find another college that would accept him. When he did find a college he made his application of 30<sup>th</sup> April 2014. He therefore had acted properly and in accordance with the conditions of his leave to remain.
21. As a result, it is submitted, the appellant has been in the UK since the 10<sup>th</sup> January 2016 with no impermissible gaps and thus has more than ten years continuous residence in the UK and there are no other factors which disentitle him under paragraph 276B of the Immigration Rules to indefinite leave to remain.

### *Conclusions - Remaking*

22. I am satisfied on the balance of probabilities that the decision of 18<sup>th</sup> May 2015 was not properly served on the appellant, either to his address or that of his representative, shortly after its making on 19<sup>th</sup> May 2015 as claimed by the respondent but was first provided to him and his current representative on 11<sup>th</sup> June 2018. I come to this conclusion primarily because the respondent wrote to the appellant's MP on 29<sup>th</sup> June 2015 stating that the application was "with a team for consideration" and that he would be "notified of the outcome as soon as possible". Further the GCID Case Record Sheet for the supposed delivery of this decision does not provide a recorded delivery number to a representative's or residential address. I do not find the fact that the appellant stopped attending a college, which the respondent himself later removed sponsor status from, because he found it unsatisfactory in its teaching and administration is a factor which leads me to

disbelieve his evidence that he and his representative did not receive this decision, nor the fact that it took him some time to find an alternative college and make a new application for further leave to remain as a student. The fact that he did inform the respondent of his change of residential address is a neutral matter which takes this issue no further.

23. As I have now found that the appellant was not properly served with the decision of 18<sup>th</sup> May 2015 it follows that he has been lawfully in the UK without any breaks of more than 28 days since the 10<sup>th</sup> January 2006 and as a result for a continuous period of more than ten years. It is accepted by the respondent that he meets all the other requirements of paragraph 276B of the Immigration Rules, and I am also satisfied that this is the case. The appellant undoubtedly has private life ties with the UK having lived in this country for this period of time, and removal would undoubtedly interfere with those ties. The appellant speaks good English but has supplied no information about his ability to support himself financially. I find that his removal would be a disproportionate interference with his Article 8 ECHR rights as there is no public interest in his removal given that he is able to meet the requirements of the long residence Immigration Rules for indefinite leave to remain at paragraph 276B.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the decision in the appeal by allowing it on Article 8 ECHR human rights grounds.

Signed: *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

Date: 12<sup>th</sup> June 2018

Fee Award                      Note: this is **not** part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals. I have decided to make no fee award because I was not asked to make one by the appellant's representative.

Signed: *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

Date: 12<sup>th</sup> June 2018