



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/18223/2016

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 28 June 2018

Decision & Reasons Promulgated  
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AFTAB MAJEED  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer  
For the Respondent: Mr Gajjar, instructed by Law Lane Solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, Aftab Majeed, was born on 7 May 1975 and is a male citizen of Pakistan. He arrived in the

United Kingdom in 2006 as a student. He applied for further leave to remain but his application was refused by a decision of the respondent dated 15 July 2016. The appellant appealed to the First-tier Tribunal (Judge Moran) which, in a decision promulgated on 17 January 2018, allowed the appeal on human rights grounds (Article 8, ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. I am grateful to Mr Diwnycz, who appeared for the Secretary of State at the Upper Tribunal hearing, for conceding that the appeal of the Secretary of State cannot succeed. Mr Diwnycz accepted that the concessions which Judge Moran refers to in his decision were duly given by the Presenting Officer at the First-tier Tribunal hearing. That the concessions had been given should have been clear from the judge's decision but it appears that the author of the grounds of appeal (Mr Duffy) did not have sight of the full file, including the Presenting Officer's own Record of Proceedings. Mr Diwnycz accepted that what the judge states at [17-18] is accurate:

17 By the end of the hearing the respondent's position was that no fraud had been committed and that the decision of 20 August 2010 was correct at the time now known to be wrong in the light of *Castro*. It was argued however that there would still be a break in law for residence because an application made on 2 September 2010 was made on an out of date application form. I am satisfied this argument is also wrong based on the material provided by AM at A141 and 149-151. The old form was used during the short window of time when the old form can continue to be used.

18 I find the correct position to be that AM has in fact got ten years' continuous lawful residence or if he has not it is only because of what are now shown to be clear errors in the decision making in 2010 and the decisions made in May, August and September of that year. These errors are set out above and amply proved by the abundance of material before me. Having properly made the concessions that were made all that the respondent could say to seek to support the current decision was that although the decisions leading to the break in residence are known to be wrong now (save for the September decision which is not admitted to be wrong) they were reasonably made on the information available to the respondent at the time. I need not resolve whether decisions were reasonably made over seven years ago as the important thing now is to attempt to do justice to both parties on the basis of what we know now to be the correct position.

3. The judge then proceeded to consider the circumstances of the appellant [19-20] and concluded that the decision of the respondent was not proportionate to the public interest in the maintenance of effective immigration control. He duly allowed the appeal on human rights grounds (Article 8).
4. In the light of the submissions made by Mr Diwnycz, I dismiss the Secretary of State's appeal. I acknowledge that, had Mr Duffy had full sight of the file, then the grounds may not have been submitted at all or, at least, not in the form in which they were submitted.

5. Mr Gajjar applied for costs against the Secretary of State. The Tribunal Procedure (Upper Tribunal) Rules 2008, paragraph 10(3)(d) provides that costs may be awarded where a party has acted unreasonably in bringing, conducting or defending proceedings. I consider that to be a high threshold. However, I consider that Mr Duffy, who drafted the grounds, did so with the materials available to him. It would obviously have been better had he had sight of the entire Home Office file but I am unable to conclude, in this particular instance, that the Secretary of State, or more particularly Mr Duffy acting on the Secretary of State's behalf, has acted unreasonably. There shall be no order as to costs.

**Notice of Decision**

6. The Secretary of State's appeal is dismissed. No order for costs.
7. No anonymity direction is made.

Signed

Date 20 JULY 2018

Upper Tribunal Judge Lane