Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02670/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 5th April 2019	**On 30th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

DR KASHIF RIAZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs G Fama (Counsel)
For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge J L Bristow promulgated on 12th April 2018, following a hearing at Birmingham Priory Court on 9th April 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 6th July 1980. He appealed against the decision of the Respondent dated 3rd January 2018, refusing his application for indefinite leave to remain in the UK on the basis of ten years' long residency.

The Appellant's Claim

3. The Appellant's claim is that he first entered the UK as a student in 2007, and gained various extensions of stay, including the grant of an EEA residence card in 2012, when he began living with a Czech national, and that he has now acquired ten years' lawful residence in this country, such as to enable him to apply for indefinite leave to remain.

The Judge's Determination

4. The judge considered the appeal before him on the basis of a "paper" appeal. The documentation before the judge was sparse. The observation was made by the judge, after considering the relevant legal provision in paragraph 276B (at paragraph 20), that this was a case where "the Appellant has not adduced any evidence to prove to the required standard that he has at least ten years' continuous lawful residence in the UK" (paragraph 21). Accordingly, the judge went on to conclude that, "on the evidence before me I am not satisfied that he has proved to the required standard that he can meet the requirements of paragraph 276B" (paragraph 22). Thereafter, the judge went on to consider the position under Article 8 (see paragraphs 23 to 26), and concluded that the decision that he was arriving at was not disproportionate (see paragraphs 27 to 39) to the Appellant's human rights.

5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge erred in his decision in concluding that the Appellant could not succeed on private life grounds. Moreover, the finding that the Appellant was not financially independent was wrong given that he had submitted his pay slips as an NHS doctor. Moreover, the judge placed no weight on the benefit to the UK in retaining doctors' trained in the United Kingdom, and did not refer to the well-known decision in **Agyarko [2017] UKSC 11**. This was a case where the Appellant had been in the UK for eleven years, and he deserved to succeed under paragraph 276B of HC 395.

7. On 18th May 2018, permission to appeal was granted by the Tribunal.

Submissions

8. At the hearing before me, on 5th April 2019, the Appellant was on this occasion represented by Mrs G Fama, (of Counsel), and the Respondent

was represented by Mr David Mills, a Senior Home Office Presenting Officer. Mrs Fama began at the outset by expressing her gratitude to Mr Mills, on account of the fact that she had just been alerted to the fact that this was a case where the Appellant had been in a receipt of a Tier 2 visa, (which was the equivalent of a work permit) that would entitle him to work in this country until September 2021. She submitted that she was not aware of this. As far as she was concerned, she had arrived to argue the Appellant's eligibility on the basis of paragraph 276ADE of the Immigration Rules. Her instruction was that the Appellant had been in the UK for eleven years continuously. He had never been out of this country for more than the required six months, which would thereafter disentitle him to come back as a returning resident. She agreed that the Appellant's application would have to be determined on the basis of the sparse documentation before Judge Bristow at the time of the hearing. It was true that there was a well compiled bundle of documents thereafter, on the basis of which permission to appeal was granted by the Tribunal, but that was not the bundle that was before Judge Bristow, who had struggled to find the evidence that the Appellant wished to rely upon.

9. For his part, Mr Mills submitted that this was a human rights appeal. The Appellant had applied for indefinite leave to remain on the basis of ten years' residence. However, he did not have ten years of continuous leave. What had happened was that he had entered into a relationship with an EEA national in 2012, and had then been granted an EEA residence card, when he had then, upon its expiry on 2nd October 2017, applied for an extension, which he did on 18th November 2015, which she did, and that application was refused. It was not until 26th September 2017 that he then applied for a Tier 2 visa. What this meant was that he was without lawful leave when this EEA residence card expired, and up to the point when he eventually then secured on 26th September 2017 a Tier 2 visa, which would now be valid until 2021. It was accepted that it was not a big gap. It was likely the case that the Appellant was not aware that this gap had the effect of breaking his lawful residence. Nevertheless, the position currently was that he did not have lawful leave and therefore could not succeed.

No Error of Law

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.

11. First, it is agreed by all those before me today that the judge below did not have the evidence that the Appellant sought to rely upon to demonstrate that he had been in this country lawfully for ten years, so as to entitle him to remain on the basis of indefinite leave in this country.

12. Second, on the contrary, the evidence is that the Appellant's leave had been broken after his EEA residence card expired, so that he only entered

a period of lawful leave after 26th September 2017 with a Tier 2 visa being granted to him up to September 2021.

13. Third, it can be no part of a consideration for a judge that the UK needs to retain doctors trained in this country, at a time of dire need in the NHS. That may well be the case. However, that is a matter that falls within the province of the UK government, to be debated and decided upon by the UK Parliament. It is no part of the judge's function to have regard to policy concerns, which have not materialised into hard law.

14. Finally, what this means is that, that on the basis of the agreed evidence before me, this was an Appellant who will after September 2021, be in a position to apply, on the basis of five years' lawful residence in this country, for indefinite leave to remain. However, as far as the present appeal is concerned, it cannot be said that the judge below had in any way erred in law. Accordingly, this appeal falls to be dismissed.

Decision

15. The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.

No anonymity direction is made.

This appeal is dismissed.

Signed	Dated
Deputy Upper Tribunal Judge Juss	25th April 2019