Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10653/2018

THE IMMIGRATION ACTS

Heard at Manchester	**Determination & Reasons Promulgated**
On 7 January 2019	**On 8 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ABDUL HAMEED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Islam (Solicitor), Salam & Co Solicitors Limited
For the Respondent: Mr C Bates (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Raiks, promulgated in Manchester following the hearing there on 13th September 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, who was born on 17th April 1988. He appealed against the decision of the Respondent dated 24th April 2018 refusing his application for indefinite leave to remain in the United Kingdom on the basis of his long residence in this country and his family and private life.

The Appellant's Claim

3. The essence of the Appellant's claim is set out by the judge at the outset where he notes that:

> "The Appellant's application for leave to remain dated 21st September 2017 was on the basis of his long residence in the UK. Paragraph 276B allows for a person to potentially qualify for settlement after completing a period of ten years' continuous lawful residence in the UK." (Paragraph 2).

The Judge's Findings

4. The judge observed that although the application of the Appellant was made on the basis of paragraph 276B, the Respondent had refused that application for two essential reasons.

5. First, while she had applied in time for indefinite leave to remain to remain as a Tier 1 (General) Migrant on 30th June 2016, this application was refused on the same date. Thereafter the Appellant requested an in time administrative review on 11th July 2016 and his stay was then extended by virtue of Section 3C of the Immigration Act 1971 whilst the administrative review was pending. The judge goes on to explain that:

> "However, the Appellant then submitted a fresh application for ILR on the basis of ten years long residence on 27th July 2016. Therefore, and as for guidance referred to by the Secretary of State in the refusal decision Section 3C was considered as ended on 26th June 2016." (Paragraph 3).

6. The second reason given by the Respondent in the refusal letter was that,

> "The Respondent having considered the general grounds of refusal of leave to remain, concluded that the information provided by the Appellant on 5th April 2011 when the Appellant was granted his Tier 1 (General) Migrant status, had been incorrect, and that the Appellant had failed to provide accurate information in respect of his tax return at the time of that application, and this "had an impact on the grant of his status." (Paragraph 4).

7. The judge held that the Appellant could not succeed because his Section 3C leave ended as soon as the Appellant had made a fresh application on 27th July 2016. As the judge explained, "The administrative review therefore ended the day before this on 26th July 2017 as it was considered no longer pending as a result of this new application. At this stage the

Appellant had resided in the UK for eight years and ten months." (Paragraph 17).

Grounds of Application

8. The grounds of application state that the judge had misconceived the nature of the application, which had nothing to do with the fact that the Appellant had been granted a Section 3C leave, after the administrative review process was triggered. The application had everything to do with the fact that the Appellant had applied for indefinite leave in a second application on 27th July 2016. It was this application that took two years for the Secretary of State to determine. Had the application been determined earlier, the Appellant would have no leg to stand upon, because the Appellant's residence in this country would not have amounted to ten years. However, at the time that it was decided, the Appellant had been in this country for ten years and six months. This is because the Respondent had considered the application on 24th April 2018 and the Appellant had therefore completed the ten year qualifying period so as to enable him to succeed under paragraph 276ADE. The grounds are quite well-argued in this respect.

9. Permission to appeal was granted on 9th November 2018. This was on the basis that the judge had not engaged with the IDI of the Secretary of State, which allowed for the claim to be put in the way that the appellant was putting it. Instead, the judge had focused on the fact that the Appellant's Section 3C leave had ended, and therefore he could not succeed.

Submissions

10. At the hearing before me on 8th January 2019, Mr Islam, appearing on behalf of the Appellant, relied upon the grounds of application. He was emphatic in his statement that the judge had simply failed to consider the fact that the second application, although ending the Appellant's Section 3C leave, was not considered by the Secretary of State until some two years later on 24 April 2018, when in fact it had been made on 27th July 2016, and by that time the Appellant had clocked up ten years and six months. Therefore, he could succeed under paragraph 276ADE.

11. For his part, Mr Bates relied upon the decision of the Tribunal in **Patel [2015] UKUT 0273**, where the Upper Tribunal had stated that it was not open to a person who had not as yet completed a full ten years of lawful residence in this country, to make one application after another, and thereby get leave to remain by way of operation of law, and then clock up the requisite ten years, so as to be able to stake a claim to remain in this country. In that case the Upper Tribunal had made it clear that "this would open Section 3C to abuse. It would open the possibility of a series

of applications leading to indefinite extension of the original leave." (Paragraph 17).

12. Mr Islam, replied to say that there was no bar to an applicant making his application as many times as he wanted. Indeed, the IDIs makes it quite clear that if a person were to amend their application more than once on the same day, they should make it clear which application they were relying upon. The issue was not whether the Appellant had made one application after another. The issue was that the application which he had made, namely the one on 27th July 2016, was not determined until 24th April 2018, and this was something that the judge did not engage with. At that time, the Appellant had clocked up ten years so as to make him eligible for the right to remain in this country.

Error of Law

13. I am satisfied that the making of the decision by the judge involved 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. My reasons are as follows. There is some apparent justification in the ingenious argument put forward by Mr Islam before this Tribunal. It arises from the IDI which, in its policy on "long residence" version 15.0, published on 3rd April 2017), has a heading "Applications being Considered More than 28 Days Before the Required Qualifying Period is Completed". The paragraph under this heading goes on to say that "if you are considering an application more than 28 days before the applicant completes the required qualifying period for long residence you must refuse. This is because the applicant has not completed the required period of leave in the UK". Mr Islam has argued that the reference to "considering an application" means that the relevant date is the time when the Home Office made the decision with respect to this application. The judge in this case did not engage with this argument. The decision, therefore, was one which did not consider everything that ought to have been considered. It left unanswered the Appellant's argument. That being so, this matter has been remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Raiks, under Practice Statement 7.2.(b), because "the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal".

14. No anonymity direction is made.

15. This appeal is allowed.

Signed Date

Deputy Upper Tribunal Judge Juss 29th January 2019