



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

Appeal Number: HU/15018/2017

THE IMMIGRATION ACTS

Heard at North Shields

On 11 January 2019

**Decision & Reasons
Promulgated
On 30 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR M M
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Diwnycz, Home Office Presenting Officer.

For the Respondent: Mr E Nicholson, Counsel.

DECISION AND REASONS

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-Tier Tribunal with the Secretary of State referred to as “the Respondent” and Mr M M “the Appellant”.
2. The Appellant is a citizen of Bangladesh who made an application for further leave to remain on the basis of his private life in the United Kingdom. That application was subsequently varied to one of indefinite leave to remain on the basis of ten years long residence. The Respondent refused it and subsequently the Appellant appealed.

3. Following a hearing at North Shields, and in a decision promulgated on 5 July 2018, Judge of the First-tier Tribunal Bircher allowed the Appellant's appeal.
4. The Respondent sought permission to appeal which was granted by Judge of the First-tier Tribunal Froom on 20 September 2018. His reasons for so granting were: -

- "1. The application is in-time.*
- 2. The FtTJ arguably erred in finding at [19] that the appellant had accrued more than ten years' lawful continuous residence. The appellant became appeal rights exhausted on 2 October 2014 and did not submit his current application until 29 October 2014. The FtTJ makes no explicit finding as to whether the requirements of paragraph 276B have been met.*
- 3. Any error regarding the ETS point may prove immaterial if the FtTJ was entitled to find the respondent had not discharged the legal burden in this case. However, all grounds may be argued."*

5. Thus, the appeal came before me today.
6. At the hearing I was handed a Rule 24 response prepared by Mr Nicholson on behalf of the Appellant.
7. Mr Diwnycz relied on the grounds seeking permission to appeal.
8. Both representatives agreed that the two issues before me were, as identified by Judge Froom, at paragraphs 2 and 3 of his above-mentioned decision. Albeit, that it was the one at paragraph 2 which was at the nub application before me today.
9. Mr Nicholson referred me to paragraph 276B of the Immigration Rules. It states: -

"276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

(i)(a) he has had at least 10 years continuous lawful residence in the United Kingdom.

(ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:

(a) age; and

(b) strength of connections in the United Kingdom; and

(c) personal history, including character, conduct, associations and employment record; and

(d) domestic circumstances; and

- (e) *compassionate circumstances; and*
- (f) *any representations received on the person's behalf; and*

(iii) *the applicant does not fall for refusal under the general grounds for refusal.*

(iv) *the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL.*

(v) *the applicant must not be in the UK in breach of immigration laws, except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded. Any previous period of overstaying between periods of leave will also be disregarded where-*

(a) *the previous application was made before 24 November 2016 and within 28 days of the expiry of leave; or*

(b) *the further application was made on or after 24 November 2016 and paragraph 39E of these Rules applied."*

10. In particular he relied on Rule 276B (v) (a).
11. Mr Diwnycz accepted the chronology as referred to in paragraph 2 above of the grant of permission to appeal. Namely, that the Appellant became appeal rights exhausted on 2 October 2014 and did not submit his current application until 29 October 2014.
12. Mr Nicholson argued that in light of that, which was an application made prior to 24 November 2016 and within 28 days of the expiry of leave the Appellant's appeal should* succeed. In any event the Judge was entitled to find that Article 8 was in play and her finding that removal would be disproportionate to the pursuit of legitimate aims was one she was entitled to come to.
13. Having considered Paragraph 276B of the Immigration Rules alongside the decision, Mr Diwnycz conceded that there was no material error of law within Judge Bircher's decision and it should stand.
14. That is an analysis that I share.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Appleyard

15 January 2019