



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

Appeal Number: HU/03922/2019

**Heard at Bradford
On 19 February 2020**

**Decision & Reasons
Promulgated
On 6 March 2020**

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**BASHIR AHMAD
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed instructed by KM Solicitors LTD
For the Respondent: Mrs R Pettersen Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on the 8 July 1974.
2. On 15 November 2019 the Upper Tribunal set aside a decision of the First-tier Tribunal which allowed Mr Ahmed's appeal on human rights grounds on the basis that judge had failed to properly examine all relevant aspects of the applicable legal provisions. The matter comes

back before the Upper Tribunal today for it to substitute a decision to either allow or dismiss the appeal.

3. The finding of the First-tier Tribunal that the respondent had not proved Mr Ahmed had used deception in his English language test is a preserved finding.

Background

4. The chronology relevant to this decision is as follows:
 - i. Mr Ahmed entered the UK on a student visa valid between 27 January 2004 and 30 January 2005.
 - ii. Mr Ahmed granted leave to remain as a student to 31 October 2005.
 - iii. Mr Ahmed granted leave to remain on a work permit valid to 27 September 2010.
 - iv. Application made on the 23 April 2007 for leave to remain outside the Immigration Rules was rejected.
 - v. Mr Ahmed granted further leave to remain on a work permit valid to 7 June 2012.
 - vi. Mr Ahmed granted leave to remain as a Tier 2 skilled worker on valid to 27 September 2012 although such leave was curtailed on 18 August 2010 to 17 October 2010.
 - vii. Mr Ahmed granted leave to remain as a Tier 2 skilled worker valid to 1 November 2013.
 - viii. Further application for leave as Tier 2 skilled worker refused.
 - ix. Mr Ahmed granted leave to remain as student valid to 11 June 2015.
 - x. Application for indefinite leave to remain in the United Kingdom granted on 9 June 2014.
 - xi. Application for naturalisation refused on 19 January 2016.
 - xii. 12 October 2015 indefinite leave to remain revoked and Mr Ahmed served with a RED.0001 as a person who had used deception in order to obtain leave.
 - xiii. Application for leave to remain on the basis of family and private life refused and certified on 2 November 2017.
 - xiv. PAP submitted on 20 February 2018 challenge the decision by way of judicial review resulting in reconsideration of the application with a statutory right of appeal.
5. The reasons for the decision refusing the application for leave to remain on the basis of family and private life relate to the alleged use of a proxy in an English language test. This resulted in the decision-maker concluding that Mr Ahmed's presence in the United Kingdom

- was not conducive to the public good; leading to a refusal under paragraph S -LTR.1.6 of the Immigration Rules.
6. The First-Tier Tribunal having found the alleged deception in taking the English language test had not been made out allowed the appeal under the Rules.
 7. Having considered the evidence provided it is not accepted that Mr Ahmed has established an ability to satisfy the requirements of Appendix FM of the Immigration Rules or paragraph 276 ADE as he has not been in the United Kingdom for the requisite period of time and has not established credible significant obstacles to his reintegration into Pakistan, or any other reason justifying a grant of leave on this basis.
 8. The claim medical practitioners in the public sector in Pakistan are subject to an upper age limit of 35 is accepted, in relevant circumstances, but Mr Ahmed is an internationally trained nurse, having qualified in the United Kingdom, with there being no evidence of any effort made by him to ascertain whether he will be able to obtain employment in either the public or private healthcare sectors in Pakistan.
 9. Mr Ahmed's wife and children still remain in Pakistan. According to Mr Ahmed and his witnesses they converse in Pushtu. In addition the witness Mr Hussain stated the Mr Ahmed speaks a number of dialects/languages.
 10. The issue in this appeal is whether Mr Ahmed is able to succeed pursuant to Article 8 ECHR.
 11. I have applied the 5 stage Razgar test which requires me to consider the following questions:
 - Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
 - If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
 - If so, is such interference in accordance with the law?
 - If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
 - If so, is such interference proportionate to the legitimate public end sought to be achieved?
 12. The answer to the first question is that although Mr Ahmed has not established family life recognised by article 8 in the UK he has established a private life sufficient to engage article 8.
 13. That private life is composed of Mr Ahmed's employment as a nurse, friendship groups, work undertaken assisting members of the community, for example at the Jinnah Day Care Centre in accordance with Mr Hussein's evidence, his home in the United Kingdom, and outdoor activities such as cricket.
 14. The answer to the second question is that Mr Ahmed's removal from the United Kingdom will interfere with his protected right to private life which will have consequences of such gravity as to potentially engage the operation of article 8. The quality of the private life enjoyed is

strong as confirmed by the evidence which I find it to be credible, combined with the period over which such private life has been enjoyed in the United Kingdom. Although some aspects of the private life can no doubt be duplicated on return to Pakistan those specifically relevant to associations with friends and caring/work-related elements are particular to the United Kingdom.

15. There is no dispute that the interference is in accordance with the law. In this respect comment made by Mr Ahmed that he believed a judicial review issued on 8 June 2016, case number JR/6343/2016, challenging the legality of the decision to revoke his ILR was still pending has no arguable merit. The material clearly shows that permission to bring judicial review was refused on the papers by HHJ Goose QC sitting as a judge of the High Court on 23 August 2016 on the basis the application was out of time, with no satisfactory explanation for the delay. The permission application was renewed and came before Mr Justice Blake on 18 November 2016 who refused an application to adjourn and refused to renew the permission application as it is said the challenge was unarguable for the reasons given by HHJ Goose to which there had been no response. Although a subsequent letter was received from GLD by the Upper Tribunal indicating that it appeared HHJ Goose had erred in several matters in the refusal of permission, it does not appear it was considered relevant to relist the permission hearing in light of the fact the permission application had been refused primarily because it was substantially out of time.
16. The issue in this appeal is the proportionality of the respondent's decision. The burden of proving a decision is proportionate falls upon the Secretary of State. Mrs Pettersen relied on the refusal with the exception of the ETS point, the lack of evidence of problems with Mr Ahmed settling Pakistan, and his inability to satisfy the requirements of the Immigration Rules. The respondent in the refusal deals with the proportionality issue under the heading 'Exceptional Circumstances' where it is written:

We have considered whether there are exceptional circumstances in your case which would render refusal a breach of Article 8 of the ECHR because it would result in unjustifiably harsh consequences for you, a relevant child or another family member. In so doing we have taken into account the best interests of any relevant child as the primary consideration.

Based on the information you have provided we have decided that there are no such exceptional circumstances in your case that would warrant a grant of leave to remain outside the Immigration Rules.

You have told us you have a settled life in the United Kingdom. You state that you have resided in the UK for 14 years and have spent your formative years in the UK and spent most of your working and studying life in the United Kingdom. You also claim to be a cornerstone of society. It is further noted you deny that your TOEIC obtained.

We have reached this decision because you have no significant ties to the UK. As previously stated, it is not accepted that there would be very significant obstacles to your integration into Pakistan if you were required to leave the UK because you resided in Pakistan up to the age of 29, which includes your childhood, formative years and a significant proportion of your adult life. It is accepted that you'll have retained knowledge of the life, language and

culture, and would not face significant obstacles to reintegrating into life in Pakistan once more.

It is noted that you dispute that your TOEIC was fraudulently obtained. However, it is considered that you have failed to provide sufficient to demonstrate this. ETS has a record of your speaking test. Using voice verification software, ETS is able to detect when a single person is undertaking multiple tests. ETS undertook a check of your test and confirmed to the SSHD that there was significant evidence to conclude that your certificate was fraudulently obtained by the use of a proxy test taker. It is also noted that the TOEIC in question was taken on 17 September 2013. This was 31 days prior to your Tier 4 application submitted on 18 October 2013. It is also noted your leave to remain was due to expire on 1 November 2013. On the basis of the information provided to her by ETS, the SSHD's satisfied that your certificate was fraudulently obtained and that you use deception in your application of 29 May 2012.

17. It is not clear how a test taken on 17 September 2013 could have been used to support an application of 29 May 2012 as at that date, according to the respondents chronology, Mr Ahmed had not even sat the test in question. The immigration history makes no mention of an application on 29 May 2012 although there is reference to an application of 18 October 2013 in the refusal letter under the heading 'Suitability' in which it is stated a TOEIC certificate was provided.
18. It is a preserved finding that the respondent had not established use of deception leaving very little available to the respondent in the refusal letter.
19. Balanced against the respondent's case is the fact the chronology shows the majority of Mr Ahmed's time in the United Kingdom has been lawful, from 9 June 2014 with indefinite leave to remain (ILR). There is merit in the submission made on Mr Ahmed's behalf that at this time his connection to Pakistan, including the presence of his wife and children there, was as outlined in the refusal letter but it was still accepted it was proportionate to grant him indefinite leave to remain.
20. The sole reason the respondent revoked Mr Ahmed's ILR was as a result of the concerns regarding the use deception in the English language test. The First-tier Tribunal Judge was satisfied the respondent had discharged the initial evidential burden on the basis of the material that had been provided but no more. Having applied the 3-stage test for such cases the accusation did not stand up to establish the use of deception.
21. Mr Ahmed is a nurse who works both within the NHS where there is a chronic shortage of qualified nurses and assists outside the NHS within the community. There is nothing to show that he is a person whose presence in the United Kingdom is not conducive to the public good. He is a person who is making a positive contribution.
22. When balancing the competing interests I find they fall in favour of Mr Ahmed. Had the ETS matter not arisen his ILR would not have been cancelled. Mr Ahmed is not seeking to rely upon a private life developed when his immigration status was precarious. It is a neutral factor that Mr Ahmed speaks very good English and is economically independent, but these are factors that do not warrant adverse findings being made against him either.

23. Considering section 117 of the 2002 Act and competing submissions, I find the respondent has not discharged the burden of proof upon her to the required standard to establish that the decision is proportionate. Having undertaken the required balancing exercise I find the scales fall in Mr Ahmed's favour.
24. Although the appeal has been allowed on human rights grounds it is for the respondent to decide the appropriate relief to be granted. Ordinarily 30 months leave would be granted following an appeal being allowed on human rights grounds, but it may be on the facts of this case that it is more appropriate, and fairer, for Mr Ahmed's ILR to be reinstated.

Decision

25. **I remake the decision as follows. This appeal is allowed pursuant to Article 8 ECHR**

Anonymity.

26. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 20 February 2020