Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04012/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 4 February 2020	**On 27 February 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

TERRENCE CHUN YEE YUEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. H. Salmon and Mr. R. Bircumshaw, Central England Law Centre
For the Respondent: Ms. H. Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appeal came before me to be remade following the decision of Upper Tribunal Judge Hemingway dated 11 November 2019.

2. The Appellant attended the hearing.

3. This is a human rights appeal. However, the issue before me was whether the Appellant met the requirements of the immigration rules in relation to continuous residence, with reference in particular to the case law of Teixeira v SSHD [1989] Imm AR 432 and schedule 4 of the 1971 Act. If he did so, following TZ (Pakistan) [2018] EWCA Civ 1109, his appeal should be allowed on human rights grounds.

4. Although the Respondent had been directed to file a copy of paragraph 133 of the immigration rules as was in force at the time that Teixeira was decided, she had not done so. Neither had she filed a skeleton argument. However, the Appellant's representatives had filed a copy of paragraph 133 as it was at the time that Teixeira was decided. It was agreed that this raised no new issues in relation to the way that Teixeira was decided, given the way that it was discussed and treated in Teixeira.

5. Both parties confirmed that neither of them had been able to find any case law on this point since Teixeira. Therefore it was agreed that the most recent case law in relation to the application of schedule 4, and the issue of leave granted in the Isle of Man, was the case of Teixeira.

6. It was further submitted by Ms. Salmon, who had researched the various statements of changes to the immigration rules since Teixeira was decided in 1989, that no change had been made to the immigration rules in relation to the position of the Isle of Man until sometime after November 2012. This was only in relation to work permit indefinite leave to remain provisions by means of paragraph 128A, introduced in November 2012. However, paragraph 128A(aa) was not introduced at that time, and therefore it must have been after November 2012 that any specific provisions for the Isle of Man were brought in. This was agreed by Ms. Aboni.

7. In summary therefore, there was no update to the position since the previous hearing, and the appeal proceeded by way of submissions only.

8. With reference to [34] of the decision of the First-tier Tribunal, it was accepted by both parties that the lateness of the application was not relevant, and did not affect whether or not the Appellant met the requirements of paragraph 276B. The only issue before me was whether or not the time he spent in the Isle of Man counted towards the period of continuous residence.

9. I have taken into account the Appellant's witness statement dated 21 June 2018, the chronology, the skeleton argument dated 6 September 2019 and the documents in the Respondent's bundle.

Decision and reasons

10. The issue before me is essentially whether the case of Teixeira was correctly decided in relation to schedule 4 of the 1971 Act, and whether schedule 4 similarly applies in relation to the immigration rules in general.

11. Ms. Aboni submitted that the position in the reasons for refusal letter was maintained. Since Teixeira was decided, provision had been made in certain immigration rules regarding residence in the Isle of Man, namely those relating to work permits. She submitted that, had the same been intended to apply to the long residence rules, provision would have been made in the specific immigration rule. As the Appellant did not have leave to enter on the basis of a work permit given that he was a student, his residence in the Isle of Man did not count towards his period of continuous leave.

12. As set out above, and as agreed by the parties, the relevant caselaw is the decision of Teixeira. I accept this is a relatively old decision dating from 1989. As was submitted by Mr. Bircumshaw, it is not as detailed as it might be if it were decided now. However, I find that Teixeira is clear. I find that the general point applies and that, as stated, "schedule 4 has the effect of extending the rules so as to cover the situation of persons such as the appellant: and if there is an apparent conflict between the Act and a rule, obviously the Act must prevail."

13. It is clear that the 1971 Act prevails over the immigration rules, and over any guidance. I find that the Respondent cannot rely on her own guidance to carry more weight and to offset the application of the Act, as is done in the reasons for refusal letter. Ms. Aboni relied on the reasons for refusal letter and the guidance referred to there. She stated that version 15, as set out in the reasons for refusal letter, had now been replaced by version 16, but there was no change. However, I find that this is merely the Respondent's own guidance, not even an immigration rule, let alone an Act. I find that reliance on guidance is not enough.

14. The wording of Schedule 4 is clear. At sub-paragraph (1) it states that:-

> "Where under the immigration laws of any of the Islands a person is or has been given leave to enter or remain in the island, or is or has been refused leave, this Act shall have effect in relation to him, if he is not a British citizen, as if the leave were leave (of like duration) given under this Act to enter or remain in the United Kingdom, or, as the case may be, as if he had under this Act been refused leave to enter the United Kingdom".

15. Sub-paragraph (2) states that:-

> "Where under the immigration laws of any of the Islands a person has a limited leave to enter or remain in the island subject to any such conditions as are authorised in the United Kingdom by section 3(1) of this Act (being conditions imposed by

notice given to him, whether the notice of leave or a subsequent notice), then on his coming to the United Kingdom this Act shall apply, if he is not a British citizen, as if those conditions related to his stay in the United Kingdom and had been imposed by notice under this Act".

16. I find that sub-paragraph (1) is clear that the grant of leave made under the immigration laws of the Islands is as if it were leave granted under the 1971 Act. I therefore find that, by means of schedule 4, leave granted in the Islands is to be treated in exactly the same way as if it were leave granted under the 1971 Act.

17. I find the fact that the immigration rules were not amended following the case of Teixeira, which was decided in 1989, strengthens this position. No changes were made to the immigration rules until some point after November 2012. Had the Respondent disputed the conclusion in Teixeira, I find that the immigration rules would have been altered at the time so as to make plain that Teixeira did not apply so as to "extend the rules". Schedule 4 provides that any leave granted in the Islands must be treated as if it were leave granted in the United Kingdom. It is not limited. Leave granted in the United Kingdom counts towards a period of continuous residence. There is nothing in schedule 4 to suggest that leave granted in the Islands should not be treated as if it were leave granted in the United Kingdom in relation to the continuous residence rules. The only place where this is suggested is in the Respondent's guidance which does not carry the weight of the 1971 Act.

18. Further, with reference to the amendment being made to the immigration rules in relation to work permits but not to continuous residence, the fact that it appears that the immigration rules were brought into line with schedule 4 of the 1971 Act in one particular area does not mean that the fact that they have not been so amended in other areas offsets the overriding effect of schedule 4. It was submitted by Ms. Aboni that schedule 4 related to free movement of people in-between the Islands and the United Kingdom, but I find that it is not so limited. It clearly states that any period of leave granted in the Islands is to be treated as if it were leave granted in the United Kingdom.

19. I find that, if the Appellant was given leave to remain in the Isle of Man, this must be treated as if it had been granted in the United Kingdom. I therefore find that, following Teixeira and schedule 4 of the 1971 Act, any lawful period of residence in the Isle of Man is to be treated as a period of lawful residence in the United Kingdom. Lawful residence counts towards continuous leave. Therefore lawful residence in the Isle of Man should be counted towards a period of continuous leave in the United Kingdom.

20. I was referred by Ms. Salmon to the Respondent's guidance on the Common Travel Area, Version 6.0 dated 22 November 2019, in particular at page 9 where it says that:-

"Schedule 4 of the Immigration Act 1971 makes specific provisions to ensure that the immigration laws of the UK, Jersey, Guernsey and the Isle of Man are integrated. In

practice, this means that where a person has been granted leave to enter or remain in the Crown Dependencies and then proceeds directly to the UK, or the other way around, that leave and any conditions attached to it is treated as if it had been granted in the UK".

21. This is the Respondent's own guidance which makes clear that the purpose of schedule 4 is to ensure that the immigration laws of the UK, Jersey, Guernsey and the Isle of Man are integrated. It also makes clear that the leave is to be treated as if it had been granted in the United Kingdom. It does not make an exception for the rules relating to continuous residence. This further strengthens the Appellant's case.

22. I therefore find that the Appellant has shown, on the balance of probabilities, given that the period leave in the Isle of Man counts towards his period of continuous leave, that he meets the requirements of paragraph 276B of the immigration rules.

Article 8

23. I have considered the Appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27. The Appellant has a private life in the United Kingdom sufficient to engage Article 8. TZ (Pakistan) [2018] EWCA Civ 1109 states at [34]:-

"That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

24. Further, the headnote to OA and Others (human rights; 'new matter'; s.120) Pakistan [2019] UKUT 00065 (IAC) states:

"(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied."

25. Following these cases, I therefore find that there is no public interest in the Appellant not remaining in the United Kingdom, and that his removal would be disproportionate.

26. For the sake of completeness, in case I am wrong in this, I have considered the Appellant's appeal under Article 8 on the basis that he does not meet the requirements of paragraph 276B, solely for the reason that his period of time in the Isle of Man does not count towards the period of continuous residence.

27. I find the Appellant has a private life in the United Kingdom. He came to the United Kingdom in 2006 when he was 14 years old. He spent a year in education in Ipswich before moving to a school on the Isle of Man. He then moved to the United Kingdom in August 2011. He has therefore been in the United Kingdom and/or the Isle of Man from September 2006, a period of over thirteen years. He has been in the United Kingdom, as opposed to the Isle of Man, since September 2011, a period of over nine years. He has not left the United Kingdom since that time.

28. Given the evidence before me in the form of the Respondent's guidance which states that the immigration laws of the Isle of Man and of the United Kingdom should be integrated, and given that the relationship between the Crown Dependencies and the United Kingdom is very strong, I find that there is nothing to indicate that the time spent in the Isle of Man should be treated any differently to time spent in the United Kingdom in terms of integration.

29. I find that the Appellant is fully integrated into the United Kingdom. I find that the Appellant has spent almost half of his life in the United Kingdom. He came here aged 14, and he is now 27. He has studied here, and worked here. His family have invested a considerable amount of money in his education in the United Kingdom. He has not committed any criminal offence. No reason has been given by the Respondent as to why he should not be granted leave to remain other than for the technicality regarding time spent in the Isle of Man. Proceeding on the basis that the Appellant did not meet the requirements of the immigration rules, I find that this would mean that the Appellant would be penalised despite the Respondent's own guidance stating that the immigration laws of the United Kingdom and the Isle of Man were integrated.

30. Although it was not submitted that there had been a legitimate expectation that he would obtain indefinite leave to remain, I find that the Appellant sought advice in the past from the Citizens Advice Bureau, and also from the authorities in the Isle of Man, as to whether his residency in the Isle of Man would affect his ability to obtain indefinite leave to remain, were he to abide by the immigration laws of the United Kingdom and/or the Isle of Man. He was advised that it would not which, given schedule 4 to the 1971 Act, and the Respondent's own guidance which states that the immigration laws integrated, is not particularly surprising.

31. I find that it not in the public interest to deny the Appellant's right to a private life on the basis that, although the immigration laws of the United Kingdom and the Isle of Man are said to be fully integrated, they are in fact not. While I find that section 117B(1) provides that the maintenance of effective immigration controls is in the public interest, and that there is a strong public interest in refusing leave to those who do not meet the requirements of the immigration rules, the Appellant has met the requirements of the immigration rules on the basis that he has always had leave to remain in either the United Kingdom or the Isle of Man, whose immigration laws

are said by the Respondent to be integrated, and where Parliament has provided that they be so integrated.

32. I therefore find that, even if I were to find that the period of leave in the Isle of Man did not count towards continuous leave, the Appellant should be granted leave in relation to his private life under Article 8. The Appellant would be penalised for residing in the Isle of Man, although the 1971 Act clearly provides that leave given in one territory should be treated as leave given in the other. It would be unjustifiably harsh to deny the Appellant his private life in the United Kingdom which he has built up over many years on the basis of this technicality.

33. The Appellant speaks English (section 117B(2)). He has gained qualifications and been employed in the United Kingdom, and I find that, were he able to work, he would be financially independent (section 117B(3)). Section 117B(4) is not relevant as the Appellant has not been in the United Kingdom unlawfully. In relation to section 117B(5), the Appellant has been in the United Kingdom and/or the Isle of Man for over ten years. He made his application under a route provided by the Respondent for those who have had ten years continuous lawful residence. This shows that the Respondent considers that further weight should be given to a private life in these circumstances, given that it is expressly provided for in the immigration rules. Section 117B(6) is not relevant.

34. Taking all of the above into account, I find that the balance comes down in favour of the Appellant. I find that the Appellant has shown on the balance of probabilities that the decision is a breach of his right to a private life under Article 8 ECHR.

Notice of Decision

35. The decision of the First-tier Tribunal was set aside by way of a decision dated 11 November 2019.

36. I remake the decision allowing the Appellant's appeal on human rights grounds, Article 8. The Appellant meets the requirements of paragraph 276B of the immigration rules.

37. I have not made an anonymity direction.

Signed Date 14 February 2020

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award. I have decided to make a fee award as the Respondent relied on her own guidance, whereas the 1971 Act is clear that leave given on the Isle of Man should be treated as if it were granted in the United Kingdom. Different guidance from the Respondent reflected this, making it clear that the immigration laws of the Isle of Man and the United Kingdom should be integrated. In the circumstances, I make a fee award for the entire fee paid, £140.

Signed Date 14 February 2020

Deputy Upper Tribunal Judge Chamberlain