Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **IA/21250/2014**

THE IMMIGRATION ACTS

At **Field House** Decision and Reasons Promulgated
On **06.08.2015** On 17.08.2015

Before:

Upper Tribunal Judges
John FREEMAN and Kate MARKUS QC

Between:

Mohd. ATIQ

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: *Darryl Balroop* (counsel instructed by Chauhan)
For the respondent: Mr Stephen Walker

DETERMINATION AND REASONS

1. This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Christopher Woolley), sitting at Newport on 19 December 2014, to dismiss an entrepreneur/long residence/Article 8 appeal by a citizen of Pakistan, born 26 October 1980. The entrepreneur ground was not pursued before us: permission was given in the Upper Tribunal on the basis that the judge had found the appellant had achieved the necessary length of lawful residence to benefit from paragraph 276B of the Rules, the relevant part of which follows.

NOTE: no anonymity direction made at first instance will continue, unless extended by us.

> ‘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; …’

2. The reasons why the judge did *not* consider it in the public interest for this appellant to have indefinite leave to remain were based on his conduct. To follow them, his history needs to be considered. The appellant had been in this country, first as a student, and then with leave to remain as a post-study work migrant till 20 March 2014. On 17 March last year he applied for leave to remain as an entrepreneur; but he could not show the necessary funds, and so his application was refused on 24 April. The appellant nevertheless appealed, but without citing any error in the decision on the funding point, or on the entrepreneur refusal at all; he also relied on Article 8, on the basis that his right to a private life required him to be allowed to pursue his business ambitions in this country.

3. This appeal gave the appellant leave to remain under s. 3C of the Immigration Act 1971, so long as it was pending; and by 5 December he had been here lawfully for ten years. The judge accepted that he had the continuity of residence he needed, and, following ***MU*** **('statement of additional grounds'; long residence; discretion) Bangladesh** [2010] UKUT 442 (IAC) that he could qualify on that basis by way of leave pending appeal.

4. However, it is worth looking at what actually happened in ***MU***. This can be seen from paragraph 11. Judge McKee found that:

> “… the blatant deception practised by the appellant, which triggered a mandatory refusal under paragraph 322(1A) of his application for further leave, justifies refusing his application for indefinite leave under paragraph 276D. That the appellant was only able to raise the ‘Ten-Year Rule’ in the first place because his appeal against the mandatory refusal took so long to be resolved, is also a circumstance which is not irrelevant to the exercise of the discretion under rule 276B.”

5. In the present case, Judge Christopher Woolley found, in a particularly clear and robust decision, for reasons he gave on the facts, that (paragraph 29) at no time did this appellant have any expectation of the funds he needed; but he put in a hopeless entrepreneur application, simply to prolong his stay in this country. He went on to put in a hopeless appeal, against advice he had been given as to the grounds, again for that sole purpose.

6. At paragraph 30 Judge Woolley went on to find that the appellant had manipulated both the application and the appeal process, in order to manufacture a period of lawful leave, when he could have had no expectation of any further lawful leave being granted when his post-study work migrant leave ran out on 20 March 2014. The judge pointed out that it was no answer to this point for the appellant to say that he had raised Article 8 grounds on his appeal: he could have applied for leave to remain outside the Rules before his post-study work migrant leave ran out, if he had genuinely thought himself entitled to it.

7. It is interesting to read this appellant's grounds of appeal to the Upper Tribunal, drafted by Mr Zane Malik, who had been counsel for the appellant in ***MU***. Mr Malik argues at paragraph 11 that Judge Woolley's approach "… stands to undermine the *ratio* of this authority [***MU***] … There must be something more than mere residence [*sci. reliance*] on section 3C of the 1971 Act to disqualify an Appellant under Paragraph 276B (ii) of the Immigration Rules." He points out that the appellant in ***MU*** was disqualified by his reliance on a bogus qualification to support his leave application.

8. At paragraph 12 Mr Malik suggests that, since s. 3C leave is automatic, it could not be right for Judge Woolley to say that this appellant had 'manufactured' it for himself, since it was simply part of a statutory scheme. He makes a further point at paragraph 13, which I shall deal with in due course. Mr Balroop essentially stood by these grounds before us.

9. Dealing first with Mr Malik's points on this appellant's achieving ten years' stay by way of the entrepreneur application and appeal, there was indeed on Judge Woolley's findings something more than mere reliance on s. 3C: he had found that this appellant had deliberately set out to clock up the necessary period on the basis of an application and an appeal, which he must have known all along were hopeless, since he never had any expectation of the necessary funding. Mr Balroop suggested that this process could not be regarded as so heinous as relying on a false document, as in ***MU***.

10. That may be a question of opinion; but in either case, the appellant had set out to achieve a result to which he knew he was not entitled, by what amounted to a false representation that he was. We invited Mr Balroop to suggest any difference in principle, rather than on the facts in themselves, which would justify distinguishing what we regard as the principle set out in ***MU***; but he was unable to do so.

11. In our view, there was a clear statement of principle in ***MU***, part of the *ratio*, even if not included in the judicial head-note, which can be re-stated in this way: if an appellant has achieved ten years' residence by way of s. 3C leave, through misconduct which is to be taken account of under paragraph 276B (ii), and in particular (c), then it may be undesirable in the public interest for him to be given indefinite leave to remain.

12. The rest of paragraph 276B (ii) should of course be considered; but Mr Balroop did not pursue before us any suggestion that Judge Woolley's decision was inadequate for that reason. It would in any case have been hard for him to pursue Mr Malik's points at paragraph 18 of the grounds, undeveloped in any detail, but for what Mr Malik describes as the fact that this appellant had an unblemished immigration history, which has at least to be seen in the light of Judge Woolley's findings about how he tried his best to manipulate the system.

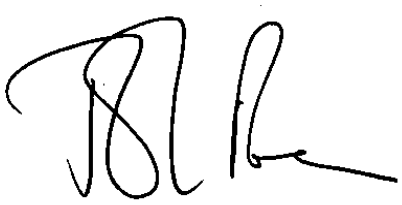
13. In the present case, Judge Woolley very clearly, and for reasons already explained, found that this appellant had been guilty of misconduct, which made it undesirable in the public interest for him to be given indefinite leave to remain. That decision in our view was fully in accordance with ***MU***, and with general principle; so we turn to Mr Malik's other point, raised at paragraph 13 of the grounds.

14. This was to the effect that Judge Woolley had not found that the appellant's Article 8 claim was hopeless or abusive; and he was entitled to raise it, to resist his removal from this country. So far, that is literally correct, and the judge had indeed dealt with the Article 8 claim on its merits, and in some detail, at paragraphs 35 – 42, in a way of which no complaint is made.

15. This point however quite ignores what Judge Woolley had actually said about the relevance of the appellant's Article 8 claim, in considering how far his acquisition of ten years' residence could be regarded as legitimate reliance on, rather than abuse of the law. We have set that out at **6**; as the judge said, if the appellant had thought he had a genuine Article 8 claim, likely to succeed on its merits on his private and family life, then there was nothing to stop his raising it in the proper way, by making a claim outside the Rules (but for which there is an established process, known as an FLR (O) application) before his post-study work migrant leave ran out.

16. Clearly Judge Woolley found that the appellant did not do that, because he wanted to prolong his stay till he could make a long residence claim. That is why he regarded the way in which the appellant had stayed on with s. 3C leave, not only by appealing the entrepreneur refusal, but by raising Article 8, as misconduct in terms of paragraph 276B (ii) (c). In our judgment he was entitled to take that view, and to decide the case as he did.

Appeal dismissed



(a judge of the Upper Tribunal)