



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

Appeal Number: IA/25835/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 15 March 2016**

**Decision & Reasons
Promulgated
On 1 June 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**ZAHID MAHMOOD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Janjua, Janjua & Associates

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Zahid Mahmood, was born on 13 February 1973 and is a male citizen of Pakistan. By a decision dated 10 June 2014, the appellant was refused further leave to remain on a discretionary basis in the United

Kingdom. He appealed to the First-tier Tribunal against that decision on Article 8 ECHR grounds; the First-tier Tribunal Judge (Judge Hindson) recorded at [3] that the appellant's representative (Mr Janjua) accepted "that the appellant cannot succeed under the Rules." The First-tier Tribunal dismissed the appeal in a decision promulgated on 2 July 2015. Permission was initially refused in the First-tier Tribunal (Judge Astle) but granted on renewal (UTJ Linsley).

2. At [13], Judge Hindson recorded:

The appellant has been in the UK for about ten years. He was here legally until the breakdown of his marriage, at which point (a time he cannot remember but prior to August 2013) he should have told the Home Office that this, the basis upon which he had permission to be in the UK, had ended.

3. The judge went on in the following paragraph to describe the appellant's immigration status as "precarious". The Grounds of appeal assert that that finding (as to the illegality of the appellant's residence) was not accurate. Ground [2] argues that, prior to the expiry of his discretionary leave, the appellant had made an application for an extension of leave. He had indicated in that application that he was no longer living with his wife and sought an extension of leave on the basis of private life only. Before the hearing in May 2015, the appellant claimed that he completed ten years' lawful residence in the United Kingdom.

4. Judge Linsley, granting permission, dealt with this point at [4]:

It is arguable that this [finding that the appellant was not in the United Kingdom lawfully] was a material error of law given the need to weight the public interest maintaining immigration control was arguably necessary (despite the concession of the appellant's representative recording at paragraph 3 of the decision) for the First-tier Tribunal to have considered whether the appellant could succeed under the Immigration Rules at paragraph 276B on the basis of his ten years' continuous lawful residence. However, the appellant would arguably have to show that he could show sufficient knowledge of the English language and sufficient knowledge about life in the UK in accordance with the accepted documentation set out at Appendix KoLL of the Immigration Rules, and compliance with the other provisions of paragraph 276B, for this ultimately to have been a material error.

5. Judge Linsley had also directed that the appellant should "file any further evidence with the Tribunal and serve it upon the respondent ten days prior to the hearing date" in order that, should it be necessary, the Tribunal may remake the decision at the initial hearing. No such additional evidence has been filed or served.

6. I am not persuaded that the judge has erred in law. Even if I were to accept that the appellant had completed ten years' lawful residence and that the judge was incorrect at [13] where he stated that the appellant had not been in the United Kingdom legally after the breakdown of his

marriage, it is not at all clear on what basis the appellant might succeed in a claim for further leave to remain. As Judge Linsley has pointed out in granting permission, the appellant would have to show that any error on the part of the judge was a failure by him to consider whether the appellant might qualify under paragraph 276B the appellant would need to show that he was in a position to satisfy the requirements of that provision. He has not provided any such evidence and, indeed, his failure to show proficiency in the English language was recorded by the judge at [15] (“he does not speak English, as evidenced by his reliance on an interpreter in the hearing.”)

7. As Judge Linsley also indicates, the judge’s possibly incorrect assessment of the appellant’s immigration status may have influenced his assessment of proportionality under Article 8 ECHR. However, although the judge refers in general terms to the maintenance of immigration control [17] he has not stressed the fact that the appellant was (as the judge thought) living illegally in the United Kingdom. The judge’s reference to the precarious nature of the appellant’s immigration status [14] is not misplaced given that the appellant had only been granted the discretionary leave to remain in order to prove the subsistence of a marriage which had, in fact, broken down. I do not find that the judge’s analysis of the appeal on Article 8 ECHR grounds is flawed for the reasons given in the grounds of appeal or at all.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 30 May 2016

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 30 May 2016

Upper Tribunal Judge Clive Lane