



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

Appeal Number: HU/02415/2016

THE IMMIGRATION ACTS

Heard at Field House

On 4 July 2017

**Decision & Reasons
Promulgated
On 24 July 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**AMIR HAMZA PERVEZ RAJA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Mohammed, Counsel, instructed by Legis Chambers
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 9 December 2016 First-tier Tribunal Judge Thomas dismissed the appeal of the appellant, a citizen of Pakistan, against a decision made on 10 January 2016 refusing him leave to remain. The appellant had applied for leave on the basis of ten years' residence. The judge noted that the appeal was restricted under s.84 of the NIAA 2002 to human rights grounds.

2. The judge found first of all that the appellant did not meet the requirement of ten years' continuous lawful residence because s.3C of the Immigration Act 1971 as amended only extends leave when an application has been made during an extant period of leave. The judge then turned directly to the appellant's Article 8 circumstances, considering him first under para 276ADE and concluding that he did not meet its requirements in full since he had failed to establish there would be very significant obstacles to his integration into Pakistan. Finally, the judge considered whether there were compelling circumstances to justify a grant of leave outside the Rules, stating at para 21:

"21. I have considered whether there are compelling circumstances to justify consideration of Article 8 outside the Rules. I take account of the Appellant's relationship with his brother; his claimed problems with his previous representatives; and the length of time he has lived in the United Kingdom. I do not however, find that these matters amount to compelling circumstances to consider leave outside the Rules under Article 8 ECHR."

3. The appellant's grounds of appeal were confined to a challenge to the judge's finding on family and private life which were said to represent a failure to engage with the fact that the appellant had family life with his brother.
4. At the hearing I received submissions from both parties, Mr Mohammed's including a challenge not just to the judge's findings on family and private life but those on long residency. In relation to the latter issue, he contended that the judge's reasoning at para 18 betrayed an error of law because it wrongly asserted that although the appellant had lost s.3C leave, he had regained it, which was not legally possible. This error, he said, had also infected his reasoning as regards the length of the appellant's overstay.
5. I must state straightway that I do not admit this second ground. It was not advanced in the written grounds of appeal; there has been no application to amend the grounds. In any event I would have rejected Mr Mohammed's submissions regarding it. Whilst the judge's reasoning at para 18 contains some muddled passages, its essential finding, that the appellant did not have ten years' continuous lawful residence at the date of application, was clearly correct. At that point he was an overstayer and s.3C does not permit an applicant to make an application to vary leave whilst leave is extended pending a decision on an appeal.
6. I turn therefore to the only ground raised in the written grounds, which concerned the judge's treatment of the appellant's private and family life ties. Whilst it is not expressly stated in the grounds, this ground can only bite on the judge's assessment of the appellant's case outside the Rules since in order to succeed under the Rules he would have had to show that he met the requirements of para 276ADE(1)(vi) by proving there would be

very significant obstacles to his integration into Pakistan. At para 20 the judge said the following on this matter:

“20. The Appellant came to the United Kingdom at the age of 21. Prior to this, he lived in Pakistan. His parents continue to live there. He was educated in Pakistan and completed a degree at the University of Azad Jammu and Kashmir. He has no cultural or linguistic difficulties in Pakistan and no health issues. He would return with further educational qualifications and work experience gained in the United Kingdom to assist integration. Despite the length of time he has lived in the United Kingdom, I am not persuaded that he has no ties to his home country. Considering all matters, I do not find that there are very significant obstacles to his integration in Pakistan.”

7. The grounds take no issue with the judge’s reasoning on this matter (nor with the judge’s conclusion adverted to earlier that the appellant could not meet the requirements of para 276B (long residence)).
8. So far as the grounds challenge the judge’s assessment of the appellant’s family and private life circumstances. the judge received submissions from the parties regarding this matter, including a statement from Mr Mohammed (who represented him at the FtT level as well) that the appellant “has a substantial family and private life developed since 2005”. I have already set out what the judge decided on this issue in his paragraph 21. It is right to say that the judge’s treatment therein of this issue is cursory. At the same time, this has to be viewed in the context of the surrounding factual and legal circumstances. Mr Mohammed has argued that on the appellant’s evidence as set out in his witness statement the appellant enjoyed family life with his brother and sister-in-law because he was financially supported by his brother and had emotional ties with them. What Mr Mohammed failed to mention was that the appellant himself made no mention of the importance to him of his relationship with his brother in his original grounds of appeal dated 22 January 2016 nor had he mentioned them in an earlier s.120 notice nor in the submissions sent to the respondent on 17 September 2015. Those documents simply referred broadly to the appellant having formed close ties to the UK and with his social circle of friends. If the appellant genuinely believed that his emotional ties with his brother went beyond the normal ties between adult siblings, I consider he would most certainly have said so at this stage.
9. Secondly, so far as concerns his private life ties (whether encompassing his brother and/or his circle of friends) it was incumbent on the judge to attach little weight to them by virtue of s.117B(4) and (5) of the 2002 Act. The appellant’s immigration status in the UK had always been precarious within the meaning of that provision. So far as concerns the appellant’s family life, even assuming the judge had accepted that the ties with the

brother constituted family life within the meaning of Article 8, the weight the judge could attach to that was again reduced by the fact that he had gone and lived with his brother at a time when his immigration status was precarious: Strasbourg jurisprudence applies such an approach to private and family life ties: see **Rajendran (s.117B - family life) [2016] UKUT 138 (IAC)**. In such circumstances it was sufficient for the judge to deal very shortly with the appellant's relationship with his brother. On the basis of the appellant's own witness statement he was not financially independent and that was a further statutory consideration the judge would have had in mind (see s117B(3)). In short, the appellant's development of his claim to have a substantial family life in the course of litigation did not demonstrate either that he enjoyed family life with his brother within the meaning of Article 8 or, even if he did, that there were compelling circumstances arising from it warranting a grant of leave to remain outside the Rules.

For the above reasons:

The FtT judge did not materially err in law.

The decision of the FtT judge must accordingly stand.

No anonymity direction is made.

Signed

Date: 21 July 2017

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, stylized 'S'.

Dr H H Storey
Judge of the Upper Tribunal