



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/01066/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On 12 January 2017 and 21 February  
2017**

**On 3 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**FARHAN KHALID SIDDIQUI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. S. Shah, 786 Law Associates

For the Respondent: Mr. P. Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Sullivan promulgated on 13 May 2016 in which he dismissed the Appellant's appeal for further leave to remain on the basis of family and private life.
2. Following directions made on 21 February 2017, the Respondent has now considered the further submissions provided by the Appellant. I have now received a letter dated 6 April 2017 from the Respondent, copied to the Appellant's representatives, which states as follows:

“Having reviewed the immigration history the Secretary of State agrees that ten years lawful residence has now been completed. There was a period without leave following a late application but that is covered by the provision in 276B(v) covering periods of less than 28 days or where an application was under consideration which was made less than 28 days after expiry of previous leave.

There being no remaining issue in 276B it is accepted that Mr. Siddiqui’s appeal now falls to be allowed.”

### **Error of law**

3. I found at the first hearing that the judge had made an error of law in paragraph 42 of the decision. This was accepted by Mr. Nath. This relates to gaps in the Appellant’s leave in 2006/2007, and 2008/2009. The judge had not considered whether these periods were covered in part by section 3C leave. Neither had he considered the 28 day grace period permitted by paragraph 276B(v).
4. There remained the period in June/July 2011. As stated in my directions promulgated on 16 January 2017, the materiality of the error of law in paragraph 42 depended on whether there was an error in paragraph 41. This paragraph states:

“It is not clear when the Appellant’s 2011 appeal rights were exhausted because I do not [know] what action (if any) he took after dismissal of his appeal in June 2011. It seems likely to me that the 29 day gap between 20 June 2011 and 19 July 2011 would have been covered to some extent by leave under section 3C(2) of the Immigration Act 1971. It is possible that the 19 July 2011 application for leave to remain was out of time in which case there would have been a break in continuous lawful residence prior to the grant of leave on 27 September 2011.”
5. The Respondent has accepted that the Appellant did not break his leave in 2011 for the purposes of paragraph 276B. I find that there was a gap of only 19 days from the date of dismissal of his appeal on 20 June 2011 to the application made on 19 July 2011. The Appellant had 10 days in which to appeal to the Upper Tribunal and therefore had leave under section 3C until 30 June 2011. There was then a gap of 19 days before his application, which is covered by paragraph 276B(v).
6. I therefore find that there was no period in excess of 28 days in June/July 2011 when the Appellant was without leave.
7. Further, in paragraph 40, the judge referred to the Appellant’s witness statement being “silent as to the details of his overseas travel from the United Kingdom”. The Appellant provided evidence of time spent away from the UK in his letter of 27 January 2017. He stated that he spent four weeks in Pakistan in August 2006, and five weeks in Pakistan in December 2007/ January 2008. These periods are not in excess of those permitted under paragraph 276B. The Respondent has accepted this.

8. I therefore find that the Appellant met the requirements of paragraph 276B of the immigration rules, which has been accepted by the Respondent. I find that the error of law in the calculation of gaps in the Appellant's leave is material.
9. The Respondent's decision was in respect of the Appellant alone, and subsequently there was only one appeal before me, that of the Appellant. There were no dependents on his appeal. Given that the Respondent has accepted that the Appellant is entitled to a grant of leave under paragraph 276B of the immigration rules, there are no remaining issues.

### **Decision and Remaking**

10. The decision involves the making of a material error of law and I set the decision aside.
11. I remake the appeal, allowing it under the immigration rules. The Respondent has accepted that the Appellant meets the requirements of paragraph 276B of the immigration rules, and that he is entitled to a grant of leave to remain under this paragraph.
12. No anonymity direction is made.

Signed

Date 28 April 2017

**Deputy Upper Tribunal Judge Chamberlain**

### **TO THE RESPONDENT** **FEE AWARD**

I have allowed the appeal and a fee has been paid. The Appellant did not provide all of the evidence regarding his ten year residency until after the date of the decision. In the circumstances I make no fee award.

Signed

Date 28 April 2017

Deputy Upper Tribunal Judge Chamberlain