



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/13020/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 November 2018

Decision & Reasons Promulgated  
On 22 November 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

NABEEL AHMED

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. J. Gaffar instructed by Law Lane Solicitors

For the Respondent: Mr. D. Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Pakistan. On 10 July 2017 he applied for indefinite leave to remain on the basis of long residence and his rights under the European Convention on Human Rights. His application was refused on 9 October 2017 and he appealed. First-tier

Tribunal Judge Cohen dismissed his appeal on human rights grounds in a decision promulgated on 20 August 2018. The Appellant sought permission to appeal and First-tier Tribunal Judge Robertson granted him permission to appeal on 26 September 2018.

### **ERROR OF LAW HEARING**

2. The legal representative for the Appellant and the Home Office Presenting Officer both made oral submissions and I have taken these into account when reaching my decision below.

### **ERROR OF LAW DECISION**

3. The Appellant had been refused indefinite leave to remain under paragraph 322(1A) of the Immigration Rules and paragraphs R-LTRP.1.1.(c)(i) and R-LTRP.1.1.(d)(i) of Appendix FM to the Immigration Rules on the basis that he had failed to disclose two previous convictions of theft by employee, which took place on 15 August 2005 and 30 August 2007.
4. It was the Appellant's case that he had suffered a trauma to his head when he was younger and that this had left him with continuing memory loss and that he had not remembered these offences. He relied upon medical evidence and evidence provided by his girlfriend to substantiate this claim.
5. The first ground of appeal was that First-tier Tribunal Judge Cohen erred in law in so far as he failed to make any findings in relation to the credibility of the evidence provided by the Appellant's girlfriend. In paragraph 13 of his decision the First-tier Tribunal Judge recorded that the Appellant's girlfriend's witness statement indicated that the Appellant had significant problems with his memory and that she had to do everything for him. In particular, she said that he cannot remember key dates or their relationship or holiday plans and that she had to keep track of his appointments with doctors and consultants
6. Towards the end of paragraph 18 of his decision, First-tier Tribunal Judge Cohen stated:

“I do not find that the appellant could have achieved qualifications that he has to date and to contemplating studying on the ACCA course if his degree of memory loss and mental impairment was as indicated by himself and his girlfriend”.

7. By implication, this indicated that First-tier Tribunal Judge Cohen preferred the evidence of his educational and intellectual achievements to the content of his girlfriend's witness statement.
8. However, the Appellant also submitted that the First-tier Tribunal Judge had not given sufficient weight to the medical evidence which had also been provided. First-tier Tribunal Judge Cohen did refer to the medical evidence provided by Dr. Chaudhry, in paragraph 18 of his decision, but attached little weight to it. He did not give any reasons for not doing so which related directly to the evidence. He also failed to remind himself that the MRI scan taken in 2011 indicated that the Appellant had sustained slight damage to the temporal lobe of his brain and that he was suffering from a weak memory. Neither did he connect this evidence with that provided by Dr. Radunovic, a consultant neurologist, in a letter, dated 11 July 2018, which stated that the Appellant's mini mental state score was such that it was necessary to undertake a further MRI scan and to refer him to a Consultant Neuropsychologist for a formal neuropsychometry. The fact that further results were not available at the date of the hearing did not detract from this diagnosis and referral.
9. This medical evidence taken together with that of his girlfriend was capable of indicating that he suffered from an operative memory loss despite his ability to study.
10. For these reasons I find that the decision made by First-tier Tribunal Judge Cohen contained errors of law and must be set aside.

## **Decision**

- (1) The appeal is allowed.
- (2) The decision of First-tier Tribunal Judge Cohen is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Cohen or First-tier Tribunal Judge Robertson.

**Nadine Finch**

Signed

Date 16 November 2018

Upper Tribunal Judge Finch