UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: HU/15191/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 17 July 2018	**On 14 August 2018**

Before

Deputy Upper Tribunal Judge Mailer

Between

MR WAQAS LATIF
ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: **Mr L Youssefian, Richmond Chambers LLP**
For the Respondent: **Mr E Tufan, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The appellant is a national of Pakistan born on 23 November 1988. He appeals with permission against the decision of First-tier Tribunal Judge I D Boyes who dismissed his appeal against the respondent's decision refusing his application for leave to remain in the United Kingdom on account of long residence. The decision was promulgated on 19 April 2018.

2. The appellant was out of time by 49 days. He explained that he left the matter to his solicitor to deal with. His solicitor failed him. He then made a formal complaint to the SRA which had contacted the solicitor, but the file was no longer in existence.

3. In dismissing his appeal under the ten year continuous lawful residence provisions, Judge Boyes could not, and did not, find that it was his solicitor who was at fault. It was the appellant's application and the responsibility for the just and proper administration of that application on appeal rested with him. Even if correct about what happened, the reason he had provided did not amount to a sufficiently compelling or compassionate reason for allowing him to breach time [10].

4. The appellant contended at the hearing that he could not return to Pakistan as he did not have anyone there. He is 29 years old and had to begin from scratch. He maintained that there were significant obstacles.

5. The Judge found that there were no significant obstacles to his return to Pakistan. He is in good health, can speak English and has a good strong work ethic. He is regularly in contact with people of his own culture and has visited Pakistan a number of times recently. It is not a significant obstacle to his integration that he would have to find employment and a place to live. He is a young man who can take advantage of the skills he has and had in the UK and apply them in Pakistan [12]. There was nothing exceptional about his case.

6. On behalf of the appellant, Mr Youssefian noted that he entered the UK on 21 February 2007 on a family visit visa valid until 29 January 2009. An out of time application for further leave to remain as a dependant outside the rules was granted until 28 April 2011. He then applied in time for leave to remain as a dependant outside the rules which was also approved on 28 June 2011 with leave valid until 28 June 2013.

7. He then made an in time application under Appendix FM which was initially refused on 12 August 2013. He appealed that decision. First-tier Tribunal Judge Lloyd allowed his appeal under paragraph 276ADE(vi) of the Rules as well as outside the rules under Article 8. He was then granted further leave to remain on 2 December 2014 valid until 2 June 2017.

8. On 30 May 2017 he applied for indefinite leave to remain on long residence grounds. The application was refused on 1 November 2017 as his continuous lawful residence had been broken following an out of time application made on 19 March 2009. It was also contended that he had sufficient ties to Pakistan as he had visited the country twice since the determination in 2014.

9. Mr Youssefian submitted (ground 1) that the Judge did not have proper regard to the findings of Judge Lloyd in 2014, and did not treat them as a starting point – Deevaseelan (Settled Appeals – ECHR – Extra-territorial effect) Sri Lanka [2002] UKIAT 00702.

10. In particular Judge Lloyd found in 2014 that the appellant had no ties to Pakistan, thus satisfying paragraph 276ADE(vi) of the Rules. That should have been the starting point.

11. Even though there was a change in wording of paragraph 276ADE(vi) on 28 July 2014, from considering "ties" to considering "integration" the earlier findings were still relevant to the question of integration.

12. The earlier determination was raised in the respondent's refusal letter as well as in the appellant's notice of appeal to the First-tier Tribunal.

13. Nor did the Judge provide any good reasons to depart from those findings: Mubu and Others (Immigration Appeals – res judicata) Zimbabwe [2012] UKUT 398. The fact that he had recently visited Pakistan in itself cannot constitute a good reason to depart from Judge Lloyd's finding that the appellant had no ties to Pakistan notwithstanding his two previous visits there. The Judge did not explain how or why his brief visits to Pakistan renewed his connection with that country such that his removal from the UK would be proportionate.

14. He also submitted - ground 2 - that the Judge did not make a finding as to whether the appellant's former representatives had in fact failed to submit his extension application on 19 March 2009 in a timely manner.

15. The appellant's evidence was that his former solicitors were at fault in not submitting the application in time even though they were instructed far in advance of his leave expiring. He only became aware of the out of time application when the most recent refusal pointed this out to him. He made a formal complaint to the SRA about the representative's failure and also complained to the former solicitors but was informed that they had destroyed his file – BT (Former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311).

16. The Judge however failed to make findings as to whether his allegation against his former representatives' misconduct was accepted. No adverse credibility findings were made against the appellant. It is not clear whether the Judge accepted his allegations or rejected them. He should have found that the solicitors failed to submit the application in time.

17. Without such finding, the Judge was unable to support the conclusion that the former solicitors were not at fault for the late application [10]. He therefore failed to resolve a material conflict of facts.

18. He submitted - ground 3 - that the Judge failed to provide proper reasons for his conclusion at [10] that even if the appellant's evidence is accepted, that does not provide a sufficiently compelling or compassionate reason for allowing him to abridge time. The Judge further stated that the fact that he chose someone to help him does not absolve the appellant of responsibility of making an application and ensuring it is made in time.

19. Mr Youssefian submitted that the appellant did not simply "choose" someone to help him. He instructed a properly regulated law firm which specialised in immigration matters to prepare and submit his extension application in a timely manner. The appellant had therefore taken all reasonable steps to ensure that his application was submitted in time.

20. He submitted that it is perverse to hold that the solicitors' failure to submit the application in a timely manner in those circumstances did not constitute compelling or compassionate circumstances. The appellant cannot bear all the blame for his former representative's failure, particularly given his evidence that, but for this, the application would have been submitted in time.

21. He submitted in ground 4 that even if the Judge was correct in his assessment that the appellant was accountable for his former representatives' failures, he ought nevertheless to have considered the appellant's circumstances and length of lawful residence in the UK. The extent to which he was able to meet the requirements of the rule is a relevant factor when considering whether an interference with Article 8 is proportionate - Mostafa (Article 8 in entry clearance) [2015] UKUT 00112). The Judge's failure "to meaningfully engage" with the extent to which the appellant satisfied paragraph 276B of the Rules is an arguable error of law. The fact that the case is also a "near miss" case may be a relevant consideration which tips the balance under Article 8 in his favour - SS (Congo) v SSHD [2015] EWCA Civ 387 at [56].

22. He submitted that the fact that the appellant "purportedly" made an application 49 days out of time, 28 days of which could be disregarded in accordance with paragraph 276B(v)(a) of the Rules in any event, is highly relevant. Aside from the application that was 49 days out of time, he had lawfully resided in the UK for nine continuous years and ten cumulative years. This should have been given appropriate weight and the determination is vitiated for failing to take this factor into account.

23. Finally, he submitted that the Judge has had no, or no proper regard, to the public interest factors under s.117B of the Nationality, Immigration and Asylum Act 2002. In particular there has been no proper regard to the appellant's proficiency in English, his financial independence, or the nature of his ties and private/family life in the UK. He failed to consider those provisions in both form and substance.

24. Mr Tufan accepted that the Judge has made a short determination (some fifteen paragraphs over two pages). He acknowledged that he made a "sweeping statement" in [3] where he stated that he did not propose to detail the law in this case as it is well known to all.

25. In the circumstances Mr Tufan acknowledged that the Judge failed to make a finding relating to the solicitors' negligence. This is potentially significant.

Assessment

26. I have had regard to the decision of First-tier Tribunal Judge D Lloyd promulgated on 12 February 2014.

27. The Judge was satisfied that the appellant really has no family ties or connections in Pakistan. His father's cousin will not offer him any support. He will virtually disown him. It was common ground that the appellant was born out of wedlock. The Judge found that there are still significant social difficulties and prejudices associated with illegitimate births in Pakistan.

28. On the two occasions that he returned to Pakistan, it has not been an easy experience for him [43]. It has probably been in many respects a somewhat isolated and solitary one.

29. Judge Lloyd found that there was significant substance to the argument advanced that the appellant engages paragraph 276ADE(iv). In reality the appellant has no ties, whether social, cultural or family, with Pakistan [44]. Additionally the Judge upheld his appeal under Article 8. The requirement for him to return to Pakistan would be an immediate and disproportionate interference with his private life in the UK.

30. I was referred to the wording of paragraph 276ADE applicable as at the date of the 2014 decision. 276DE(vi) provided that the requirement to be met by an applicant for leave to remain on the grounds of private life under that sub paragraph was that he was aged 18 years or above, has lived continuously in the UK for less than 20 years, but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.

31. I accept the submission that the finding that he had no ties to Pakistan is relevant to the decision to be made as to whether there would be significant obstacles to his re-integration into Pakistan. That should at least have constituted a starting point in the determination by the First-tier Tribunal.

32. Nor, as properly conceded by Mr Tufan, did the Judge make a finding as to whether the former representatives failed to submit his extension application on time. He did make a complaint to the SRA about that. The Judge made no findings as to whether his allegations against his former representative's misconduct was accepted. There was in fact no finding one way or the other in respect of the appellant's contentions.

33. In the circumstances there was not a proper basis to support the conclusion that his former representatives were not at fault for the late application [10].

34. I also find that there is merit under the remaining grounds (grounds 3, 4 and 5). As noted by First-tier Tribunal Judge Parker in granting permission, that in a human rights appeal the Judge is entitled to consider the extent to which an appellant is able to meet the relevant immigration rule and make findings on it before going on to consider proportionality, including the need to maintain effective immigration control, one of the public interest factors now enshrined in statute. She noted that the Judge did not address paragraph 276B and, under paragraph 276ADE, made no reference to the decision of Judge Lloyd. There was no reference to the five step test in Razgar. Nor was there a proper consideration under s.117B of the 2002 Act.

35. In the circumstances, I find that the decision of the First-tier Tribunal involved the making of an error on a point of law. I accordingly set it aside.

36. I am satisfied that the effect of the errors has been to deprive the appellant of a full and proper opportunity for his case properly to be put and considered by the First-tier Tribunal.

37. I accordingly find that this is an appropriate case to remit the appeal to the First-tier Tribunal for a fresh decision to be made.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside and is remitted to the First-tier Tribunal (Newport) for a fresh decision to be made by another Judge.

Anonymity direction not made.

Signed Date 3 August 2018

Deputy Upper Tribunal Judge Mailer