



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

Appeal Number: HU/16791/2016

THE IMMIGRATION ACTS

Heard at North Shields

On 13 February 2018

**Decision & Reasons
Promulgated**

On 23 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

**MR SYED NAFIZ HASAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Marafat, Legal Representative.

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh who made a human rights application for indefinite leave to remain in the United Kingdom on the grounds of his ten years continuous lawful residence. His application was considered in terms of paragraph 276B with reference to 276A to D and paragraph 276ADE. Consideration was also given to the application in terms of Appendix FM and paragraph 276ADE(1)-CE and outside the Immigration Rules. The refusal was because the Appellant had been outside the United Kingdom for a period of over six months from 22 July

2010 until 25 July 2011 which broke his long residence and therefore he could not meet the Rules in terms of paragraph 276B(i)(a). The Appellant's appeal was heard by Judge of the First-tier Tribunal Hands who, following a hearing on 30 July 2017 dismissed it.

2. The Appellant sought permission to appeal which was initially refused. A renewed application was granted by Upper Tribunal Judge Kekić on 1 December 2017. Her reasons for so doing are: -

“The appellant challenges the decision of First-tier Tribunal Judge Hands dismissing his appeal against the respondent's decision to refuse to grant indefinite leave to remain because he had been outside the UK for just over one year between July 2010 and 2011 and his period of lawful leave had therefore been broken. The respondent also considered there were no reasons to warrant a grant of discretionary leave.

The reason the appellant left the UK was because his application for further leave had been refused on the grounds that he failed to show the required funds for maintenance for a 28-day period prior to his application. After his departure, the respondent changed her policy and undertook to reconsider certain categories of applicants including those who had left the UK.

The appellant argues that he fell into one of the categories requiring reconsideration, that had his application been properly considered under that guidance he would have been granted further leave and that he would have completed an unbroken ten-year period.

Arguably, the judge did not consider the respondent's failure to follow her policy. The grounds, which could have been more succinctly and coherently put, may all be argued.”

3. Thus, the appeal came before me today.
4. Both parties agreed that the Judge had materially erred in not considering the Respondent's failure to follow her own policy and that consequently this is an appeal that should be remitted to the First-tier Tribunal to be heard de novo.
5. That is an analysis I share.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Hands.

No anonymity direction is made.

Signed Date 19 February 2018.
Deputy Upper Tribunal Judge Appleyard