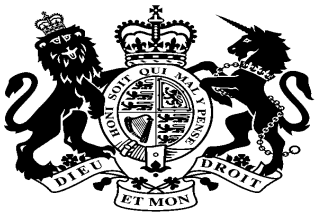

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/26867/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision promulgated**
on 30 October 2018	**On 8 November 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TU-R
(anonymity deck direction made)

Respondent

Representation:

For the Appellant: Mr M Diwnycz - Senior Home Office Presenting Officer
For the Respondent: Mr Metzer - Counsel

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission a decision of First-Tier Tribunal Turnock, promulgated on 28 March 2018, in which the Judge allowed the appellant's appeal on human rights grounds.
2. The operative part of the grant of permission being in the following terms:

4. Where an individual cannot meet the Immigration Rules compelling reasons are required to justify a grant of leave under article 8 which is not a stand-alone provision. The decision does not identify any compelling factors and in the circumstances the grounds are arguable.

Error of law

3. The Judge writes at [58 – 59]:

> 58. It is clear that, as a result of advice provided to him the Appellant lost the opportunity of acquiring 10 years lawful residence in the UK. The decision to withdraw the appeal was not on the basis of trying to secure some tactical advantage for the Appellant but because the implications of the withdrawal were not appreciated. Had the Appellant not withdrawn his appeal and simply taken no action then the 45 days would have passed and the Appellant would have been able to show that he had 10 years lawful residence in the UK. In itself that would not have guaranteed the grant of Indefinite leave to remain as there would have been other factors which would have required consideration under the relevant Rule, but no one has suggested that there were any serious issues with those factors.
>
> 59. The Appellant's situation was not brought about by any action on the part of the Respondent or the government but flowed from the alleged poor service provided to him by former solicitors. It had previously been suggested that there had been an 'historic injustice' (sic) perpetrated against the Appellant although that was not an argument which was advanced at the hearing before me.

4. The Judge undertook an examination of relevant case law before drawing together the threads of the decision at [71] in the following terms:

> 71. The public interest in this case is the need to maintain effective immigration controls. As identified that is a factor that must be given significant weight. That must be tempered to a degree to take account of the fact that the Appellant could, without any difficulty, have met the requirements of the Rules by simply taking no action in December 2011. Almost certainly he would have then been granted indefinite leave to remain. He now has a private life which includes relationships with family members which has developed of approximately 16 years. He has been financially independent and there is no reason to think he will not be again, and he has made a contribution during the time he has spent in the UK. In light of the compelling circumstances of this particular case, which I find exist, I conclude that, on balance, the public interest considerations are outweighed by the factors in favour of the Appellant and his removal would be disproportionate.

5. The Judge noted it was accepted the Appellant was in the UK lawfully until he ceased to have leave to remain when he withdrew an appeal on 8 December 2011, the circumstances of which are set out in the Preliminary Decision of the Legal Ombudsman; set out at [57] of the decision under challenge. It is not disputed that the appellant's previous advisers are culpable for what occurred with no suggestion or finding that the appellant contributed to his own

difficulties in relation to the loss of the lawful residence which, at the date the appeal was withdrawn, was 45 day short of the 10 years lawful residence required to enable the applicant to succeed under the long residence rule.

6. The President of the Upper Tribunal has recently handed down the reported decision in *Mansur (Immigration adviser's failings: Article 8) Bangladesh [2018] UKUT 00274 (IAC),* the head note of which reads:

> (1) Poor professional immigration advice or other services given to P cannot give P a stronger form of protected private or family life than P would otherwise have.
>
> (2) The correct way of approaching the matter is to ask whether the poor advice etc that P has received constitutes a reason to qualify the weight to be placed on the public interest in maintaining firm and effective immigration control.
>
> (3) It will be only in a rare case that an adviser's failings will constitute such a reason. The weight that would otherwise need to be given to that interest is not to be reduced just because there happen to be immigration advisers who offer poor advice and other services. Consequently, a person who takes such advice will normally have to live with the consequences.
>
> (4) A blatant failure by an immigration adviser to follow P's instructions, as found by the relevant professional regulator, which led directly to P's application for leave being invalid when it would otherwise have been likely to have been granted, can, however, amount to such a rare case.

7. The finding of the legal ombudsman in the Preliminary Decision of 2 March 2018 clearly established the applicant's previous representatives Farani Javid Taylor Solicitors LLP are culpable for failing to consider and advise the appellant of the impact of withdrawing the appeal listed for hearing on 25 January 2012, on 8 December 2011, at which point the appellant's presence in the United Kingdom became unlawful leaving him 45 day short of accruing 10 years continuous lawful residence. Whilst not, technically, an issue of a representative failing to follow a client's instructions I find the finding of the Ombudsman shows a blatant failure by the previous representatives to act in a professional manner leading directly to the applicant's appeal being withdrawn and to his being unable to establish 10 years lawful residence in the United Kingdom. The Preliminary Decision recommended an award of damages to the appellant as a result of the previous solicitors conduct in the sum of £12,317.50. The Judge records that at the date of the hearing all that was available was the Preliminary Decision.

8. The Upper Tribunal were today advised that the preliminary finding became the Ombudsman's final finding.

9. The issue in this appeal is whether the conclusions reached by the Judge are in the range of those reasonably open and available following the analysis of the relevant law and facts of this appeal. I do not find it made out that the Judge's conclusions are irrational such as to fall outside the range of those reasonably available on the facts. The Judge carefully analyses the appellant circumstances as a whole, including the issue of the previous representatives' error, setting out a number of issues which contributed to the overall assessment of the balancing exercise.

10. Accordingly I find that the respondent has failed to establish arguable legal error sufficient to warrant a grant of permission to enable the Upper Tribunal to interfere in this decision. It has not been made out the conclusion the decision is not proportionate is not within the range of findings reasonably available to the Judge on the evidence.

Decision

11. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 30 October 2018