



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/04871/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 11th February 2019**

**Determination & Reasons
Promulgated
On 19th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR BADAR MUNIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jaquiss (Counsel), Nasim & Co Solicitors
For the Respondent: Ms S S Cunha, Senior HOPO

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Pears, promulgated on 26th October 2018, following a hearing at Hatton Cross on 27th September 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 1st April 1982. He appealed against the decision of 31st January 2018 refusing his

application for indefinite leave to remain in the UK on the basis that he had been here at least for ten continuous years of lawful residence.

The Appellant's Claim

3. The essence of the Appellant's claim was that he had completed ten years of continuous lawful residence and there was no gap in his leave to remain, because this had been extended pursuant to Section 3(c) of the Immigration Act 1971. He claimed that although there had been a refusal of his application on 29 November 2010, this had been appealed. In addition, the Appellant also argued that he should be granted leave outside the Immigration Rules based on his family life and private life under Article 8 (see paragraph 4 of the determination).

The Judge's Findings

4. In a short determination, the judge held that there was no evidence before him of his having a partner or a child, no evidence from his mother or other family members, no evidence of engagement with British society, and no statements from his friends. Moreover, it was not the case that the Appellant had appealed an earlier decision so as to have continuous lawful residence as he claimed because no such evidence existed (see paragraphs 12 to 14 of the determination).

Submissions

5. At the hearing before me on 11th February 2019, there was agreement between Ms Jaquiss and Ms Cunha appearing for the Appellant and the Respondent Secretary of State respectively, that the judge's determination did indeed contain an error of law. This was for two reasons. First, there was no consideration of the appeal outside the Immigration Rules, even though the judge had stated (at paragraph 4) that part of the Appellant's claim was that his appeal should be allowed outside the Immigration Rules. Second, there was no proper consideration of the Section 117B requirement in favour of immigration control.
6. Ms Jaquiss submitted that two issues in particular arose (given what the judge had decided at paragraph 14), namely, firstly, whether the Appellant had lodged his appeal following the refusal on 29th November 2010 as he claimed. Secondly, what weight in terms of the Section 117B considerations, ought to be given to his genuine belief, that such an appeal had indeed been lodged. This was important because the Appellant had subsequently then been granted an extension of stay. This does not normally happen in Ms Jaquiss' experience, unless there was a reason for the Secretary of State to grant leave. This would only have arisen if there had indeed been a valid appeal lodged. If therefore, such an appeal had been lodged, then the fact that there was a grant of further stay, went to the Appellant's genuine belief that he was not in breach of the Immigration Rules, so that the Section 117B considerations would fall to be applied in his favour. All of this needed to be assessed properly again by the First-tier Tribunal. Ms Cunha did not disagree.

Notice of Decision

7. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Pears (pursuant to practice statement 7.2(b) for the simple reason that the Tribunal below has not considered the Appellant's claim outside the Immigration Rules on the basis of freestanding Article 8 jurisprudence; nor has consideration been given to how the balance of considerations would fall in relation to the application of 117B of the 2014 Act.
8. No anonymity direction is made.
9. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

18th March 2019