Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/05615/2020**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh	**Decisions and Reason promulgated**
On 9 February 2022	**On 16 March 2022**

Before

UT JUDGE MACLEMAN & DEPUTY UT JUDGE FARRELLY

Between

RAJA JAMROZ KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms Stein, Advocate, instructed by Marks & Marks, Solicitors, Harrow
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. In a decision dated 21 April 2020, the respondent declined to grant the appellant leave to remain on the basis of his private life. The claim under the immigration rules was based on long residence.

2. FtT Judge P A Grant-Hutchison dismissed the appellant's appeal by a decision promulgated on 13 August 2021. He did not find it established that the appellant had been continuously resident for 20 years, so he did not meet the terms of paragraph 276 ADE(1)(iii) of the rules. The judge went on to consider the position

outside the rules. He accepted that private life existed and article 8 was engaged. However, he concluded that the decision was proportionate.

3. Permission to appeal to the UT was granted on the two grounds advanced. The first submitted that the judge erred in his assessment of the appellant's length of residence in the United Kingdom. It was suggested he should have taken the combined length of residence so as to include the period before he was removed. The judge had not made a finding on whether it was accepted the appellant had been in the United Kingdom from 1988 as he claimed until his removal or `deportation', as it was then termed, in 1999.

4. The grounds argue that the findings as to the length of residence in the United Kingdom were relevant to the assessment of the appellant's article 8 private life outside the rules .

5. There has been no rule 24 response.

6. Ms Stein appeared for the appellant as she did in the First-tier Tribunal. Mr Diwyncz on behalf of the respondent confirmed that nothing can be found on the respondent's computer system to show the appellant's presence in the United Kingdom before 1999. He pointed out that much of the records before then were kept on paper and are no longer accessible.

7. There is a copy in the papers of a First-tier tribunal decision by Immigration Judge Horvath, sitting at Taylor House, promulgated on 17 March 2010.

8. The appellant had claimed he came to the United Kingdom on 27 March 1988. Following various unsuccessful applications, he was removed from the United Kingdom on or about 26 September 1999. On an unknown date he returned to the United Kingdom. On 12 November 2007 he applied for leave to remain on compassionate grounds outside the rules. This was refused and that decision formed the subject matter of the appeal before Immigration Judge Horvath. The submission was founded on the appellant's article 8 right to private life. The judge was advised that the appellant had suffered two myocardial infarctions in 2004 and had bypass surgery in January 2009. He also suffered from diabetes.

9. Ms Stein referred us to page 182 of the tribunal bundle which is a document from London Transport. It indicates the appellant successfully passed a test to be a taxi driver on 3 October 2007. On the previous page there is a letter dated 20 August 2003 addressed to the appellant from London Transport indicating that a temporary permit as a taxi driver was being issued to the appellant.

10. There was a letter before Judge Grant-Hutchison from a Mr Amjad to the effect that he had known the appellant a long time and that he had stayed with him "until 2003." Ms Stein next referred us to paragraph 7 (g) of the decision of Judge PA Grant -Hutchison which records that the appellant was asked how long he had known Mr Amjad and he replied that he 'had befriended him when he came here in 1988'.

11. She submitted that Judge Grant-Hutchison failed to make clear findings on how long the appellant had been in the United Kingdom, which, she said, in turn impacted upon the assessment of the appellant's private life should he not succeed under the immigration rules.

12. The original determination from Judge Horvath contains a finding at paragraph 32 that whilst the appellant had claimed presence from an earlier date the papers before the judge only suggested his presence as of May 2004. The judge could find nothing between September 1999 when he was removed and that date. At the hearing before Judge Grant -Hutchison it was submitted by the respondent (para 8(a)) that the Devaseelan principle applied in relation to this earlier decision. Under the heading `The Decision' Judge Grant -Hutchison records at paragraph 11:

> … It is accepted that a previous Immigration Judge found that the appellant has been in this country since 2004 in a decision promulgated on 17 March 2010. However, the appellant invites me to find there is sufficient new evidence before me to depart from said decision. In 2004 the appellant went to his GP over concerns about his heart condition. In his witness statement he admits he cannot provide any documentary evidence prior to this (although his skeleton argument refers to evidence placing him in the UK by 20 August 2003) …. I am not prepared to accept his evidence as being either new [or] sufficiently powerful enough to allow me to overturn the judgement made in this regard.

13. We conclude from paragraph 32 that the judge correctly applied the Devaseelan principle. The judge had regard to the previous decision and the findings made on this important point. The judge then considered if there was any further evidence to alter that starting point and found none. On the documentary evidence the most that could be said, as his representatives have conceded, is that there was evidence of his presence in August 2003 when he was issued with the temporary taxi drivers permit. As the necessary 20 years would still not be satisfied this makes no material difference.

14. The judge at paragraph 12 accepted the appellant had health issues, referring to his cardiac problem, his hypertension, and his diabetes. The judge also referred to the possibility there could be some anxiety related conditions. He accepted he had little or no family in Pakistan. Against that he has spent his formative years there and was a national of that country. He understood its customs, culture, and languages. The judge felt his past employment as a taxi driver would be of benefit to him on return. (Ms Stein suggested that the evidence about the appellant's health does not suggest he is really fit for work, but the Judge's point arose from the appellant saying he could work to support himself in the UK; he cannot realistically have it both ways.) The judge did not see very significant obstacles to the appellant's reintegration and found he could not succeed under paragraph 276 ADE(1)(iii) of the rules. We cannot see any material error of law in the judge's evaluation. In summary, therefore, we find no material error of law in relation to the judge's assessment under the immigration rules.

15. In relation to the assessment of the appellant's private life and proportionality, Judge Grant-Hutchison at paragraph 16 accepted that the removal of the appellant potentially engaged article 8. The judge identified the determinative issue as being the proportionality of removal and that it was for the respondent to show it was justified on the balance of probabilities. He set out the public interest considerations from part 5A of the Nationality, Immigration and Asylum Act 2002. He referred to the fact the appellant's private life was established when his immigration status was precarious. The judge did accept that the appellant had been in the United Kingdom for a very long time albeit he had not established 20 years continuous residence. He refers to the appellant overstaying and his illegal return to the United Kingdom after being removed. It was advanced on his behalf

that he would not be a burden on the UK if he were permitted to work. However, the judge pointed out that he could use the skills he had learned here to obtain employment in Pakistan. Furthermore, the judge was not satisfied medical treatment would be unavailable in Pakistan. The judge pointed out that his failure to meet the rules was a factor to be considered in relation to the proportionality of the decision.

16. We have considered the judge's assessment of proportionality. Our conclusions are that the judge had regard to relevant factors. It is not for us to substitute our own view of where the balance lies. Suffice it to say that we can see no error of law in the judge's approach.

17. As no material error of law has been demonstrated the appeal is dismissed, and the decision of the FtT stands.

18. No anonymity direction has been requested or made.

F Farrelly

9 February 2022
Deputy UT Judge Farrelly

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.