IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003299
First-tier Tribunal No: EA/11943/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 October 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE GREY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KM
(Anonymity Order made)

Respondent

Representation:

For the Appellant: Mr M Parvar, Senior Home Office Presenting Officer
For the Respondent: Mr S Vnuk of Comran Children's Legal Centre

Heard at Field House on 27 September 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing KM's appeal against the respondent's decision to refuse his application for leave to remain in the UK.

2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and KM as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of the Democratic Republic of the Congo (DRC), born on 25 August 1970. He has a lengthy immigration history which can be summarised as follows. He entered the UK on 26 March 1998 and claimed asylum the following day. His claim was refused on 23 March 2001 and an appeal against that decision was dismissed on 20 June 2002. He made a human rights claim on 24 February 2003 which

© CROWN COPYRIGHT 2024

was refused on 18 August 2003 and an appeal against that decision was dismissed on 4 January 2005. He began a relationship with a DRC national, GU, who had arrived in the UK in September 2003 with her younger sister and had claimed asylum. He was arrested in July 2005 for working illegally and on 10 October 2005 he was sentenced to a term of 12 months' imprisonment for a passport offence and 6 months for a deception offence, to be served consecutively (18 months' imprisonment). On 8 May 2006 the respondent made a decision to deport the appellant. His appeal against that decision was allowed by the Tribunal on 21 January 2008 to the extent that discretionary leave should be granted until such time as he and his family could lawfully be removed to the DRC, given the moratorium on removals to the DRC and given that the appellant had established a family life in the UK. By that time the appellant's family included GU and her sister, and their daughters D (born 16 January 2006) and A (born 6 March 2007). GU and her sister and their daughters were granted indefinite leave to remain under the family ILR exercise.

4. The appellant was granted successive periods of discretionary leave (DL): he was granted 6 months' DL from 15 April 2008 until 14 October 2008, 6 months' DL from 23 November 2010 until 22 May 2010, 3 years' DL from 8 August 2011 until 7 August 2014 (following a judicial review challenge in the administrative court), and 30 months' leave from November 2016 until 16 May 2019.

In the meantime, a third daughter, V, was born on 14 August 2010 and a fourth daughter, J, on 5 March 2013. The appellant's relationship with GU came to an end and he was unable to have any further contact with his daughters.

5. On 13 May 2019 the appellant applied for further leave. In a letter of 19 June 2019 to the Home Office he stated that his application was for indefinite leave to remain. In a subsequent email from his legal representative (Mr Vnuk), dated 23 June 2022, it was clarified that his application for indefinite leave to remain was made on the basis of having completed 10 years of discretionary leave. That is the relevant application which has given rise to this appeal.

6. The respondent refused the appellant's application on 15 November 2022. In so doing, the respondent considered that the appellant did not satisfy the requirements of the transitional arrangements of the DL policy to be granted ILR because the circumstances under which he had held his initial grant of DL no longer prevailed. That was because he was granted leave on the basis of his relationship with his children, whereas he had failed to provide any evidence that the relationship with his children was subsisting. The respondent went on to consider Article 8 and noted that since his previous grant of leave the appellant had amassed 3 convictions between 20 August 2018 to 13 January 2022 and had first been convicted in 2001. The respondent considered that the appellant's presence in the UK was not conducive to the public good because of the nature of the offences/ convictions from 2018 to 2022, which included offences against the person and drugs offences, and that the suitability provisions in paragraph S-LTR.1.6 therefore applied. The respondent considered that the appellant did not meet the eligibility requirements in Appendix FM on the basis of family life as a partner or parent because he had not provided any evidence of his relationship with his partner nor evidence of any dependents under the age of 18. The respondent considered further that the appellant did not meet the requirements of paragraph 276ADE(1), having failed to provide evidence to show that he had been living in the UK continuously for over 20 years and having failed to demonstrate that there were any very significant obstacles to his integration in the DRC. The respondent considered there to be no evidence of exceptional compassionate circumstances which could lead to a grant of discretionary leave and that there were no other

compelling or exceptional circumstances justifying a grant of leave outside the immigration rules.

7. The appellant appealed against that decision.

8. A case management review (CMR) hearing was held on 26 October 2023. We do not have a record of proceedings for that hearing. We are told by Mr Vnuk that there was some discussion about the issues to be determined and the evidence before the Tribunal. We are told that it was argued on behalf of the appellant that the refusal decision was deficient in that it did not provide any details of the appellant's criminal convictions and did not address all the relevant issues in the appellant's case. Mr Vnuk tells us that the issues identified in particular which had not been addressed in the refusal decision were paragraph 276B (ILR on the grounds of long residence in the UK) as well as paragraph 276A1 (extension of stay on the ground of long residence in the UK). Directions were made by the Tribunal on 1 December 2023 following the CMR for the respondent to produce the PNC records for the appellant, for the appellant to produce a skeleton argument and for the respondent to produce a focussed Respondent's Review. In the absence of a response, further directions were made on 8 December 2023.

9. The appellant produced a skeleton argument on 19 January 2024 together with a supplementary bundle. In that skeleton argument it was submitted that he took issue with various matters in the respondent's refusal decision including the respondent's consideration of the Discretionary Leave (Transitional Arrangements), the respondent's failure to consider the appellant's application under long residence rules (paras 276A-276D of the Immigration Rules) and the respondent's assessment that he did not meet the suitability requirements in S-LTR.1.6. It was submitted in the skeleton argument that it would be a breach of the appellant's Article 3 and Refugee Convention rights for him to be removed to the DRC because he was at risk on return to the DRC owing to his membership of, and involvement in activities for, Apareco and that that was relevant at least to his application under the Rules and/or Article 8. With regard to the respondent's consideration of the Discretionary Leave (Transitional Arrangements), it was submitted that the relevant policy which ought to have been applied was the October 2009 policy which did not include a requirement that the circumstances which led to the initial grant of DL still prevailed, in which case he should have been granted ILR under the transitional arrangements. With regard to the respondent's failure to consider the appellant's application under long residence rules, it was submitted that the appellant met the requirements for an extension of stay on the ground of long residence in the UK in accordance with paragraph 276A1, which in turn referred to the requirements of paragraph 276B(i) to (ii) and (v) of the immigration rules, and relevant to which was the appellant's long employment record in the UK. As for the respondent's assessment that the appellant did not meet the suitability requirements, in S-LTR.1.6, it was submitted that the respondent had made no attempt to consider the nature of, and background to, the appellant's offences, and that had she done so she would not have found that the appellant did not meet the suitability requirements. The appellant's skeleton went on to submit that the appellant's return to the DRC would result in "unjustifiably harsh consequences" for the purposes of GEN.3.2 of Appendix FM, that the appellant had submitted sufficient evidence to show that he had lived in the UK for over 20 years and met the requirements of paragraph 276ADE(1)(iii), that the appellant would face very significant obstacles to integration in the DRC and that the respondent had failed to carry out a proper Article 8 proportionality assessment.

10. The respondent produced a Respondent's Review on 29 January 2024 in which it was stated that points in the appellant's skeleton argument which were not

specifically addressed should not be taken as accepted by the respondent, but with no details provided. The respondent maintained the view that the appellant's application should be refused on suitability grounds owing to his criminal convictions and that his removal from the UK would not be disproportionate under Article 8.

11. The appellant produced a response to the Respondent's Review, dated 31 January 2024, asserting that the review did not address the issues set out in the skeleton argument and reiterating the submission that the appellant met the requirements of paragraph 276A1 for an extension of stay in the UK. It was asserted that there were no suitability requirements under this rule nor in paragraph 276B and that once the 10 years continuous lawful residence requirement had been met the focus was on the appellant's personal history and in particular his employment.

12. The appellant's appeal came before First-tier Tribunal Judge Loke on 1 February 2024. The appellant's representative raised two issues which it was said had not been considered by the respondent: firstly, the appellant's entitlement for limited leave under paragraph 281 of the immigration rules; and secondly, the risk faced by the appellant on return to the DRC, in terms of "very significant obstacles to integration" rather than protection, as a result of his involvement with APARECO. There was no objection to the matters being considered by the judge. The judge had regard to the findings made by the Upper Tribunal in the decision of 21 January 2008 allowing the appellant's appeal against the decision to deport him, to the extent that discretionary leave should be granted until such time as he and his family could lawfully be removed to the DRC (given the moratorium, at that time, on removals to the DRC, and given his established family life in the UK). Mention was also made of the fact that, since that time, the appellant had separated from his partner in late September 2014 and had had no contact with her or his daughters. With regard to the matter of the Discretionary Leave (Transitional Arrangements), the judge considered the DL guidance of 16 March 2023 which required that, in order for further DL to be granted, there had to be a consideration of whether the circumstances prevailing at the time of the original grant of leave were still continuing at the date of the application. She found that the requirement also applied under the 27 October 2019 policy and that, since the appellant's family circumstances at the time of the original grant of leave no longer prevailed, he could not qualify for further DL under the transitional provisions.

13. With regard to entitlement to ILR after accruing 10 years lawful residence, the judge considered paragraph 276B of the immigration rules. She found that the appellant had been living in the UK lawfully for at least 10 years for the purposes of paragraph 276B(i). As for paragraph 276B(ii), the public interest factors, the judge found that the appellant had established a strong private life in the UK. She had regard to the appellant's criminal offences and found that he was not a prolific or persistent offender and that his offences were not especially serious. She concluded that, for the purposes of paragraph 276B(ii), it was not undesirable for the appellant to be granted indefinite leave to remain on the basis of 10 years lawful residence. She also concluded that the appellant's conduct did not render his presence in the UK conducive to the public good such that the general grounds of refusal under Part 9 should apply to him. The judge accordingly found that the appellant met the requirements of the immigration rules and that that was determinative of his Article 8 appeal and she allowed the appeal under Article 8.

14. The Secretary of State sought permission to appeal the decision on four grounds. Firstly that the judge, when considering paragraph 276B, had considered the wrong version of the immigration rules and that she should have considered the rules in force between 9 -29 November 2022 when the respondent made her decision. Secondly that the judge, when considering the requirements of paragraph 276B, failed to go on to

consider paragraph 276B(iv) which required that an applicant had to demonstrate a sufficient knowledge of the English language and sufficient knowledge about life in the UK in accordance with Appendix KoLL. Thirdly, that the judge had failed to give adequate reasons for her findings in relation to the appellant's criminality, specifically with regard to the lack of clarity as to which suitability rules were considered and had failed to give adequate reasons for finding that the appellant's offences were not especially serious and why they were insufficient to bring the appellant within the scope of the general grounds for refusal. Fourthly, that the judge had applied the wrong test when considering the appellant's criminality and had failed to consider the mandatory nature of paragraph S-LTR.1.6, as discussed in Mahmood (paras. S-LTR.1.6. & S-LTR.4.2.; Scope) [2020] UKUT 00376 but had rather engaged in a balancing exercise.

15. Somewhat unusually, the appellant made submissions, dated 19 June 2024, in response to the Secretary of State's grounds prior to a decision having been made by the Tribunal. In those submissions the appellant objected to the respondent's grounds being admitted as they were out of time and asserted that the grounds contained fundamental errors and misunderstandings in relation to the appeal. It was submitted that the background to the appeal had been misunderstood as consent had been given at an earlier stage in the proceedings prior to the hearing before Judge Loke, at the 25 October 2023 CMR hearing, for consideration to be given to the argument that the appellant was eligible for an extension of leave, not ILR, under the long residence category in the immigration rules (paragraph 276A1) and that that was the basis upon which he was pursuing his appeal. Reference was made to the Tribunal's directions in that regard following the CMR and it was submitted that the respondent had failed to address the matter in the Respondent's Review. The appellant went on to addressed each of the respondent's grounds. With regard to ground 1, it was submitted that there was no difference between the previous and current rules in relation to paragraph 276A1 and 276B(i)-(ii) and (iv), and the general grounds of refusal were not relevant to paragraph 276A1. With regard to ground 2, that ground was wrong as paragraph 276B(iv) was not a requirement under paragraph 276A1. With regard to grounds 3 and 4, the respondent was wrong as the general grounds of refusal and paragraph S-LTR.1.6 were not relevant to paragraph 276A1 and the judge in any event properly considered the appellant's criminality.

16. The First-tier Tribunal extended time for appealing and granted permission on 4 July 2024 on the following basis:

> "3. The grounds of appeal assert that the judge applied the wrong form of the Immigration Rules. This is because they considered the form of the rules at the date of the application rather than at the date of the decision (MO (Date of decision: applicable rules) Nigeria [2007] UKAIT 00057). Had they applied the correct form of the rules it is asserted that the judge could not have concluded that the appellant met the requirements of paragraph 276B, which was the basis on which the appeal was allowed.
>
> 4. Whilst I do not accept that the judge erred by failing to provide adequate reasons or giving weight to irrelevant matters I am persuaded that the issue set out above (ground 1) discloses an arguable error of law. "

17. The appellant filed a Rule 24 response on 6 August 2024 requesting that the 19 June 2024 submissions stand as the Rule 24 response.

18. The matter was listed for hearing in the Upper Tribunal on 27 September 2024 and both parties produced skeleton arguments setting out their case. Mr Parvar, in his

skeleton argument, addressed the paragraph 276A1 issue, submitting that it had never been part of the appellant's case and was a new matter.

Hearing and Submissions

19. As a preliminary matter we advised the parties, after some discussion, that we did not consider the grounds to be restricted to the first ground, as Mr Vnuk asserted in his skeleton argument. The Upper Tribunal, in Safi and others (permission to appeal decisions) [2018] UKUT 00388, made it clear that if the grounds were to be restricted that had to be reflected in the decision itself rather than the reasons, which in this case it was not. We therefore considered that all grounds were arguable. Mr Vnuk asked us to disregard any challenge made by the respondent in her skeleton argument relating to paragraph 276A1 as the original grounds made no mention of paragraph 276A1. However we agree with Mr Parvar that the relevance of paragraph 276A1 only became apparent in the appellant's Rule 24 and skeleton argument and in such circumstances it was a matter we had to consider in order to determine the challenge to Judge Loke's decision.

20. We heard submissions from the parties.

21. Mr Parvar submitted that paragraph 276A1 was not a matter considered by Judge Loke and that it was a new matter which needed to be considered as such. He submitted that Judge Loke had only considered paragraph 276B and had erred in her decision in that regard as she had failed to consider paragraph 276B(iv). Further, with reference to paragraph 276B(iii), whilst she had referred to the general grounds for refusal and Part 9 of the immigration rules, she had not explained why the appellant did not fall for refusal under Part 9 but had simply cross-referenced to her findings on paragraph 276B(ii) which involved a different test. Mr Parvar submitted that the judge had failed to embark on a proper consideration of the appellant's offences which were serious, irrespective of the length and type of sentence.

22. Mr Vnuk submitted that the issue of paragraph 276A1 was raised at the CMR hearing and it was because the respondent had not considered that matter in the refusal decision that directions had been made for the respondent to produce a focussed Respondent's Review in response to his submissions. He submitted that that had been one of the issues in the schedule of issues in his skeleton argument before the First-tier Tribunal and had been specifically referred to in the response to the Respondent's Review. Mr Vnuk submitted that although Judge Loke did not specifically mention paragraph 276A1 in her decision, it was clear that her references to paragraph 276B were in the context of a consideration of paragraph 276A1. It was for that reason that she referred to only three sub-paragraphs of 276B. She did not refer to paragraph 276B(iv) because that was not a requirement of paragraph 276A1. Although she referred to paragraph 276B(iii) at [29] she must have intended rather to refer to paragraph 276B(v) which was a requirement of paragraph 276A1, whereas paragraph 276B(iii), the general grounds of refusal in Part 9, was not a requirement of paragraph 276A1. He submitted that in any event the judge had given proper consideration to the general grounds of refusal in Part 9 at [36] of her decision and had given full and proper consideration to the appellant's convictions. Mr Vnuk submitted that even if the judge had not considered paragraph 276A1 the outcome of the appeal was inevitably the same on the findings she had made in any event and there was therefore no material error in her decision.

23. In response Mr Parvar submitted that the new matter of paragraph 276A1 was a red herring because the judge had conclusively determined the appeal as a 10 year ILR case. He submitted that it could not be said that the judge's findings were sufficient to determine the issue of paragraph 276A1 in the appellant's favour in any

event, as Part 9 applied and the judge had not properly engaged with that matter. Mr Parvar asked that the decision be set aside and the matter retained in the Upper Tribunal for the decision to be re-made.

24. Mr Vnuk, in turn, disputed that paragraph 276A1 was a new matter that required consent and submitted that if it was found that the judge had erred in law, the decision could simply be re-made by allowing the appeal by reference to paragraph 276A1 as no further findings needed to be made.

Discussion

25. There has been considerable confusion in this case at all stages which has not been assisted at all by the fact that the appellant is now seeking to argue his case on a different basis to which the application was initially made by himself (in his letter of 19 June 2019) and as confirmed by Mr Vnuk in his email of 23 June 2022. In that email, which can be found at page 147 of the composite bundle, Mr Vnuk requested that the appellant be granted indefinite leave to remain on the basis of having completed 10 years of discretionary leave to remain in the UK. There was no application for an extension of leave at that stage and indeed it seems that no formal application was made on that or any other basis. Whilst Mr Vnuk may criticize the respondent for not considering an extension of leave in the alternative, in her refusal decision, it is clear that she considered the application on the basis that it was made.

26. It was only a year later, at the CMR on 26 October 2023, that the matter of paragraph 276A1 was, we are told, raised. As we have said, we do not have the record of proceedings of that hearing to ascertain how the matter was presented to the Tribunal at that hearing, and we note that the directions issued to the parties following the CMR for skeleton arguments to be produced did not make any specific reference to paragraph 276A1. Nevertheless we do not dispute Mr Vnuk's assertion that it was raised and we note that it was referred to in the appellant's skeleton argument dated 19 January 2024 which followed the CMR hearing. We observe, however, that there was no specific assertion in the skeleton argument that the appellant had abandoned his application for ILR, as is now asserted.

27. It is on that basis that the matter came before Judge Loke on 1 February 2024 and the question arises, therefore, whether she was aware that paragraph 276A1 was a matter before her and whether she addressed the matter. Mr Vnuk's submission was that Judge Loke was aware of, and considered, the paragraph 276A1 matter. He submits that, whilst she did not cite the provision specifically, it is apparent that that was what she was considering as the relevant Rule. As support for that assertion he relies on the fact that, at [29], the judge referred to only three of the requirements of paragraph 276B as being the only relevant provisions of paragraph 276B to be met for the purposes of paragraph 276A1 and that she simply made a mistake when she included 276B(iii) rather than (v), the relevant provisions being 276B(i), (ii) and (v), and deliberately did not consider paragraph 276B(iv) because that was not a requirement for paragraph 276A1.

28. We cannot accept that that is the case. At [13], the judge recorded the appellant's representative's submission that two issues had not been considered by the Home Office and it was accepted that those two issues could be considered at that hearing. Neither of those was paragraph 276A1. Further, at [28], the judge referred to the parties agreeing that she ought to consider paragraph 276B despite it not having been considered by the respondent and indeed in the preceding paragraph, [27], she specifically referred to applications for 'settlement', before going on to consider paragraph 276B. In addition, as we have already mentioned above in relation to the skeleton argument before the judge, there was no indication in that document that the

appellant was no longer pursuing a claim to be able to meet the requirements for ILR on the basis of 10 years continuous lawful residence. It seems to us, therefore, that the hearing proceeded on the basis of the judge's understanding that the relevant issues were the transitional arrangements under the Discretionary Leave policy and paragraph 276B of the immigration rules. Whether it was not made clear to the judge that the appellant was only relying upon paragraph 276A1, or whether she simply misunderstood, is not apparent to us, but what is apparent is that the judge's decision was not based upon paragraph 276A1. In so far as the judge determined the appeal under paragraph 276B, therefore, she clearly erred in law, given that she failed to consider the requirements in paragraph 276B(iv) which, as Mr Vnuk accepts, the appellant could not meet.

29. The next question for us, therefore, is whether that error of law is a material one which requires the judge's decision to be set aside. It was Mr Vnuk's submission that even if the judge had erred by not specifically citing paragraph 276A1, the error was not material. Firstly, because paragraph 276A1 was a matter which was before the Tribunal since it had been discussed at the CMR and was included in the appellant's skeleton argument. Secondly, because the appellant met the requirements of paragraph 276A1 on the findings that the judge had made.

30. With regard to the first point, Mr Parvar raised the issue of a 'new matter' and relied upon the guidance in Mahmud (S. 85 NIAA 2002 – 'new matters') [2017] UKUT 00488 in that regard, submitting that paragraph 276A1 was not a matter which the Tribunal could consider as it had not been considered by the respondent in the refusal decision. We do observe, however, that in the refusal decision the respondent stated that the decision had been taken in line with the Immigration Rules and Home Office policies in place at the time. Therefore paragraph 276A1 would have been a matter that she could have considered at that time. We note further, in terms of the guidance in Mahmud, that the appellant was relying upon the same factual matrix at that time as he now relies upon in relation to paragraph 276A1, albeit in an application for ILR rather than an extension of leave. In addition it is relevant to note that paragraph 276A1 had been raised in the CMR and in the appellant's skeleton argument and it was therefore a matter of which the Tribunal had been made aware, even if it was not dealt with by the judge. It is also of note that consent was specifically given for the long residence rules to be considered by the Tribunal, albeit with no specific reference to paragraph 276A1. Accordingly it does not appear to us that the application of paragraph 276A1 amounted to a 'new matter' which required consent from the respondent, or even if it was, that consent had been denied by the respondent. The respondent had the opportunity to address the matter in the Respondent's Review, but did not do so and if the issue was considered by the respondent to be a new matter which required consent, that was the time to mention it.

31. Turning to the requirements of paragraph 276A1, those are that an applicant can meet each of the requirements in paragraph 276B(i), (ii) and (v). The judge found that the requirements of paragraph 276B(i) and (ii) were met. The respondent has not challenged the judge's findings in that regard. Further, there has been no suggestion that the appellant was in the UK in breach of immigration laws such that the requirements of paragraph 276B(v) were not met. Mr Vnuk and Mr Parvar disagreed on whether Part 9, the general grounds of refusal, had to be considered under paragraph 276A1. It was Mr Parvar's submission that Part 9 did apply (as made clear in Section 1 of Part 9) and that the judge had not properly dealt with it, specifically with paragraph 9.3.1, which was in the same terms as the suitability provisions in S-LTR.1.6. Mr Vnuk, however, submitted that Part 9 played no part in a consideration of paragraph 297A1, given that paragraph 276B(iii) was not a requirement to be met when considering paragraph 276A1.

32. It is not entirely clear to us if Part 9 applies to 276A1. As Mr Parvar submitted, Section 1 of Part 9 makes it clear that the suitability requirements apply to all routes and, further, paragraph 9.1.1 does not refer to paragraph 276A1 as being one of the provisions where Part 9 does not apply. On the other hand, it is also of note that the requirement in 276B(iii), that an applicant does not fall for refusal under the general grounds of refusal, is not one of those specifically stated in paragraph 276A1 which have to be met. However we do not need to resolve that matter, since the judge addressed Part 9 in any event, at [36] of her decision.

33. Although not specifically cited, it is clear that the judge was considering paragraph 9.3.1 of Part 9 which the Secretary of State states, in her grounds, is the only applicable general ground of refusal. We disagree with the suggestion in the grounds of appeal that the judge conflated paragraph 276B(ii) and the general grounds of refusal in paragraph 9.3.1. What the judge did was to apply the findings that she had made in regard to the appellant's convictions, when considering paragraph 276B(ii), to the requirements in paragraph 9.3.1. We do not consider that she erred in that respect or that she failed to appreciate the different tests involved. We also disagree with the assertion in the grounds that the judge failed properly to address the appellant's convictions. On the contrary, the judge addressed the appellant's criminal history in some detail at [33] to [35] and gave cogent reasons for concluding that they were not such as to render the appellant's presence in the UK not conducive to the public good. Again, we consider that that was a finding properly open to the judge. The fourth ground asserts that the judge's approach was inconsistent with the mandatory nature of paragraph 9.3.1, but Mr Parvar conceded before us that that did not preclude the judge from reaching her own decision on whether the applicant's presence in the UK was not conducive to the public good. We consider that the judge undertook the appropriate assessment, having particular regard to the appellant's offending history and personal circumstances, and that she was entitled to conclude as she did.

34. In the circumstances it seems to us that, on the findings made by Judge Loke, the appellant met the requirements of paragraph 276A1. The judge did not err by concluding that the long residence rules were met, but rather considered the wrong paragraph and category of those rules. Given that this was a human rights appeal, the outcome of the appeal would inevitably be the same, albeit that the consequences would be different in terms of the nature of the leave granted by the respondent. We do not consider, therefore, that it would be appropriate or necessary to set aside the judge's decision. The outcome of any re-making would inevitably be the same. All relevant matters have already been determined. We simply make it clear that the appellant succeeds on the basis of an application for an extension of his stay and not indefinite leave to remain. Accordingly we uphold the judge's decision.

35. As for the application made by the appellant in his skeleton argument for costs, we find that to have no merit. In so far as reference is made at [16] of the appellant's skeleton argument to misunderstandings by the respondent in relation to the appeal, we consider that those have arisen to a large extent as a result of the application made by and on behalf of the appellant and the lack of clarity in the route he was pursuing. We do not agree that the respondent acted unreasonably in making the application for permission and we note that there was some merit in the challenges made by the respondent, for the reasons we have given above.

Notice of Decision

36. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. Judge Loke's decision to allow the appellant's appeal accordingly stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 October 2024