



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: HU/14484/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 15 November 2018

Decision and Reasons Promulgated
On: 28 November 2018

Before
Deputy Upper Tribunal Judge Mailer

Between
MR HIMANSU BHOGILAL PATEL
ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Iqbal, counsel, instructed by London View Chambers
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge, who in a decision promulgated on 20 June 2018, dismissed the appellant's appeal against the respondent's decision dated 24 May 2016 to refuse the his human rights claim arising from an application under the Immigration Rules for indefinite leave to remain on long residence grounds.
2. In granting permission to appeal, Upper Tribunal Judge Martin stated that the Judge had applied the correct version of paragraph 276B of the Immigration Rules, namely those in force at the date of decision.
3. She noted that it had been argued that having submitted his application within 28 days of the expiry of his leave, the appellant could rely on having accrued ten years in the UK by February 2016 before the decision was made.

4. She found that to be arguable as the respondent's policy is that an applicant who accrues ten years' lawful residence whilst awaiting a decision cannot make a further application but can amend the application. That may well have been the reason that the Home Office Presenting Officer requested an adjournment at the hearing to reconsider the application.
5. It is recorded at [5] of the decision that the respondent applied for an adjournment to review the evidence produced by the appellant for this appeal, '... about his last application being sent by registered mail on 21 September 2015'.
6. The respondent indicated in the Rule 24 response to the grounds of appeal that the appellant's application for permission to appeal is not opposed. The Tribunal is invited to determine the appeal with a fresh oral hearing to consider whether the appellant meets the requirements for indefinite leave to remain under paragraph 276B of the Rules, and on the basis of the Human Rights grounds available to the appellant under the amended appeal regime.
7. At the hearing, Mr Lindsay on behalf of the respondent accepted that the decision of the First-tier Tribunal involved the making of an error on a point of law. Mr Lindsay indicated that, subject to the respondent being satisfied that the appellant has no relevant convictions, the appeal can be re-made and allowed. The PNC check is to be made.

Assessment

8. I find that the appellant had accrued ten years in the UK by February 2016, before the decision was made. In the circumstances, as accepted by the respondent the decision of the First-tier tribunal involved the making of an error on a point of law. I accordingly set it aside and remake it.
9. Following the hearing Mr Lindsay has sent the Tribunal a printout from Border Force WICU PNC and UKVI Crosscheck Bureaux. The PNC printout reveals that there are no convictions registered against the appellant.
10. In remaking the decision, I am satisfied that the appellant meets the requirements for indefinite leave to remain under paragraph 276B of the Rules. On the basis of the human rights grounds available to him under section 82(1)(b) of the Nationality, Immigration and Asylum act 2002, I find that there would be a breach of his rights under Article 8 of the Human Rights Convention, if the appeal was dismissed.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

I remake the decision and allow the appellant's appeal.

No anonymity direction made.

Signed

Date 22 November 2018

Deputy Upper Tribunal Judge Mailer