



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/13968/2017

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 4<sup>th</sup> February 2019

Decision & Reasons Promulgated  
On 26<sup>th</sup> February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

ARK  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Izevbizua of R & A Solicitors

For the Respondent: Ms Pettersen, HOPO

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Moran made following a hearing at North Shields on 27<sup>th</sup> March 2018.

**Background**

2. The appellant is a citizen of Pakistan born on 10<sup>th</sup> June 1982. On 4<sup>th</sup> October 2016 he made an application for indefinite leave to remain on the basis of having ten years' continuous residence in the UK. He was refused on 17<sup>th</sup> October 2017 on the grounds

that he did not meet the requirements of paragraph 276B, namely that he had not accrued ten years' lawful residence and because he fell for refusal under the general grounds for refusal having made false representations in an entrepreneur visa application made on 9<sup>th</sup> October 2011.

3. Judge Moran said that he was not required to decide whether there had been a break in continuity of lawful residence as asserted by the respondent because he was satisfied that the appellant had knowingly made false representations and relied on false documents in 2011. On that basis he dismissed the appeal.

### **The Grounds of Application**

4. The appellant sought permission to appeal on the grounds that the judge had erred in law in relying on the entrepreneur application because it had been withdrawn and in any event had wrongfully concluded that the appellant had acted dishonestly. Permission to appeal was granted by Judge Andrew on 3<sup>rd</sup> August 2018.
5. On 26<sup>th</sup> September 2018 the respondent served a reply submitting that the fact that the appellant had subsequently withdrawn an application was immaterial since withdrawn or not he had relied on false documents in a previous application and would fail suitability on that basis.

### **Submissions**

6. Mr Izevbizua relied on his grounds and argued that the judge was wrong to have made findings on an application which had been withdrawn and said that the appellant continued to maintain that he had no knowledge of any wrongdoing.
7. Mrs Petersen relied on her Rule 24 response.

### **Findings and Conclusions**

8. The Immigration Judge did not err in law.
9. Under S/LTR.4.2 of Appendix FM of the Immigration Rules an applicant will normally be refused on grounds of suitability if he has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave or in a previous human rights claim.
10. The judge set out the appellant's immigration history. He arrived on 14<sup>th</sup> July 2006 with leave as a student and was granted further periods of leave until making an application on 7<sup>th</sup> October 2011 for leave as a Tier 1 (Entrepreneur). On 3<sup>rd</sup> January 2013 he made an asylum application and this was refused on 7<sup>th</sup> October 2014.
11. The appellant said that the entrepreneur application was withdrawn when he made his asylum application and it should never have been adjudicated upon.
12. The judge considered the documentation which had been provided in relation to the alleged fraud including a letter from Hargreaves Lansdown addressed to the

appellant thanking him for investing £207,516 which was available for withdrawal at any time. The refusal letter states that Hargreaves Lansdown say that an account was set up in the appellant's name but the balance never exceeded £30 and that any documentation stating otherwise was false.

13. The judge recorded the written and oral evidence in some detail and concluded that the appellant had been dishonest.

14. At paragraph 26 he wrote

"It is for the respondent to prove that AK knowingly made false representations and relied on false documents. I find that this is proved to a high standard. It is possible that AK may not have created the documents himself. He may have paid someone to obtain a visa for him but if he did so I am satisfied that he did so with full knowledge that it was not being done legitimately."

15. The judge was plainly entitled and indeed required to make a finding on the issue. Paragraph 276B(3) requires that an applicant does not fall for refusal under the general grounds for refusal. On the findings of the Immigration Judge, the appellant made false representations in 2011. The fact that he subsequently withdrew the application is irrelevant.

16. Although the appellant continues to argue that the judge was wrong to find that he had acted dishonestly he is simply attempting to reargue his case. Disagreement with the judge's decision is not a foundation for establishing an error of law.

### **Decision**

The original Immigration Judge did not err in law. His decision stands. The appellant's appeal is dismissed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

*Deborah Taylor*

Signed

Date 23 February 2019

Deputy Upper Tribunal Judge Taylor