



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/14830/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 28<sup>th</sup> November 2017**

**Decision & Reasons  
Promulgated  
On 19<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR ARIF HUSSAIN BHATTI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S A Salam, Solicitor

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan born on 2<sup>nd</sup> March 1974. The Appellant's lengthy immigration history is set out at page 2 of a reasons for refusal letter dated 27<sup>th</sup> May 2016. That letter specifically makes reference to the Appellant having lodged his current application on the basis of ten years' continuous lawful residence on 14<sup>th</sup> March 2016.
2. That appeal was considered by Judge of the First-tier Tribunal Dhanji sitting at Harmondsworth on 29<sup>th</sup> November 2016. The appeal was dealt with on the papers and I am advised by Mr Salam that that was at the request of the Appellant. Judge Dhanji dismissed the Appellant's appeal under Article 8.

3. Grounds of Appeal were lodged to the Upper Tribunal on 19<sup>th</sup> January 2017. On 25<sup>th</sup> July 2017 First-tier Tribunal Judge Lambert granted permission to appeal. Judge Lambert noted that the grounds take issue with the judge's failure to consider in relation to Article 8 the Appellant's position with regard to ten years' residence under paragraph 276B. She noted that the refusal in this respect was on the grounds of dishonesty in a previous application in 2011. However the grounds are correct in stating that a decision by Deputy Upper Tribunal Judge Alis records the Appellant having been found by the First-tier Tribunal Judge not to have been dishonest in that application and the submission of forged documents as having been out of his control. In those circumstances whilst the appeal was on human rights grounds only, she considered that the judge had arguably erred in not considering the Appellant's ability to meet the ten year Rule.
4. A holding 24 response was filed by the Secretary of State on 25<sup>th</sup> August 2017. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed solicitor, Mr Salam. The Secretary of State appears by her Home Office Presenting Officer, Mr Harrison.

### **Submissions/Discussion**

5. Mr Salam contends that the judge made no findings with regard to the long residence of the Appellant and thereafter had gone on to consider human rights but failed to engage with the grounds. Mr Harrison acknowledges the manner in which the judge has dealt with this but considers that if there is any failure, it relates to that of the Secretary of State in the manner in which the Secretary of State has addressed the renewed application in March 2016.

### **The Law**

6. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
7. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion

is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### Findings on Error of Law

8. The basis upon which the Appellant makes his case is that he meets the considerations under paragraph 276B of the Immigration Rules, namely that he seeks indefinite leave to remain on the ground of long residence in the United Kingdom in that:
  - (a) (a) he has at least ten years' continuous lawful residence in the United Kingdom;
  - (b) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence and also for the considerations to be made under 276B(iii) to (v).

Where the Secretary of State's representative has erred is in the findings set out at the bottom of pages 3 and top of page 4 of the Notice of Refusal. They state:

*"As false representations have been made in relation to a previous application it is refused under paragraph 322(2) of the Immigration Rules ... In your current application at D10, you have said that you have never used deception when seeking leave to remain. I am satisfied that the statement was false because of the above reasons. For the above reasons I am satisfied that you have used deception in the current application therefore it is further refused under Section 322(1A) of the Immigration Rules".*

9. The problem with that finding is that it fails to take into account the decision of Deputy Upper Tribunal Judge Alis heard at Manchester on 7<sup>th</sup> April 2015. That was an appeal from a previous decision and there are certain paragraphs therein that are of extreme importance to this decision. At paragraph 13 it is recorded that the previous First-tier Tribunal Judge, Judge Fox, accepted that the Appellant had not acted dishonestly and had gone on to state:

*"I am satisfied that the agent acted entirely unilaterally and independently of the Appellant and the bank statements submitted on behalf of the Appellant by his agent were forged. This was out of his control ... It would be wrong in my view for the Respondent to hold an allegation of dishonesty against this Appellant in light of the facts established in this case".*

10. As Mr Harrison has indicated, whilst there was an act of dishonesty that act of dishonesty was by an agent and not by the Appellant. He

acknowledges that that finding may not have actually been noted by the decision-maker.

11. In such circumstances Mr Salam urges me not just to find that there is a material error of law but to go on and re-make the decision. I am not prepared to go that far today. It is clear that there is a material error of law in the decision of the First-tier Tribunal Judge. In many respects this is due to the decision of the Appellant to ask for the matter to be addressed on the papers. However, the judge has not addressed the initial basis upon which the Secretary of State's representative started from the basis that the Appellant has been dishonest. That in itself does not however enable me to go on and re-make the decision. The consideration under paragraph 276B of the Immigration Rules as to whether or not the Appellant's claims long residence have not been aired before effectively the original decision-maker nor before the judge on appeal. It is not merely a matter of endorsing the application. The Rule has to be met and needs consideration before a Tribunal. In such circumstances the correct approach is to find that there is a material error of law in the decision of the First-tier Tribunal Judge and to remit the matter back for re-hearing. Directions are given hereinafter for the re-hearing of this matter.

### **Decision and Reasons**

- (1) The decision of the First-tier Tribunal discloses a material error of law and is set aside. None of the findings of fact to stand.
- (2) The appeal is remitted back to the First-tier Tribunal sitting at Manchester to be heard before any Judge of the First-tier Tribunal other than Judges Dhanji, Lambert, Alis, or Fox on the first available date 28 days hence with an ELH of two hours.
- (3) That there be leave to either party to file an up-to-date bundle of evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (4) That in the event of the Appellant requiring an interpreter his instructed solicitors do notify the Tribunal within seven days of receipt of these directions.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris