



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-002338
HU/04177/2021

THE IMMIGRATION ACTS

Field House

On 23 February 2023

**Decision & Reasons
Promulgated
On 17 July 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MAHMMAD MUNSHI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This is an appeal against the decision issued on 17 February 2022 of First-tier Tribunal Judge Atreya which refused the appellant's appeal brought on human rights grounds.
2. The appellant is a national of India and was born on 25 January 1964.
3. The appellant came to the UK in 2007 as a student and overstayed. He has health problems. The First-tier Tribunal found the appellant to be a credible and reliable witness; see paragraph 32. It was accepted that the appellant

would find it difficult to work in India given his health, his age and the time that he has been away. It was not accepted that he would face very significant obstacles to reintegration in India, however; see paragraphs 36 and 37. Paragraph 276ADE(vi) was not found to be met; see paragraph 38. The public interest was found to be reduced because of the respondent's delay; see paragraph 42. He was found to have a significant private life; see paragraph 43. The decision to refuse leave was found to be a "substantial interference" with his private life; see paragraph 45. Those findings are not challenged and stand. The First-tier Tribunal did not find that the decision was disproportionate, however; see paragraph 47.

4. The appellant was granted permission to appeal to the Upper Tribunal on 25 April 2022. On 26 May 2022 the respondent indicated in a Rule 24 response that the error of law was conceded to the effect that the paragraph 276ADE(vi) assessment had to be set aside to be remade. It was not clear whether the appellant would be able to work in India and the fact that he had done a little work in the UK was not determinative of this.
5. In light of the Rule 24 response, the Upper Tribunal indicated to the parties on 7 November 2022 that it was likely to find an error of law. The Upper Tribunal requested the parties to provide a view, in that event, on the appropriate disposal of the remaking. Only the appellant provided a view, indicating on 16 December 2022 that it was appropriate for the appeal to be remitted to the First-tier Tribunal where the 276ADE(vi) assessment had to be remade and that this would also require the Article 8 assessment outside the Immigration Rules to be remade.
6. For these reasons, the Upper Tribunal finds an error on a point of law in the decision of the First-tier Tribunal as the 276ADE(vi) finding is unsound and this undermines the ensuing Article 8 assessment. Having considered the extent of the remaking and the submissions of the parties on disposal and paragraph 7 of the Senior President's Practice Statement, the remaking of the appeal is remitted to the First-tier Tribunal, subject to the extant findings identified in paragraph 3 above.

Notice of Decision

7. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade in the First-tier Tribunal.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 23 February 2023