JR-2024-LON-001822

In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

In the matter of an application for Judicial Review

The King on the application of
Md Solaymun Bhuyan

Applicant

and

Secretary of State for the Home Department

Respondent

ORDER

BEFORE Upper Tribunal Judge Bulpitt

HAVING considered all documents lodged and having from the applicant and Mr Waldegrave of counsel, instructed by GLD, for the respondent at a hearing on 21 January 2025

IT IS ORDERED THAT:

(1) The application for judicial review is dismissed for the reasons given in the attached judgment.

(2) The applicant is to pay the respondent's costs in the sum of £10,977.90. The respondent is entitled to recover the costs she has incurred defending this claim and on my summary assessment, the sum claimed is a reasonable and proportionate amount given the substantive hearing that occurred. In making this order I have regard to the fact the applicant was specifically reminded by the Judges granting permission of the obligation to reconsider the merits of the case on consideration of the further material.

(3) The applicant asked me for permission to appeal against my decision to the Court of Appeal however permission to appeal is refused because I do not consider it arguable that my decision contains any error.

Signed: Luke Bulpitt

Upper Tribunal Judge Bulpitt

Dated: **28 January 2025**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 29th January 2025

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR-2024-LON-001822

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

28 January 2025

Before:

UPPER TRIBUNAL JUDGE BULPITT

- -

Between:

THE KING
on the application of
MD SOLAYMAN BHUYAN

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

The applicant appeared unrepresented

Mr E Waldegrave
(instructed by the Government Legal Department) for the respondent

Hearing date: 21 January 2025

- -

J U D G M E N T

- -

Judge Bulpitt:

1. The applicant is a Bangladeshi national who has been resident in the United Kingdom since arriving on 15 January 2010 with entry clearance to study. He is challenging by way of judicial review the respondent's decision to refuse to grant him Indefinite Leave to Remain (ILR) on the basis of his continuous long residence. That decision was taken on 5 April 2024 and the applicant was granted permission to bring this challenge by the Upper Tribunal in a decision sealed on 7 October 2024.

The Hearing

2. At the time he made his application for ILR the applicant was represented by Hubers Law who also represented the applicant when he made his application to bring these judicial review proceedings and when he renewed that application in an oral hearing. On 3 January 2025, using form UTIAC16, the applicant informed the Tribunal that he was no longer represented by Hubers Law and that no new representative had been instructed. On 10 January 2025, using form UTIAC6, the applicant made an application for this hearing to be adjourned (a) because of his ill-health and (b) to allow him time to find, fund and instruct new solicitors. I refused that application in an order sealed on 16 January 2025. A detailed history to the applicant's application for an adjournment and detailed reasons for my decision are contained in that Order. In brief, I concluded that an adjournment would not be consistent with the Tribunal's overriding objective and that it would contrary to the public interest in timely and effective decision making.

3. The applicant attended the hearing and renewed his application to adjourn the hearing. The applicant said he was suffering from depression and lacked the legal knowledge to present his case. He said he had been unhappy with the service he received from Hubers Law, who asked him at short notice to pay a large fee. He explained that he would like an adjournment to give him time to work, raise funds and pay for a new representative. He argued that he would be unable to present the case himself today. On behalf of the respondent, Mr Waldergrave opposed the application, submitting that nothing of substance had changed since I refused the last application to adjourn the hearing.

4. Having heard from the applicant and from Mr Waldergrave I refused the renewed application to adjourn. I was not satisfied on the material before me that the applicant's physical or mental health would prevent him from participating in the hearing. Indeed, having attended the hearing, the applicant demonstrated himself to be an intelligent person who, with the assistance of the Tribunal and Mr Waldergrave, was able to participate effectively in the hearing. Neither was I satisfied that an adjournment to allow the applicant time to raise funds and pay for new representatives would be effective or in the interests of justice. I had regard to the fact that it was the applicant who brought these proceedings, lodging his application for judicial review on 5 July 2024 and so he has been aware of the need to raise funds if he wants to pay for representation for more than six months. He has had ample time therefore to prepare for the hearing and to raise necessary the funds to complete the process he began. I also had regard to the further cost that an adjournment would cause and the impact that cost would have on the resources of both the parties as well as the Tribunal. Finally I considered the adverse effect that delay would have on the wider public interest in immigration decisions being made and applied promptly and efficiently. In all these circumstances I considered that an adjournment would be contrary to the Tribunal's overriding objective of dealing with cases fairly and justly.

5. My having refused to adjourn the hearing, I was grateful to Mr Waldergrave who, consistent with his duty to help the Tribunal further its overriding

objective, aided the applicant to access and follow the relevant documentation throughout the hearing.

Brief Background

The 2012 application

6. Having arrived in the United Kingdom on 15 January 2010, the applicant has made three applications to the respondent for further leave to remain. The first was made on 27 December 2012 and was an application to extend his original grant of leave on the basis he had married Mrs Francesca King a British citizen, on 24 October 2012 and wished to continue his family life with her ("the 2012 application"). This application was refused by the respondent on 14 November 2013 and an appeal against that refusal was dismissed by First-tier Tribunal Judge Beg on 2 July 2014, who found the applicant's marriage to Ms King to be a sham designed to give the applicant the right to remain. The applicant sought permission to appeal against the decision of Judge Beg but was refused (I consider his applications for permission to appeal in detail later in this judgment).

The 2015 application

7. The second application for leave to remain was made by the applicant on 13 March 2015 and again it was made on the basis of his relationship with Ms King ("the 2015 application"). The 2015 application was refused by the respondent on 21 September 2015 because the respondent said the applicant had cheated in an English language test to obtain a certificate (TOEIC) that he subsequently used in support of the 2012 application. The respondent also certified the applicant's application as "clearly unfounded" a certification that meant the applicant was not allowed to appeal against the decision while in the United Kingdom. The applicant sought to challenge that certification by judicial review, but permission to bring judicial review was refused by the Upper Tribunal on the papers in July 2016 and following oral renewal in October 2016. The applicant then sought permission from the Court of Appeal to appeal against those refusals, and eventually on 21 November 2018, the Court of Appeal approved a Consent Order in which it was agreed that, following the decision in Ahsan v SSHD [2017] EWCA Civ 2009, the respondent would reconsider the 2015 application and provide a new decision that attracted an in country right of appeal.

8. The respondent's new decision regarding the 2015 application was issued on 21 March 2019. The application was again refused on the basis that the applicant had obtained his TOEIC by cheating and this time additionally on the grounds that his relationship with Ms King was not genuine. The applicant appealed against this decision. His appeal was considered by a First-tier Tribunal Judge and dismissed but the decision of that Judge was found to contain an error of law and was set aside. On 23 June 2021 the applicant's appeal was heard by First-tier Tribunal Judge O'Garro who found: (1) the allegation that the applicant obtained his TOEIC by cheating had not been proved and (2) the applicant and Ms King were never in a genuine and subsisting relationship. Judge O'Garro then dismissed the applicant's appeal.

9. The applicant was granted permission to appeal against Judge O'Garro's decision and his appeal was heard by Upper Tribunal Judge Perkins who provided his decision on 29 August 2023. Judge Perkins, upheld Judge O'Garro's conclusion that the relationship between applicant and Ms King was not genuine and subsisting but found that having determined that the applicant did not obtain his TOEIC by cheating, Judge O'Garro should have allowed the appeal to enable the respondent to grant the appellant 6 months leave to remain in accordance with her published policy which applied where an accusation that a person obtained a TOEIC by cheating was found not to have been proven. For this reason Judge Perkins, set aside Judge O'Garro's decision and allowed the applicant's appeal against the respondent's 21 March 2019 decision. Following this the respondent granted the applicant leave to remain for a longer period than Judge Perkins had anticipated, so that he now enjoys limited leave to remain which is due to expire on 20 March 2026.

The 2024 application

10. On 2 March 2024 the applicant made the application for ILR which has led to these proceedings ("the 2024 application"). This was made on the basis that he met the requirements in paragraph 276B of the Immigration Rules for being granted ILR. In that application the applicant argued that he should be placed back into the same position as he was prior to the respondent's decision of 21 September 2015 and as such his leave to remain in the United Kingdom should be regarded as continuous and lawful since 15 January 2010.

11. The respondent refused the 2024 application in the decision which is under challenge dated 5 April 2024. In the relevant part of that decision the respondent stated that:

> *"..it is considered that your application for leave to remain on 13 March 2015 was submitted out of time and did not vary your outstanding appeal or extend your permission to stay in the United Kingdom. It is therefore considered that your lawful leave ceased when you became appeal rights exhausted on 10 December 2015 and as such you can demonstrate continuous lawful residence during the period from your entry on 15 January 2010 until 10 December 2015, a period of 5 years 10 months and 26 days. Whilst it is accepted that you were granted leave to remain in the United Kingdom on 21 September 2023 it is not considered that the period from 11 December 2015 until 20 September 2023 can be regarded as being continuous and lawful residence for the purposes of paragraph 276B of the Immigration Rules.*

The applicant's case

12. The applicant's grounds were drafted by experienced counsel. They argue that having arrived on 15 January 2010, by virtue of Section 3C of the Immigration Act 1971 (the 1971 Act), the applicant's initial leave to remain was seamlessly extended by the 2012 application, continuing during the time that application was decided and while the appeal against the refusal of that application was pending. The grounds argue that the applicant

made his 2015 application during the time the appeal against the 2012 application was pending and therefore the applicant enjoyed leave to remain at the time he made the 2015 application (see [5] of the grounds). The grounds acknowledge that the respondent's decision letter was correct to identify that the 2015 application could not in these circumstances further extend the applicant's leave to remain, because of the effect of section 3C(4) of the 1971 Act, and it is accepted that the applicant's leave to remain therefore ended when his appeal against the refusal of his 2012 application ended. It is argued however that the respondent should have treated the applicant as though he did enjoy leave to remain throughout the time the 2015 application was considered and the various appeals arising from the refusal of that application were pending i.e. from 13 March 2015 (the date of the application) until 21 September 2023 (the date on which the applicant was granted leave to remain following the decision of Judge Perkins). The grounds refer to this as the "relevant period" and I will adopt that term in this judgment.

13. The assertion in the grounds that the applicant should have been treated as having leave to remain during the relevant period is based on the Court of Appeal decision in Ahsan v SSHD which, the grounds argue, obliged the respondent to deal with the applicant as if the 2015 application were granted. It is argued in these circumstances that the respondent's failure to consider whether to treat the applicant as though he had leave to remain during the relevant period was unlawful.

14. Permission to bring these judicial review proceedings was therefore granted on two grounds:

(1) it was arguable that the respondent failed to reasonably consider the applicant's contention that the respondent was obliged to treat the applicant as though he had the required period of lawful continuous residence for the purpose of 276B(i) of the Immigration Rules; and

(2) that it was arguable that the respondent erred in law when considering the applicant's length of residence in the United Kingdom because she mis understood the obligation to put the applicant in the position he should have been in had the 2015 application been lawfully considered.

15. Although he said he did not have the knowledge to follow the argument made on his behalf, the applicant displayed a good understanding of the claim he was making and spoke in support of the claim. He said that the false allegation that he had cheated to obtain the TOEIC had messed everything up for him. He said that his 2012 application and his 2015 application were "joined up" and that were it not for the erroneous allegation in relation to his TOEIC, he would have continued to enjoy leave to remain throughout his time in the United Kingdom.

The Respondent's Case

16. The respondent's position has shifted from that set out in their summary grounds of defence and at the permission hearing. This followed the service of an amended judicial review bundle by the applicant and an additional disclosure bundle by the respondent. The potential for such a

shift was foreseen by the Judges who granted permission to bring these proceedings and who noted that the applicant's immigration history was at the fore of the case, that the judicial review bundle submitted by the applicant omitted key documents which it really should have included, and that provision of those documents might make the situation become clearer. In this context the Judges directed the service of an amended judicial review bundle to include specified documents and reminded the parties of their ongoing obligation to reconsider the merits of their respective cases on consideration of that further material. I consider the additional material served later in this judgment.

17. The respondent's case is set out in the detailed grounds of defence which were served while the applicant was still represented, and in the recent skeleton argument helpfully drafted by Mr Waldergrave. The respondent now argues that even if the applicant's arguments about the relevant period were accepted and the respondent should have treated the applicant's residence during the relevant period as lawful (something Mr Waldegrave was clear remains disputed), the applicant was not lawfully resident in the United Kingdom for the ten years prior to him making the 2024 application because correct analysis of his history shows he was not lawfully resident between August 2014, when his appeal against the 2012 application ceased to be pending, and 13 March 2015 when he made the 2015 application. In these circumstances the respondent argues that had the decision maker properly taken into account and accepted the applicant's argument about the relevant period, she would still have been highly likely (at least) to reach the same decision to refuse the 2024 application as the requirements of the Immigration Rules were not met.

18. The respondent therefore argued that it is not necessary to resolve the question of whether the applicant should have been considered to be lawfully resident during the relevant period, because there was no prospect of him meeting the requirements of the Immigration Rules for being granted ILR on grounds of long residence.

The Legal Framework

19. Paragraph 276A-D of the Immigration Rules, which applied at the time the applicant made the 2024 application, but which have since been replaced with "Appendix: Long Residence" identified the circumstances when a person will be granted ILR on the basis of their long residence. One of the requirements to be met identified in paragraph 276B(i)(a) is that the applicant *"has had at least 10 years continuous lawful residence in the United Kingdom."* "Lawful residence" is defined in paragraph 276A(b) as meaning *"residence which is continuous residence pursuant to : (i) existing leave to enter or remain …or (ii) an exemption from immigration control.*

20. Section 3(1) of the 1971 Act provides that a person may be given leave to enter or remain in the United Kingdom either for a limited or indefinite period. Section 3(3) of the Act provides that a person's leave may be varied including enlarging the limit on its duration.

21. Section 3C of the 1971 Act deals with the continuation of a person's leave pending a decision on whether to vary it. As this section is fundamental to

these proceedings I reproduce it in full as it applied when the applicant made his 2015 application:

3C Continuation of leave pending variation decision

(1) This section applies if—
  (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,
  (b) the application for variation is made before the leave expires, and
  (c) the leave expires without the application for variation having been decided.

(2) The leave is extended by virtue of this section during any period when—
  (a) the application for variation is neither decided nor withdrawn,
  (b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought, while the appellant is in the United Kingdom against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission),
  (c) an appeal under that section against that decision, brought while the appellant is in the United Kingdom, is pending (within the meaning of section 104 of that Act), or
  (d) an administrative review of the decision on the application for variation—
    (i) could be sought, or
    (ii) is pending.

(3) Leave extended by virtue of this section shall lapse if the applicant leaves the United Kingdom.

(4) A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of this section.

(5) But subsection (4) does not prevent the variation of the application mentioned in subsection (1)(a).

(6) The Secretary of State may make regulations determining when an application is decided for the purposes of this section; and the regulations–
  (a) may make provision by reference to receipt of a notice,
  (b) may provide for a notice to be treated as having been received in specified circumstances,
  (c) may make different provision for different purposes or circumstances,
  (d) shall be made by statutory instrument, and
  (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section— *"administrative review"* means a review conducted under the immigration rules; the question of whether an administrative review is pending is to be determined in accordance with the immigration rules.

22. Section 104 of the 2002 Nationality Immigration and Asylum Act identifies when an appeal under that Act is "pending" providing so far as is relevant:

> (1) An appeal under section 82(1) is pending during the period—
> (a) beginning when it is instituted, and
> (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).
>
> (2) An appeal under section 82(1) is not finally determined for the purpose of subsection (1)(b) while—
> (a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,
> (b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or
> (c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.

Analysis of the Applicant's Immigration History

23. As the Judges granting the applicant permission to bring these judicial review proceedings remarked, the applicant's immigration history is at the fore of this matter and so careful consideration of that history is required to properly understand the circumstances in which the 2024 application was made. Sadly it is apparent that the required attention to the detail of the applicant's immigration history has not always been applied.

24. There is no dispute about the fact the applicant was 25-years-old when on 15 January 2010 he arrived in the United Kingdom having been granted entry clearance as a student which conferred leave to enter until 31 January 2013. Likewise there is no dispute about the fact that the 2012 application was made before that leave expired and that the 2012 application had the effect of extending the applicant's leave to remain during the period the application was "nether decided nor withdrawn" by virtue of section 3C(2)(a) of the 1971 Act. That period ended when on 14 November 2013 the respondent refused the 2012 application.

25. By virtue of section 3C(2)(b) of the 1971 Act, which provides that the leave is extended during any period when an appeal against the decision "could be brought while the applicant is in the United Kingdom (ignoring any possibility of an appeal out of time with permission", the applicant's leave to remain was extended for a further two weeks following the decision on 14 November 2013 i.e. until 28 November 2013 (two weeks being the time permitted for bringing an appeal against the respondent's decision).

26. Judge Beg records at [1] of her decision dismissing the applicant's appeal against the decision to refuse the 2012 application,[1] that the applicant lodged his appeal against the respondent's decision on 25 November 2013 i.e. during the time when his leave was extended. By virtue of section

[1] The decision of Judge Beg was one of the documents that the Judges granting permission directed should be served having identified that it should have been included in the original Judicial Review bundle but was not.

3C(2)(c) of the 1971 Act, this had the effect of continuing the applicant's leave during any period when the appeal was "pending".

27. By virtue of section 104(1) of the 2002 Act an appeal is pending during the period beginning when it is instituted (in this case 25 November 2013) and ending when it is finally determined, withdrawn or abandoned or lapses on grounds of national security. By virtue of Section 104(2) of the 2002 Act an appeal is not finally determined while (a) an application for permission to appeal could be made or is awaiting determination

28. Judge Beg's decision dismissing the applicant's appeal was promulgated on 2 July 2014. First-tier Tribunal Judge Ford[2] records that the applicant made an "in time" application for permission to appeal against that decision and Judge Ford refused that application in a decision dated 18 July 2014, although it is apparent that the decision was not sent to the applicant until 22 July 2014. The effect of s104(2)(a) of the 2002 Act and s3C(2)(c) of the 1971 Act is that the applicant's leave to remain continued throughout this time as his appeal was still "pending".

29. The applicant had the opportunity of making a renewed application for permission to appeal against Judge Beg's decision to the Upper Tribunal, but rule 21(3)(aa)(i) of The Tribunal Procedure (Upper Tribunal) Rules 2008 which applied at the time, required any such application to be received by the Upper Tribunal seven working days after the refusal of permission by the First-tier Tribunal. In other words a further application for permission to appeal "could be made" but had to be made by 29 July 2014. If such an application were made before 29 July 2014 the appeal in relation to the 2012 application would have remained pending until the application was resolved with the consequence that the applicant's leave to remain would also have continued until the application was resolved.

30. There is no material however to indicate that the applicant made such a renewed application for permission to appeal to the Upper Tribunal before the 29 July 2014. Instead, the material that has been belatedly provided comprehensively establishes that no such application was made.

31. The immigration history set out in the respondent's decision taken on 21 September 2015 refusing the 2015 application[3] makes no reference to a renewed application for permission to appeal having being made to the Upper Tribunal. Instead, the letter states that having been refused permission to appeal by the First-tier Tribunal "all appeal rights were exhausted on 1 August 2014"[4]. Consistent with that, the letter goes on to state that at the time he made the 2015 application the applicant was resident in the United Kingdom in breach of immigration laws.

32. Upper Tribunal Judge Craig did deal with a renewed application for permission to appeal against Judge Beg's decision on 23 November 2015

[2] The decision of Judge Ford refusing the applicant permission to appeal was another of the documents that should have been in the original judicial review bundle but was not. It was included in the respondent's disclosure bundle.

[3] This was another of the documents missing from the judicial review bundle but included in the respondent's disclosure bundle.

[4] It is not clear to me why they considered the date the appellant became appeal right exhausted to be 1 August 2014 rather than 29 July 2014 but the difference of a couple of days is immaterial.

but it is clear from his decision that that application was not made prior to 29 July 2014 because he says that the application for permission *"is considerably out of time and would be refused / not admitted for this reason alone. Moreover it is entirely without merit"*. [5]

33. Recognising the significance of the date when the application for permission to appeal was submitted to the Upper Tribunal, and aware that a categoric answer to the question could be obtained from the Tribunal's records, I asked for checks to be made. A screenprint of the Tribunal's records concerning the applicant's application for permission to appeal against Judge Beg's decision was provided to Mr Waldergrave and to the applicant. That screenprint confirmed that the out of time application for permission to appeal against Judge Beg's decision was not received by the Upper Tribunal until 28 October 2015 and that Judge Craig's decision refusing the application was sent to the applicant on 10 December 2015.

34. The consequence of this history is that the applicant's appeal against the decision of Judge Beg ceased to be "pending" on 29 July 2014 and accordingly the applicant's leave ceased to be extended by virtue of section 3C(2)(c) of the 1971 Act on that date.
It is clear from the decision in R (Akinola) v. Upper Tribunal [2021] EWCA Civ. 1308 that the out of time application for permission to appeal against Judge Beg's decision made after the 2015 application had been made considered and refused, does not alter the fact that the appeal against the refusal of the 2012 application ceased to be pending on 29 July 2014. In that case the Court of Appeal rejected a suggestion that an out of time application would retrospectively extend s3C leave which had already expired.

35. The applicant did not therefore enjoy leave to remain at the time he made the 2015 application on 13 March 2015 instead he had on that date been residing in the United Kingdom unlawfully (i.e. without leave) for more than seven months. The respondent was therefore right to observe in the decision under challenge that *"..it is considered that your application for leave to remain on 13 March 2015 was submitted out of time and did not vary your outstanding appeal or extend your permission to stay in the United Kingdom."*

36. The applicant's immigration history is complicated and only becomes apparent once all the relevant documents are served and considered. It is however in my judgment clear that the correct analysis of the applicant's immigration history results in the conclusion that while he enjoyed leave to remain in the United Kingdom from when he arrived on 15 January 2010 until 29 July 2014, his leave to remain was not extended thereafter because his appeal against the refusal of further leave was no longer pending after that date.

37. In these circumstances I agree with the submission made by Mr Waldegrave that any mistakes made by the respondent in considering the applicant's argument that his leave between 13 March 2015 and 21 September 2023 should have been treated as lawful are immaterial. Even if that argument

[5] Again, his decision is a document that should have been in the original judicial review bundle but wasn't and was served only following the directions of the judges granting permission.

were correct the respondent would still have been highly likely to refuse the application for ILR because the applicant had not – even in that scenario – been continuously lawfully resident in the United Kingdom for ten years prior to making his application. I would go further and say it was inevitable that the applicant's application for ILR would be refused once there was a correct analysis of his immigration history.

38. I repeat that this is the case regardless of whether the applicant's argument that the decision in Ahsen requires the applicant's residence during the relevant period to be considered lawful is correct. The applicant would not be able to establish ten years lawful residence at the time of his application even if the argument were correct. I do however record again that the argument was not accepted by the respondent and it seems likely to me that the correct analysis of the applicant's immigration history is fatal to this argument as well. This is because having no leave to remain when he made his 2015 application means that being put back into the position he was in when he made that application does not assist the applicant. Paragraph [120] of Ahsan was dealing with people who had their lawful residence brought to an end by an unproven allegation of TOEIC cheating. That is not the case for the applicant whose leave to remain, as the analysis above demonstrates, had ceased long before any erroneous TOEIC allegation was made against him.

Conclusion

39. The effect of all this is that whilst there were errors in the respondent's consideration of the 2024 application, it is highly likely that the outcome for the applicant would not have been substantially different had those errors not been made. On a correct interpretation of the applicant's immigration history he simply could not establish that he had been continuously lawfully resident in the United Kingdom for the ten years prior to making the 2024 application.

40. In these circumstances applying section 31(2A) of the Senior Courts Act 1981 and section 15(4) of the Tribunals Courts and Enforcement Act 2007 Act I must refuse to grant the relief sought and the application for judicial review is dismissed.

~~~~0~~~~
~~~~