

R (on the application of Afzal) (Appellant) v Secretary of State for the Home Department (Respondent)

Case ID: 2022/0021

Case summary

Issue

(1) Does section 3C of the Immigration Act 1971 apply where an application for leave to remain is said to be invalid by reason of the failure to pay the relevant fee at the proper time, so that leave is extended by that provision until the application is decided or withdrawn?

(2) What is the meaning of the word "disregarded" in the second sentence of para 276B of the Immigration Rules with regards to overstaying book-ended by periods of leave to remain?

Facts

Mr Afzal was originally granted limited leave to remain until 14 April 2013 on 4 February 2010. He was subsequently granted further leave to remain until 14 July 2017 as a Tier 1 entrepreneur.

On 6 July 2017, before his leave had expired, Mr Afzal applied for an extension of leave, but the application was rejected as invalid by a notice dated 22 January 2018, due to Mr Afzal having failed to pay one of the required fees. Mr Afzal made no attempt to challenge that decision.

Mr Afzal then made a fresh application on 2 February 2018 for further leave to remain, accompanied by the appropriate fees. On 5 September 2019 Mr Afzal was given leave to remain until 4 March 2022. In the period between 14 July 2017 and 5 September 2019, therefore, Mr Afzal did not have formal leave to remain.

Mr Afzal made an application for indefinite leave to remain on 28 February 2020, for which one must have ten years' continuous residence pursuant to paragraph 276B of the Immigration Rules. On 11 March 2020 the Secretary of State refused that application on the basis that there was a period when Mr Afzal was not lawfully resident with the consequence that the period of continuous lawful residence had been broken.

Leave to bring judicial review proceedings of the Secretary of State's decision was refused by two Upper Tribunal Judges, the first on the papers and the second after an oral hearing. The Court of Appeal granted leave to bring judicial review but dismissed Mr Afzal's claim. Mr Afzal now appeals to the Supreme Court.

Judgment appealed

[\[2021\] EWCA Civ 1909](#)

Parties

Appellant(s)

Adeel Afzal

Respondent(s)

Secretary of State for the Home Department

Appeal

Justices

Lord Reed, Lord Kitchin, Lord Sales, Lord Burrows, Lord Stephens

Hearing start date

7 June 2023

Hearing finish date

8 June 2023

Watch hearing

7 June 2023 [Morning session](#) [Afternoon session](#)

8 June 2023 [Morning session](#) [Afternoon session](#)