

14 year long residence rule relaxed

This is a short note on a recent decision handed down on 19th January 2009 by the Court of Appeal which clarifies the 14 year rule. The case is **ZH (Bangladesh) v SSHD [2009] Civ 8**.

The claimant, Mr Zakir Hussain, was a 50 year old Bangladeshi national who arrived in the United Kingdom in 1991 on a visitor's visa. In 2006, he applied for Indefinite Leave to Remain in the UK on the ground of long residence, relying on Rule 276B of the Immigration Rules. This rule provides that the requirements for indefinite leave to remain on the ground of long residence in the UK includes the fact that an applicant must have had at least 14 years continuous residence in the UK and that, 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, taking into account his age, strength of connections in the UK, his personal history, among other factors.

The Secretary of State refused Mr Hussain's application. That refusal was upheld on appeal by the Tribunal. The Immigration Judge stated that, weighing up the factors listed at para 276B(ii), there was nothing in the claimant's favour save that he had no criminal record and had been in the UK for a long period of time. He stated that for all of the time the claimant had lived in the UK, save the first six months, he had been aware that he was not entitled to remain in the UK. Mr Hussain appealed to the Court of Appeal.

The Court of Appeal held that the 14 year rule was specifically directed to people who had managed to stay in the UK for 14 years or more without lawful authority, and was therefore in effect an amnesty clause. This was because in every such case, the nature of the claimant's stay was that it was unlawful and its extent was by definition 14 years or more.

The Home Office sought to play up the fact that Mr Hussain had worked illegally during this time. The Court of Appeal said that whilst this compounded the illegality of his presence here, it was a different reason from the more sinister reason for using a false

identity in order to commit frauds. The Court of Appeal also held that even if someone has obtained false identity document in order to obtain work, it should not be taken against him, as the Home Office recognised that applicants under the rules, if they were to be successful, must be expected to have worked unlawfully for much of their time here. The Court of Appeal said that the Tribunal should have accepted Mr Hussain's explanation that he had moved around a lot because he was afraid of being detected as an illegal immigrant.

What does the ZH decision mean therefore?

- It makes it a lot easier for overstayers to succeed under the provisions of the 14 year rule.
- It accepts that minor indiscretions such as working illegally should not be used against claimants under this rule, otherwise the entire purpose of the 14 year rule would be defeated if a strict approach was to be adopted.
- Crucially, it accepts that the 14 year rule operates as an amnesty and only in cases where grave offences such as fraud have been committed might a refusal may be justified. But even then, a discretion might be exercised to allow an overstayer's application for Indefinite Leave to Remain. The Court of Appeal find that the whole purpose of the 14 year rule (by which illegal immigrants can eventually seek to regularise their status after 14 continuous years of residence in the UK) would be undermined if too strict an approach was followed in relation to the public policy exemptions.

Anyone who thinks that their immigration status may be affected by this opinion should seek professional legal advice. At Genesis Law Associates, we specialise in all areas of immigration, asylum and nationality law.