



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Numbers: IA/15027/2014**

**Appeal**

**IA/15032/2014**

**IA/15034/2014**

**IA/15039/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 April 2015**

**Determination  
Promulgated  
On 27 April 2015**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**(1) Mrs MARIA GLAZUNOVA  
(2) Master MIKHAIL GLAZUNOV  
(3) Mr IGOR PODKOVKO  
(4) Dr MIKHAIL GLAZUNOV  
(NO ANONYMITY DIRECTION)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Miah, Counsel (instructed by Sony Sadaf Haroon Solicitors)

For the Respondent: Mr S Kandola, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellants in these linked cases appealed with permission granted by Upper Tribunal Judge Kekić on 10 February 2015 against the determination of First-tier Tribunal Judge Chohan who had dismissed the Appellants' appeals against the Secretary of State's decisions dated 14 March 2014 in a determination promulgated on 8 August 2014. The Appellants are nationals of Russia, who had applied for further leave to remain in Tier 1 as an Entrepreneur Migrant and as his dependants. This was refused and removal directions were made under section 47 of the Immigration, Asylum and Nationality Act 2006.
2. It was accepted before Judge Chohan that the Appellants were unable to satisfy the relevant Immigration Rules, and the hearing accordingly proceeded on the basis that the Appellants were entitled to leave to remain under paragraph 276B of the Immigration Rules and on Article 8 ECHR family life grounds. Judge Chohan found as a fact that the Appellants had acquired 10 years' continuous lawful residence (see [10] of the determination) but that they could not vary their current application.
3. Judge Kekić considered it arguable that Judge Chohan had erred in her approach and that the relevant fact was 10 years' continuous lawful residence. It was also arguable that the judge had materially erred in her approach to Article 8 ECHR.
4. The Respondent had initially opposed the onwards appeal, by notice under rule 24 in the form of a letter to the Upper Tribunal dated 27 February 2015. However, following discussion between Mr Miah for the Appellants and Mr Kandola for the Respondent before the substantive onwards appeal hearing commenced, it was accepted on behalf of the Secretary of State that there were material errors of law in the determination. It was accepted that the judge had confused the restrictions on the Points Based System with the 10 year continuous lawful residence claim which had been raised. It was accepted that the decisions had to be returned to the Secretary of State for the discretion under paragraph 276B to be exercised.
5. The tribunal agreed with the concession which had been made. Unfortunately the judge failed to notice that the

Respondent's refusal decisions had incorporated section 120, Nationality, Immigration and Asylum Act 2002 notices, which entitled and indeed required the Appellants to state any other grounds on which they claimed to be able to remain in the United Kingdom. They had done so by the date of the First-tier Tribunal hearing and so the judge had to consider that issue as far as she was able to do so. The judge's finding that 10 years' continuous lawful residence had been achieved by the Appellants was not challenged, but the judge's finding that the point could not be raised before her was wrong. The judge's finding that the Appellants had achieved 10 years' continuous lawful residence in the United Kingdom by the date of the hearing on 25 June 2014 is accordingly preserved. Her determination is otherwise set aside for error of law and is remade as follows.

6. The relevant rule is in the following terms:

***Requirements for indefinite leave to remain on the ground of long residence in the United Kingdom***

*276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:*

*(i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom; or*

*(b) he has had at least 14 years continuous residence in the United Kingdom, excluding any period spent in the United Kingdom following service of notice of liability to removal or notice of a decision to remove by way of directions under paragraphs 8 to 10A, or 12 to 14, of Schedule 2 to the Immigration Act 1971 or section 10 of the Immigration and Asylum Act 1999 Act, or of a notice of intention to deport him from the United Kingdom; and*

*(ii) 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:*

*(a) age; and*

*(b) strength of connections in the United Kingdom; and*

*(c) personal history, including character, conduct, associations and employment record; and*

*(d) domestic circumstances; and*

*(e) previous criminal record and the nature of any offence of which the person has been convicted; and*

*(f) compassionate circumstances; and*

*(g) any representations received on the person's behalf;*  
and

*(iii) the applicant has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless he is under the age of 18 or aged 65 or over at the time he makes his application.*

7. Current Home Office Guidance (dated 17 October 2014), page 11 of 53, states that *any* period of lawful continuous leave suffices for paragraph 276B, including leave available by virtue of the operation of section 3C of the Immigration Act 1971. Thus if as here the tribunal were satisfied that the Appellants had completed 10 years' lawful residence by virtue of the application of section 3C, the appropriate course is to return the case to the Secretary of State for fresh decisions on that basis to be taken, since there is a discretion yet to be exercised.
8. Paragraph 276C shows that there is a discretion under paragraph 276B, which is reviewable by the tribunal pursuant to Section 86(3)(b) of the Nationality, Immigration and Asylum Act 2002. Furthermore, there is also a further relevant discretion available under Chapter 18 of the IDIs, which has not been exercised.
9. The cases in which the tribunal should exercise its discretion before the relevant discretion under the Immigration Rules has first been exercised by the Secretary of State are rare, even where as here every potential test appears to favour the Appellants. The tribunal finds as at the date of the hearing that the Respondent's decisions are not or are no longer in accordance with the law, albeit inadvertently, and so must be revisited in accordance with the finding that the Appellants had achieved 10 years' continuous lawful

residence in the United Kingdom by the date of the hearing on 25 June 2014. The discretion available under the Immigration Rules and IDIs must be exercised by the primary decision maker on that basis. The Appellants' appeals are allowed to that extent.

10. In those circumstances, it is not necessary for the tribunal to examine the Appellants' Article 8 ECHR claims, not least because even if the tribunal found in the Appellants' favour (which is certainly possible on the facts), the result would only be a form of limited leave to remain and so would not necessarily be of value to the Appellants.

### **DECISION**

The making of the previous decision involved the making of an error on a point of law. The Appellants' appeals are allowed.

The following decision is substituted:

The appeals are allowed to the limited extent that the Respondent's decisions were not in accordance with the law. The applications remain outstanding before the Respondent, awaiting fresh lawful decisions on the basis that the Appellants have achieved 10 years' continuous lawful residence in the United Kingdom

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**

### **TO THE RESPONDENT** **FEE AWARD**

The appeals have been allowed but on the basis of new facts and to a limited extent. Fee awards are not appropriate.

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**