Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/22608/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th July 2015	**On 17th July 2015**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

UDARA PRASAD JAYAWARDANA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr Jarvis, Home Office Presenting Officer
For the Respondent: Mr Jafar, Counsel instructed by Liyon Legal Ltd

DECISION AND REASONS

1. I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Sri Lanka born on 7th May 1980. His appeal, against the Secretary of State's decision dated 7th May 2014 refusing indefinite leave to remain under paragraph 276B of the Immigration Rules, was allowed by First-tier Tribunal Judge Wellesley-Cole in a decision promulgated on 5th February 2015.

2. The Judge found that the Respondent's decision was not in accordance with the law because only the Immigration Rules were considered in the refusal letter. The grounds of appeal submit that the Respondent

considered the Appellant's Article 8 rights outside the Immigration Rules and therefore the Judge's conclusion was wrong in fact. The Judge erred in law in taking into account irrelevant factors in her assessment of Article 8 or alternatively she failed to properly determine the issue.

3. Permission to appeal was granted by First-tier Tribunal Judge Martin on the grounds that it was arguable the Judge's reasoning was unclear and she allowed the appeal on the basis that the Respondent had failed to consider Article 8 when in fact it was clear from the refusal letter that she had done so. The Judge should have decided the appeal rather than allowing it in so far as the Respondent's decision was not in accordance with the law.

4. It was agreed by the parties that that the decision should be set aside because the Judge failed to make findings under the Immigration Rules. Mr Jarvis accepted that the Respondent's calculation of the Appellant's period of lawful residence was wrong and the Appellant calculations, set out in the Rule 24 response, were correct. Accordingly, the Appellant had not overstayed for a period of more than 28 days and he therefore had ten years lawful continuous residence in the UK. The decision of the First-tier Tribunal should be set aside and remade allowing the appeal under paragraph 276B of the Immigration Rules.

5. The 28 days of overstaying allowed under the Immigration Rules starts from the day leave expired and ends on the day a successful application was made. Therefore, the Appellant had only overstayed for a period of 16 days not 118 days as alleged by the Respondent in the refusal letter. Accordingly, the Appellant satisfied the requirements of paragraph 276B of the Immigration Rules.

6. I find that the decision of the First-tier Tribunal contained an error of law in that the Judge failed to make findings under the Immigration Rules and failed to determine Article 8. I allow the Respondent's appeal to the Upper Tribunal.

7. I set aside the decision dated 5th February 2015 and remake it as follows: The Appellant's appeal against the refusal of indefinite leave to remain is allowed under paragraph 276B of the Immigration Rules.

Notice of Decision

The Respondent's appeal to the Upper Tribunal is allowed.

The Appellant's appeal is allowed under the Immigration Rules.

No anonymity direction is made.

Signed Date 16th July 2015

Upper Tribunal Judge Frances