



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/36523/2014

THE IMMIGRATION ACTS

**Heard at: Manchester
On 27th January 2016**

**Decision and Reasons
Promulgated
On 28th January 2016**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Oluwaseun Oyemade Aikomo
(anonymity direction not made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Youssefian, DJ Webb & Co Solicitors

For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Nigeria born on the 9th August 1986. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Robson)² to dismiss his appeal against a decision to refuse to grant him indefinite leave to remain.

¹ Permission was initially refused by First-tier Tribunal Judge JM Holmes on the 2nd March 2015 but granted upon renewed application by Upper Tribunal Judge Reeds in an undated decision

² Determination promulgated 8th January 2015

2. The matter in issue before the First-tier Tribunal was whether the Appellant had accrued ten years continuous lawful residence in the United Kingdom so as to qualify for leave to remain under paragraph 276B of the Immigration Rules. The sole matter in issue was whether a break in the Appellant's leave during 2005 should be treated as a break in his continuous lawful residence, having regard to the Respondent's published policy and the Rules themselves.
3. Judge Robson decided that matter in the Respondent's favour and the appeal was dismissed under the Rules and on Article 8 grounds. In granting the Appellant permission to appeal to the Upper Tribunal Judge Reeds found it to be arguable that in doing so Judge Robson had erred in failing to conduct a complete proportionality balancing exercise, having regard to the particular circumstances why the Appellant had not managed to get his application in on time back in 2005.
4. The matter came before the Upper Tribunal on the 30th September 2015. In her written decision dated 1st October 2015 Upper Tribunal Judge Plimmer found that Judge Robson had materially erred in failing to make findings of fact and to adequately address Article 8. She set the decision aside with the intention of re-making it at a later date. In doing so she noted that at the date of the appeal before her, the Appellant had now apparently accrued the ten years of continuous residence required under the rule, that period being calculated from the 3rd July 2005. Judge Plimmer gave the Respondent an opportunity to consider this point and gave directions that the case was to be reviewed prior to the next hearing.
5. The Respondent actioned Judge Plimmer's directions and sent a request to the caseowner in Leeds that the case was to be reviewed. On the 26th December 2015 the office of the Respondent in Leeds was submerged in floodwater and the Appellant's file was lost. So it was that when the matter came before me today, Ms Johnstone had to offer the Respondent's apologies for not having complied with Judge Plimmer's directions. No review had taken place, but clearly the Respondent cannot be blamed for that.
6. Ms Johnstone had however acted with her customary diligence and had pursued the relevant papers in the few days she had been given to prepare the case. She was able to confirm, with reference to the Respondent's electronic record, that the Appellant had indeed held continuous valid leave since the 3rd July 2005 to date. She knew of no reason why the Appellant could not qualify under paragraph 276B for indefinite leave to remain. She invited me to re-make the decision in the appeal on the evidence that was before me.
7. I have done so. I am satisfied that the Appellant continues today to

hold valid leave to remain and that he has done so for a continuous period since July 2005. The only ground for refusal was the alleged break in leave in May - June of 2005 but that is not now relevant. This being an in-country appeal I must decide, at the date of the appeal before me, whether the Appellant meets the requirements of the relevant rule. It being conceded that he does, the appeal is allowed.

Decisions

8. The decision of the First-tier Tribunal is set aside.
9. I remake the remaining issue in the appeal as follows:
 “the appeal is allowed under the Immigration Rules”.
10. I was not asked to make an anonymity direction and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce
27th January 2016