



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13050/2016

THE IMMIGRATION ACTS

Heard at Field House
On 28 June 2018

Decision & Reasons Promulgated
On 6 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MS MARGARET OLUFUNMIKE ABOLADE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A T Okunowo, Toltops solicitors
For the Respondent: Mr C Avery, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria born on 18 February 1957. She made an application on 28 January 2016 for leave to remain on the basis of her private life. In

particular, it was asserted that she had resided continuously in the United Kingdom since 27 May 1995.

2. This application was refused by the Respondent in a decision dated 9 May 2016 and the Appellant appealed against that decision. Her appeal came before Judge of the First-tier Tribunal Pacey for hearing on 30 August 2017.
3. In a decision and reasons promulgated on 7 September 2017 the judge dismissed the appeal, finding as follows at [21] and [22]:

"21. There can be no appeal on the basis that the Respondent had not correctly applied the Immigration Rules as held in Mostafa (Article 8 in entry clearance) [2015] UKUT 112 at paragraph 9 ...

22. There are a number of documents before me that purport to stand as evidence that the Appellant has been in the UK for twenty years. However even if I were to find on the basis of this documentary evidence, in particular the medical records, the P60s and the HSBC bank account, that the Appellant has been in the UK for twenty years and thus that the Immigration Rules had been met, the weight of the evidence before me is such that the decision is not disproportionate for the reasons set out below."

The judge then went on to find the Appellant's account not to be credible for a number of reasons and to dismiss the appeal.

4. Permission to appeal to the Upper Tribunal was sought one day out of time against the decision on a number of grounds, but essentially on the basis that the judge failed to make a clear finding on the central issue of whether or not the Appellant had lived continuously in the UK for twenty years and that this was contrary to the evidence before her and that the judge had erred in respect of her findings regarding the Appellant's credibility.
5. Permission to appeal was granted in a decision dated 7 March 2018 by First-tier Tribunal Judge N J Bennett on the following basis:

"3. Permission to appeal is granted because it is arguable that the judge erred by failing to make clear findings about whether the Appellant had been continuously resident in this country for twenty years without any breaks before she applied for leave and if so why it was nevertheless proportionate to remove the Appellant."

6. In a Rule 24 response dated 10 April 2018 the Respondent stated as follows:

"2. The Respondent does not oppose the Appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the Appellant has lived in the UK continuously for twenty years and if so whether it would be proportionate to expect her to leave the UK."

7. Regrettably the rule 24 response had not reached the Appellant's representatives nor had been picked up in advance of the hearing by the Tribunal's administration, thus it was listed for hearing today.

Decision

8. In light of the Respondent's concession that the judge had failed to make a clear finding in respect of the Appellant's continuous length of residence the parties submitted that the decision should be set aside and that remittal to the First-tier Tribunal would be the most appropriate course, in light of the fact that the Appellant wished to call a number of witnesses who were not available or present at the Upper Tribunal today and in order to submit further evidence of continuous residence.
9. I agreed with the proposed course of action. Whilst the Appellant's representatives should have advised the witnesses to attend the hearing, they were not present and it would not be in accordance with the overriding objective to proceed absent the witness evidence upon which the Appellant wished to rely to support her claim to have resided in the United Kingdom continuously since 27 May 1995.

Notice of Decision

The decision and reasons of First-tier Tribunal Judge Pacey is set aside and the appeal is remitted for a hearing *de novo* before the First-tier Tribunal.

Signed *Rebecca Chapman*

Date 4 July 2018

Deputy Upper Tribunal Judge Chapman