



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

Appeal Number: IA/44486/2013

THE IMMIGRATION ACTS

Heard at Field House

On 29 May 2014

Determination

Promulgated

On 14 August 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MERHEDIA UBIEBOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nath, Senior Home Office Presenting Officer

For the Respondent: Mr B Jones, instructed by MA Solicitors

DETERMINATION AND REASONS

1. I shall refer to the respondent, Merhedia Ubiebor, as the “appellant” and to the Secretary of State for the Home Department as the “respondent” (as they were respectively before the First-tier Tribunal).

2. The concise grounds of appeal set out both the background to this matter and also the basis upon which the respondent seeks to challenge the determination of the First-tier Tribunal (Judge Oakley) which, on 17 March 2014, allowed the appeal of the appellant. In his analysis at [18] Judge Oakley noted:

On 17 November 2009 reconsideration was requested and eventually on 12 March 2012 the respondent agreed to a full reconsideration upon the appellant agreeing to withdraw his pre-action Protocol letter. On 21 March 2012 the respondent requested further evidence in order to conduct a full consideration of the application.

3. At [24], the judge found:

Although the appellant's application was refused on 15 October 2009, the respondent agreed to a full reconsideration in March 2012 and therefore his application was pending until determination of the reconsideration. However, before his application was finally determined on 12 April 2012 the appellant applied to vary his application to a Tier 1 (Post-Study Work) Migrant. His application was refused on 28 December 2012. However by that time the appellant had accrued twelve years' lawful residence on 19 September 2012.

4. These paragraphs in the determination take us to the crux of this appeal in the Upper Tribunal, namely the legal status of the "reconsideration" of the decision (or the application by the appellant) which had led to the appellant being refused leave to remain with no right of appeal. The "pre-action Protocol letter" relates to the appellant's proposed intention to seek permission to bring judicial review proceedings in respect of the respondent's decision to refuse him further leave to remain without any right of appeal. The letter of 13 March 2012 sent to the appellant's representatives by the respondent records that "your client's case will now be fully reconsidered." A further letter of 21 March 2012 requested further information "in order for me to conduct a full reconsideration in your client's application." That "reconsideration" was overtaken by events when the appellant sought to vary his application for leave to remain but the fact remains that there was no reversal of the respondent's previous decisions to refuse the appellant's applications on the basis that the appellant's application of 3 September 2009 had been invalid and the subsequent (valid) application had been made at a time when the appellant had no leave to remain (and, therefore, the refusal of the application gave rise to no appeal to the First-tier Tribunal). I find that Judge Oakley has erred at [24] by concluding that the respondent's agreement to "reconsider" on the condition the appellant withdrew his application for judicial review either reversed the respondent's previous decisions or extended the appellant's leave to remain retrospectively beyond 3 September 2009. Nowhere in the correspondence does it state that the appellant's "application was pending until the determination of the reconsideration." [determination, 24]. It follows that Judge Oakley was wrong to conclude that the appellant had made a sequence of in time

applications to extend his leave which, in turn, meant that he had accrued ten years' lawful and uninterrupted residence.

5. I agree also with the respondent that the case of *Basnet* [2012] UKUT 00113 (IAC) is of little assistance to the appellant. The appellant's application of 3 September 2009 was properly rejected as invalid for two reasons, namely the failure to make payment and the submission of invalid photographs. Those reasons for rejecting the application do not appear to be disputed. *Basnet* is concerned with determining which party may have the burden of proving that an application was not accompanied by a fee and criticises the respondent's system of processing payments sent to her with postal applications; it does not have any application in this case given its particular facts.
6. I set aside the determination of the First-tier Tribunal and have remade the decision. In the light of my findings and observations above, the appellant's appeal against the immigration decision dated 11 October 2013 is dismissed.

DECISION

7. The determination of the First-tier Tribunal is set aside. I remade the decision. The appellant's appeal against the respondent's decision dated 11 October 2013 is dismissed.

Signed

Date 1 August 2014

Upper Tribunal Judge Clive Lane