



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

Appeal Number: IA/21719/2014

THE IMMIGRATION ACTS

Heard at Field House

On 28th August 2015

**Decision & Reasons
Promulgated**

On 4th September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS NEHA SURANA

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr T Uppal, instructed by Glen Solicitors

DECISION AND REASONS

1. The Ms Surana is a citizen of India whose date of birth is recorded as 17th October 1985. On or about 6 January 2014, she made application to the Secretary of State for variation of her leave to remain in the United Kingdom but on 1st May 2014 a decision was made to refuse the application and to remove her from the United Kingdom pursuant to

Section 47 of the Immigration, Asylum and Nationality Act 2006. In issue was whether the Respondent had met the requirements of 276B of HC 395, the ten year long residence Rule.

2. Ms Surana first entered the United Kingdom on 13th September 2001. At that time she had entry clearance with limited leave until 31st August 2003 but thereafter, although there were periods of absence from the United Kingdom, she made in-time applications for extension or variation of leave.
3. When the application came before the Secretary of State for consideration Ms Surana needed to establish not only that there had been at least ten years' continuous long residence as required by 276B(i)(a) but that the "continuous residence" fell within the definition at 276A(a) which provides:

"Continuous residence' means residence in the United Kingdom for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the United Kingdom for a period of six months or less at any one time, provided that the applicant in question has existing limited leave to enter or remain upon their departure and return, but shall be considered to have been broken if the applicant...

(v) has spent a total of more than eighteen months absent from the United Kingdom during the period in question."

4. It is common ground in this case that there was an earlier period when were a calculation of a ten year continuous period made there would have been an offending period of absence in excess of the eighteen months as set out in the Rule above and it is common ground that that was the situation which appertained at the time when the Secretary of State considered this application. However, as Mr Wilding for the Secretary of State rightly points out, paragraph 276B does not have an inbuilt timetable and by the time the appeal came before Judge Bird on 12th January 2015, working backwards, Ms Surana, was in fact able to demonstrate the requirements of the Rule.
5. What happened in this case was that the judge for reasons which are not at all clear made reference to Section 3C leave as if that were the determining factor. It may be that she has expressed herself badly and that in fact she intended to explain that by the time the matter was before her the requirements of the Rules had been met. Be that as it may, not content with the decision of the judge to allow the appeal under the Immigration Rules the Secretary of State sought permission by notice dated 20th February 2015 to appeal to the Upper Tribunal on the basis that there had been an absence in excess of eighteen months in the ten year period being contended for at the time of the application and that the way in which the judge expressed herself demonstrated a material error of law because 3C leave could not override the periods of absence. On 14th April 2015 permission to appeal was granted by Judge of the First-tier Tribunal Davies.

6. As I have already indicated the matters in fact have resolved themselves. Mr Wilding accepts that by the time the matter came before Judge Bird any error of approach or lack of clarity in expression is not material because Ms Surana was able to demonstrate that she met the requirements of the Rule, and even if that is not so she is now because "3C leave" continues to operate and is relevant in the calculation of the continuous period.
7. I am particularly grateful to Mr Wilding for his assistance in this matter. Ms Surana's passport was not before the Upper Tribunal. That is with the Secretary of State but there was a schedule in Ms Surana's bundle setting out the dates. Mr Wilding considered that schedule in advance of the hearing and it was through his diligence that it was possible to deal with this matter so swiftly.
8. In all the circumstances, although there is an error of law, it is not material. Were I to re-make the decision in any event I would be upholding the decision of the First-tier Tribunal.

Notice of Decision

The appeal to the Upper Tribunal is dismissed. For the avoidance of doubt the decision of the First-tier Tribunal is affirmed.

Signed

Date:

Deputy Upper Tribunal Judge Zucker

Approval for Promulgation

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Name of Deputy Judge issuing approval:	Judge D G Zucker
Appellant's Name:	Ms Neha Surana
Case Number:	IA/21719/2014

Oral decision (please indicate) YES

I approve the attached Decision and Reasons for promulgation

Name: D G Zucker

Date: 2 September 2015

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:

Other Information: