



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

Appeal Number: IA/29295/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11 March 2015**

**Determination  
Promulgated**

**On 12 March 2015**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Kevin Boodhoo**

**[No anonymity direction made]**

Claimant

**Representation:**

For the claimant: Ms F Allen, instructed by Paul John & Co

For the respondent: Ms A Everett, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Brown promulgated 8.12.14, allowing the claimant's appeal against the decision of the respondent, dated 2.7.14, to refuse his application for further leave to remain in the UK as a Tier 2 (General) Migrant and to remove him from the UK by way of directions under section 47 of the Immigration Asylum and Nationality Act 2006. The judge heard the appeal on 1.12.14.
2. First-tier Tribunal Judge Page granted permission to appeal on 23.1.15.

3. Thus the matter came before me on 11.3.15 as an appeal in the Upper Tribunal.

### **Error of Law**

4. For the reasons set out herein, I find that there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Brown should be set aside and remade.
5. Judge Brown allowed the appeal on the basis that the decision of the Secretary of State was not in accordance with the law as she should have considered paragraph 245AA of the Immigration Rules and requested further information from the claimant before refusing the application.
6. The grounds rightly criticise the decision for failing to identify what in particular should have been clarified or requested from the claimant and what particular provision of 245AA was relied on. 245AA has no application to the facts of this appeal. The claimant submitted an application relying on a 'used' Certificate of Sponsorship (CoS), which was found not to be valid when checked and in addition, his sponsor's licence had expired. There is nothing which an enquiry with the claimant could have revealed to enable the application to meet the requirements of the Rules. This was not the case of a missing document in a sequence, or a document in the wrong format, etc. No valid CoS had been submitted and the application was doomed to failure from the outset.
7. Ms Allen accepted that the appellant did not meet the requirements of the application he had made and could not resist the submission of Ms Everett that there was a fundamental error of law in the decision of the First-tier Tribunal.
8. I therefore set the decision aside and proposed to remake the decision at the same hearing. Ms Allen submitted that it should be remitted to the First-tier Tribunal, but I could see no reason to do so. The standard directions issued in this appeal required the claimant to prepare for this hearing on the basis that if the Upper Tribunal decided to set the decision aside, any further evidence, including supplementary oral evidence can be so considered at this hearing. The issues in the appeal are very clear and there is no reason to cause further delay by remitting the matter to the First-tier Tribunal.
9. The claimant was not in attendance at the hearing, but I was satisfied that he and his representatives had adequate notice of the hearing and Ms Allen could offer no explanation for his absence and did not seek an adjournment of the hearing but was content to proceed.
10. It is clear that the claimant cannot meet the requirements of the application made. First-tier Tribunal judge did not deal with article 8, for obvious reasons, and there was no cross-appeal by the appellant; there had been no application for permission to appeal on the basis that the judge omitted to consider article 8 ECHR. However, the grounds of appeal to the First-tier Tribunal raised article 8 ECHR. The
11. In addition, Ms Allen sought to argue 10-year long residence pursuant to

paragraph 276B of the Immigration Rules. That was never part of the grounds of appeal to the First-tier Tribunal and no submissions were made in any Rule 24 response to the grant of permission to appeal to the Upper Tribunal. Further, it is clear that at the date of hearing of the First-tier Tribunal, the claimant did not meet the requirements of 10 years continuous lawful residence.

12. There was a section 120 notice, though the claimant did not respond to that notice. The only reference to the 10 year residence requirement arose in his witness statement. As stated the First-tier Tribunal Judge could not have considered that matter as at that date he had not reached the 10-year threshold.
13. The claimant's lawful residence having continued by virtue of section 3C, the fact is that in remaking the decision today, I am faced with the fact that the 10-year long residence requirement has been met. The claimant came to the UK on 17.1.05 with leave as a student and on the information before me, that lawful leave was unbroken. Ms Allen pointed out the current long residence guidance (valid from 17.10.14), which considers the situation of a person completing the 10 year continuous lawful residence whilst awaiting the outcome of an appeal and submits an application on this basis. However, it is not possible to submit a new application whilst an appeal is outstanding, "However the applicant can submit further grounds to be considered at appeal." This suggests that the tribunal is not precluded from consideration of paragraph 276B.
14. In the circumstances, I find there is force in Ms Allen's submissions. The claimant appears to meet all the sub-clause conditions of paragraph 276B, including the life in the UK qualification. Ms Everett did not suggest any public interest considerations as to why it would be undesirable for him to be granted indefinite leave to remain. It follows that the appeal should be allowed on that basis.

**Conclusion & Decision:**

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I re-make the decision in the appeal by allowing it under paragraph 276B of the Immigration Rules, the claimant now able to meet the requirements of that route.



Signed:

Date: 11 March 2015

Deputy Upper Tribunal Judge Pickup

**Consequential Directions**

16. Forthwith on receipt of this decision the respondent shall grant the appellant leave to remain for such period as is necessary to give effect to this determination.

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The application brought could never have succeeded. It is only because of the lapse of time that the claimant now meets the requirements of an alternative route for leave to remain.



Signed:

Date: 11 March 2015

Deputy Upper Tribunal Judge Pickup