



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

Appeal Number: IA/39670/2014

THE IMMIGRATION ACTS

Heard at Field House

On the 5th October 2015

**Decision & Reasons
Promulgated**

On the 14th October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS IBILOLA FRANCESCA SHODIPO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr V Adeniyi, Solicitor, A & A Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of Judge Aziz when he was sitting at Richmond on the 7th April 2015. The Appellant, Ibilola Shodipo, applied for indefinite leave to remain under the long residence provisions but that had been refused on the basis that there was an extensive gap in her time in the UK of more than 28 days in 2005.

2. The issue of the Appellant's time in the UK without leave was raised in the refusal letter and in the Grounds of Appeal. The Appellant stated that she denied that the application was out of time 75 days in 2005. At the time her leave had expired on the 28 September of that year and in the course of giving evidence to the First-tier Tribunal she maintained that she had made an application on the 24th October.
3. The Judge took the view when dealing with the Home Office application to adjourn that more than sufficient time had been available for them to provide the paperwork that they relied on. As it happens Mr Tarlow very fairly has obtained a copy of the application in question made by the Appellant at the time.
4. The application is clearly dated and signed as the Appellant had said the 24th October 2005. That supports oral evidence that she had given the best part of nine years after the events in question, so clearly she was right about the date.
5. The Immigration Rules mandate that an application is made on the date that it is posted. There is no evidence of posting but she maintains that she posted it the day that she signed it and that of course would make sense. The document itself contains a number of stamps. The one that the Home Office rely on to prove that it is out of time appears at the top of the front of the page, a Home Office Immigration and Nationality Department IND stamp for the 8th December 2005.
6. There are, however, two other stamps. One is effectively illegible and the other, another IND stamp, clearly in 2005 but with the day 15. It is not clear at all what month that refers to. One would assume it must be November because it cannot be October and it would not postdate the December stamp.
7. That document provides significant support for the Appellant's case and if I were to have found that the adjournment should have been granted I would inevitably have been remaking the decision in the Appellant's favour in any event.
8. However, the fact is that the Home Office were clearly put on notice in the Grounds of Appeal that the central part of their case was disputed by the Appellant. Anybody who had read those Grounds of Appeal would know that they would have to show that the application was made late.
9. The date of the hearing was far too late to make an application to obtain further evidence and the judge was entirely justified in firstly refusing the application and secondly in making the findings that he did about the Appellant's length of residence.
10. Accordingly I find that the judge was entirely right to find a) that he should have proceeded with the hearing, b) that he was right to allow the Appellant's appeal. Therefore I find that there is no error of law in the

decision and that decision shall stand and the Secretary of State's appeal is dismissed.

NOTICE OF DECISION

The decision of the First-tier Tribunal did not contain an error of law. The decision of Judge Aziz stands as the disposal of the Appellant's appeal.

I make no anonymity direction.

I make a fee order in the full amount as appropriate.

Signed
Deputy Upper Tribunal Judge Parkes

Date 13th October 2015