



IAC-FH-NL-V1

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

Appeal Number: IA/06137/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> February 2016**

**Decision &  
Promulgated  
On 24<sup>th</sup> March 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**MR SUNNY IMONIKHE**

Appellant

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Home Office Presenting Officer  
For the Respondent: Mr M Ume-Ezeoke, instructed by The Legal Resource Partnership

**DECISION AND REASONS**

1. Mr Imonikhe is a citizen of Nigeria whose date of birth is recorded as 19<sup>th</sup> November 1959. He made application to the Secretary of State to regularise his status in the United Kingdom on the basis of long residence. On 29<sup>th</sup> January 2015 a decision was made to refuse the application and he appealed. His appeal was heard by Judge of the First-tier Tribunal Majid on 19<sup>th</sup> August 2015 sitting at Taylor House. Judge Majid allowed the appeal.

2. Not content with that decision, by Notice dated 10<sup>th</sup> September 2015 the Secretary of State made application for permission to appeal to the Upper Tribunal. The grounds are lengthy but the essential point was that the decision lacked adequate reasoning. The grounds also went on to make reference to a material misdirection in the law because no regard was said to have been had to Section 117B(vi) of the Nationality, Immigration and Asylum Act 2002, though of course if the decision could have been allowed under the Immigration Rules, such would not be a material consideration.
3. On 7 January 2016 Judge of the First-tier Tribunal granted permission, thus the matter comes before me.
4. The relevant Refusal Letter is dated 29<sup>th</sup> January 2015. Credit is to be given to the author of the letter for the careful consideration given to the application. For present purposes the focus is upon paragraph 15 which reads as follows:

*“It is considered that you do not fulfil the requirements for leave to remain in the United Kingdom on this (sic) basis of your private life under paragraph 276ADE because in order to meet the requirements of paragraph 276ADE(1)(iii), an applicant must show that they have lived continuously in the United Kingdom for at least 20 years (discounting any period of imprisonment). When considering the requirements outlined in paragraph 276ADE(1), it is noted that you are a national of Nigeria and that you claim to have entered the United Kingdom on 7 August 1989. You have however supplied no evidence of residency prior to 1998 other than an NHS card and no other verifiable evidence until 2003. The evidence from 2003 is taken as the date of the start of continuous residency. It is not accepted that you have lived continuously in the United Kingdom for at least 20 years. The claim to have last entered the United Kingdom in 1989 lacks credibility when you appear to have waited 16 years before attempting to regularise your stay here.”*

5. The issue therefore in my view which the judge had to resolve on the basis of the refusal was clear. Mr Clarke for the Secretary of State submitted that it was not entirely clear from the decision what Rule the judge was considering. I disagree. There could only have been one Rule under which the long residency application could have been brought when it was common ground that the Respondent had not lawfully been in the United Kingdom and that was 276ADE. The only realistic alternative candidate would have been paragraph 276B, but as the Appellant had not lawfully been continuously resident in the United Kingdom, even on his own case, for ten years or more, paragraph 276B could not have been a relevant consideration. I also had my attention drawn by Mr Ume-Ezeoke to paragraph 10(d) of the Judge’s Decision in which the judge recognised that he had to have regard to the “new Rules” introduced on 9<sup>th</sup> July 2012 and it was in that context that the issue of long residence was being considered: paragraph 276ADE came into force with those “new rules”.

6. Mr Clarke submitted that there was deficient reasoning. What I have to consider on a challenge to a finding of fact is whether there was sufficient evidence available to the judge to justify the finding made. As I have said it is clear that the judge realised what the issue was. Mr Imonikhe argued before Judge Majid that he had in fact continuous residence for 25 years. There is at paragraph 10(a) a possible error of fact recorded by the judge because the duration of 25 years contended for by Mr Imonikhe was contested by the Secretary of State, even though the contrary appears to be what the judge has recorded (though there is some lack of clarity), but if the judge was wrong it is clear from paragraph 12 that the Judge recognised that the Secretary of State had put the matter in issue and indeed if there had been the concession which the Secretary of State suggests the Judge had wrongly recorded there would not have been anything to discuss in the appeal, given that in issue was whether Mr Imonikhe could demonstrate 20 years continuous residence.
7. I come to the view that there was sufficient reasoning in the decision. At paragraph 7 the judge noted that Mr Imonikhe's evidence was consistent with what he had said in his application and it is equally clear that the judge had had regard to "other documents", he said so in terms at paragraph 7. The judge then at paragraph 10 having had regard to Mr Imonikhe's statement of 14 August 2015 and other documents noted that the "Appellant's story" (which could only be by reference to the period that he had been in the United Kingdom since that was the point in issue) had been corroborated by friends who had written letters in support. Indeed the matter went further because one of those friends came to the Tribunal to give evidence in support and that is not challenged in the grounds.
8. In the circumstances it is clear when one reads the decision as a whole that at paragraph 29 where the ultimate finding is made the judge found that Mr Imonikhe had made out his case to the requisite standard being balance of probabilities. That was, I find, a finding that was open to him.
9. On any view the decision does contain material which is not altogether relevant to the issues in contention but in this case they do not detract from the essential finding which was that the Appellant had proved his case in the First-tier Tribunal. In those circumstances the Secretary of State's appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal is affirmed.

### **Notice of Decision**

The Appeal to the Upper Tribunal is dismissed and the Decision of the First-tier Tribunal is affirmed.

**Signed**

**Date**

**Deputy Upper Tribunal Judge Zucker**