



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

Appeal Number: HU/02249/2020

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 28 January 2022**

**Decision & Reasons Promulgated  
On 09 February 2022**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**DIMPLE PATEL**

Respondent

**Representation:**

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

For the Respondent: Mr F Khan, Counsel

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Ms Patel's appeal against the respondent's decision to refuse her application for indefinite leave to remain on long residence grounds.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Ms Patel as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of India, born on 5 June 1988. She entered the UK on 26 November 2006 with entry clearance as a student, valid until 31 January

2008, and subsequently extended her leave until 31 March 2009. She applied for further leave to remain as a student on 20 March 2009 but her application was refused on 11 January 2010 and her appeal against the refusal was dismissed on 14 April 2010. She became appeal rights exhausted on 26 April 2010. The appellant then submitted a Tier 4 student application on 2 March 2011 which was granted until 30 April 2012 and her leave was subsequently extended upon further applications until 28 August 2015. On 28 August 2015 she applied for leave to remain on family and private life grounds. Her application was refused on 4 January 2016 with an out of country right of appeal. On 12 January 2016 she submitted an application for indefinite leave to remain on the basis of ten years' long residency but that was refused with a right of appeal on 5 July 2016. Her appeal was dismissed on 5 October 2017 and she became appeal rights exhausted on 28 December 2017. The appellant made another application for indefinite leave to remain on 11 January 2018 which was refused with no right of appeal on 6 June 2018 and then made further submissions on 23 June 2018 and 3 December 2018, both of which were rejected under paragraph 353 of the immigration rules.

4. On 9 August 2019 the appellant made another application for indefinite leave to remain on the basis of ten years' long residency. That application was refused with a right of appeal on 30 January 2020 and is the subject of the current proceedings. In refusing the application, the respondent considered that the appellant had no valid leave between 26 April 2010 and 2 March 2011, and from 4 January 2016 onwards, and concluded that she could not, therefore, meet the requirements of paragraph 276B of the immigration rules. The respondent considered further that the appellant could not meet the requirements of paragraph 276ADE(1) of the immigration rules on the basis of her private life and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules.

5. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Graves. The appellant was not legally represented at the hearing and neither was there a representative for the Secretary of State. Judge Graves heard from the appellant. She made a finding that the respondent's decision of 11 January 2010 had been an unlawful one and that the First-tier Tribunal Judge had wrongly dismissed the appellant's appeal on 14 April 2010. She found that the appellant's continuous leave had not, in fact, been broken and that she had had lawful and continuous leave and had accrued ten years' lawful continuous leave within the definition of paragraph 276A. She found that the appellant therefore met the requirements of paragraph 276B(i)(a). In the alternative she considered that there were exceptional and compelling circumstances outside the immigration rules, considering the appellant's immigration history and the errors that had been made in the decisions about her periods of leave. She found that the respondent's decision was disproportionate and she allowed the appeal under Article 8.

6. Permission to appeal against that decision was sought by the respondent on the grounds that the judge had erred in law by going behind the decisions of

two First-tier Tribunal judges and by reaching erroneous conclusions on the appellant's period of continuous leave.

7. Permission was granted in the Upper Tribunal on 21 April 2021.

8. The matter then came before me following a previous adjournment to enable the appellant to find a legal representative. At the hearing the appellant was represented by Mr F Khan. Mr Khan, helpfully, conceded that he could not resist the Secretary of State's grounds of appeal. He agreed that the appellant could not meet the requirements of the immigration rules on the basis of ten years continuous lawful residence and that the judge had erred in her findings in that respect. He accepted that those findings had infected the Article 8 assessment and that the decision had to be set aside in its entirety.

9. Both Mr Khan and Mr Walker submitted that the appropriate course would be for the case to be remitted to the First-tier Tribunal for the appellant's Article 8 claim to be considered afresh and for findings of fact to be made in regard to her private life on the basis of up-to-date evidence. It was my initial view that the decision could be re-made in the Upper Tribunal. However, having heard from both parties, and having considered that the appellant had previously not been legally represented in the First-tier Tribunal, I agreed to remit the case as requested.

10. I therefore set aside the decision in its entirety and remit the case to the First-tier Tribunal to be heard afresh.

## **DECISION**

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Graves.

Signed: S Kebede  
Upper Tribunal Judge Kebede  
2022

Dated: 28 January