



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27719/2013

THE IMMIGRATION ACTS

Notice Promulgated
On 18 July 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN
UPPER TRIBUNAL JUDGE COKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR HAJI ABUUBAKAR HAJI YAKUBU

Respondent

Representation:

For the Appellant: Ms P Hastings a Senior Home Office Presenting
Officer
For the Respondent: Mr G Davison of counsel instructed by AJA
Solicitors

NOTICE OF WITHDRAWAL

1. The appellant is the Secretary of State for the Home Department ("the Secretary of State"). The respondent is a citizen of Tanzania who was born on 26 April 1982 ("the claimant").

2. The claimant arrived in the UK on 21 November 2003 with entry clearance as a student. He received subsequent extensions of leave to remain as a student for periods the last of which ended on 31 October 2009. Before that expired he made an application for leave to remain under the Tier 1 Post Study Work category. The application was granted and he was given leave expiring on 3 June 2013. Before that leave expired he made an in time application for further leave to remain under the same category. On 19 June 2013 the Secretary of State refused the application and also decided to give directions for his removal from the UK.
3. The claimant was awarded all the required points for Attributes, Qualifications, UK Experience, English Language qualification and Maintenance Funds but only 5 rather than the necessary 20 points for Previous Earnings. The claimant stated that he had earnings of £36,313.16 and an income of £7,200 from self-employment. It was not accepted that the documents submitted established this or showed that the required National Insurance contributions had been paid.
4. The claimant appealed and First-Tier Tribunal Judge Devittie ("the FTTJ") heard his appeal on 31 January 2014. He allowed the claimant's appeal on Article 8 human rights grounds. The Secretary of State was granted permission to appeal against that decision. Her appeal came before me on 7 May 2014. In a Decision and Directions dated 8 May 2014 I found that the FTTJ had erred in law and I set aside his decision directing that it should be reheard on Article 8 human rights grounds. I preserved the FTTJ's findings of credibility and fact.
5. At that hearing Mr Davison indicated that the claimant might make an application for leave to amend the initial grounds of appeal to include a claim for leave to remain based on 10 years' continuous residence. I directed that if, prior to the hearing, the Secretary of State and those representing the claimant were able to reach agreement about this application then the Tribunal should be informed and the matter brought to my attention so that I could give further directions.
6. Today Ms Hastings informed us that she had agreed with Mr Davison for the claimant that the Secretary of State would withdraw her decision of 19 June 2013 so that the 10 years' continuous residence application could be considered. If the application was granted then the claimant would be entitled to 2 years' further leave to remain rather than indefinite leave to remain although he might obtain indefinite leave at some later stage. Mr Davison confirmed that this course of action was agreed and supported the application.
7. We consent to the Secretary of State withdrawing the decision of 19 June 2013 which amounts to a withdrawal of her case under rule 17 (1) (a) of The Tribunal Procedure (Upper Tribunal) Rules 2008. The appeal is also treated as

withdrawn in the First-Tier Tribunal under rule 17 (2) of The Asylum and Immigration Tribunal (Procedure) Rules 2005. We record that the effect of this is that the claimant has an outstanding application before the Secretary of State which we agree has been varied to encompass a 10 years' continuous long residence claim under paragraphs 276B, 276A1 and 276A2 of the Immigration Rules. This Notice of Withdrawal should be given to the parties.

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Upper Tribunal Judge Moulden

Date 15 July 2014