



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/14729/2014

THE IMMIGRATION ACTS

Heard at: Field House
On: 9 April 2015

Decision and Reasons Promulgated
On 27 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS NANA YAA ADU
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr R Sharma, counsel, instructed by Bhattarai and Co
Immigration Practice

DETERMINATION AND REASONS

1. I shall refer to the appellant as the secretary of state and to the respondent as the claimant.
2. The secretary of state appeals against the decision of the First-tier Tribunal allowing the claimant's appeal against the decision dated 23 January 2014 refusing her application under the Human Rights Convention. A decision was also made to remove the claimant under s.10 of the Immigration and Asylum Act 1999.
3. Mr Sharma on behalf of the claimant submitted before the First-tier Tribunal that the application to which the appeal related had been made prior to the abolition of paragraph 276B of HC395 (the 14 year long residence rule). The contention was that

she had accumulated 14 years' continuous residence. As at the date of her application she had not completed 14 years. However, it was submitted that this was not a bar to the appeal being considered under that paragraph since it is the date of the Tribunal's decision which is material.

4. The First-tier Judge was aware of a similar argument successfully presented to the Upper Tribunal on 30 July 2014 [3]. He was informed that the Upper Tribunal has not promulgated its determination. The Judge stated that in that appeal, the appellant had not resided in the UK for a continuous period of 14 years at the date of application but had done so by the time the secretary of state served the IS 151A. The Judge stated that the '.....Upper Tribunal Judge apparently held that time spent after submission of an application goes towards the '14 year' rule and that the clock stops once an enforcement notice, such as IS.51A, is served' [3].
5. The First-tier Tribunal Judge stated that it seemed that the claimant had indeed resided in the UK for a continuous period of 14 years. She completed that after submitting her application and by the time the IS.151A was served on her [4].
6. In the circumstances, he remitted the appeal to the secretary of state on the basis that the claimant was entitled to a decision under paragraph 276B of the Immigration Rules applicable as at the date of application.
7. Mr Clarke submitted on behalf of the secretary of state that the Judge erred by finding that paragraph 276B applied to this claimant. That is because she did not make an application under the Immigration Rules prior to the change on 9 July 2012. She had outstanding human rights 'representations' at that stage but had not made an application under the rules.
8. Accordingly, the transitional provisions applicable at the date that the rules were brought into effect on 9 July 2012 did not apply as she did not have an outstanding application under the rules.
9. The second ground contended that the finding that the appellant had been residing continuously for 14 years in the UK before the IS.151A was served was "simply wrong." Mr Clarke set out the chronology. The appellant entered the UK on 20 July 2000. She was served with the IS 151A on 23 January 2014. Accordingly, she had not resided continuously for 14 years before the "clock stopping" decision was served.
10. Mr Sharma made no submissions to the contrary in regard to that ground.
11. Finally, Mr Clarke submitted that the reference by the Judge to an unreported case which had not been produced at the hearing was not only "surprising" but had not been promulgated yet. It is not clear why this played such a fundamental part in the determination.

12. Mr Sharma produced a skeleton argument at the hearing. With regard to ground 1, he simply referred to the authority of the Court of Appeal in Edgehill v SSHD [2014] EWCA Civ 402. He submitted that in deciding which rule applied with reference to the transitional provisions within the statements of changes to the Rules, this was entirely consistent with the Court of Appeal's recent decision in Singh v SSHD [2015] EWCA Civ 74.
13. Apart from those submissions however, Mr Sharma made no submissions and did not produce any written arguments against the specific grounds of appeal as set out above.

Assessment

14. I find that the First-tier Judge wrongly applied paragraph 276B. That is because the claimant had not made an application under the Rules prior to the change on 9 July 2012. She simply had an outstanding human rights submission at that stage.
15. In any event, she had not been residing in the UK for 14 years having entered the UK on 20 July 2000. She was served with the IS 151A on 23 January 2014. She was accordingly six months short of meeting the period. The service of the IS.151A "stopped the clock".
16. Mr Sharma submitted that if that were the conclusion reached, the decision should be set aside and remitted to the First-tier Tribunal pursuant to s.12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.
17. He submitted that there was a human rights (Article 8) claim before the First-tier Tribunal which had required adjudication. The First-tier Tribunal did not engage with that ground at all. Accordingly, the claimant was deprived of an opportunity of having her human rights claim considered in addition to her claim under the Immigration Rules.
18. Mr Clarke on behalf of the secretary of state supported the application of Mr Sharma that the decision should be set aside and that the case should in the circumstances be remitted to the First-tier Tribunal to decide the claimant's appeal based on human rights grounds.
19. I have had regard to the joint proposals. In the circumstances, I accept that the claimant has been deprived of the opportunity of having her human rights claim considered.
20. Having regard to the Senior President's guidelines, I find that it is in the interests of justice for the case to be remitted. The First-tier Tribunal has not considered that

claim at all; moreover, I was informed that there is an extensive amount of evidence to be adduced.

Notice of Decision

Having found that the decision of the First-tier Tribunal involved the making of an error on a point of law, I set aside the decision and allow the secretary of state's appeal.

I remit the case to the First-tier Tribunal for a decision to be made on the claimant's human rights claim. The case is remitted to either Richmond or Hatton Cross, whichever hearing centre can accommodate the appeal sooner.

No anonymity direction is made.

Signed

Date: 24 April 2015

Deputy Upper Tribunal Judge Mailer