



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

Appeal Number: IA/17250/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> July 2015**

**Decision & Reasons  
Promulgated  
On 13<sup>th</sup> August 2015**

**Before**

**MR JUSTICE KNOWLES  
UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**OLEKSANDRA VOLKOVA  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Holmes, Home Office Presenting Officer

For the Respondent: Mr L Fransman Q.C and Mr A Vaughan, Counsel instructed  
by Gherson & Co

**DECISION AND REASONS**

1. We shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Ukraine born on 19<sup>th</sup> April 1984. Her appeal, against the Secretary of State's decision dated 18<sup>th</sup> March 2014 refusing to vary leave to remain and to remove her from the UK, was allowed by First-tier Tribunal Judge Robinson, in a decision dated 27<sup>th</sup> November 2014, under paragraph 276B of the Immigration Rules.

2. The Judge found that the Appellant had shown, on the balance of probabilities, that she had at least 10 years continuous residence in the UK and that she had not spent a total of more than 18 months absent from the UK during the relevant period.
3. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on the grounds that it was arguable the Judge failed to take into account a break in the Appellant's lawful residence from 16<sup>th</sup> March 2004 to 22<sup>nd</sup> June 2004.
4. At the hearing, Ms Holmes conceded that the point raised in the grounds, and upon which permission was granted, was incorrect. The Appellant had a visa valid until 20<sup>th</sup> June 2004. She conceded that the appeal to the Upper Tribunal should be dismissed. It was agreed by the parties that there was no error of law in the decision of the First-tier Tribunal.
5. Notwithstanding, the Respondent's concession, the Appellant satisfied paragraph 276B of the Immigration Rules because, as at the date of hearing before the First-tier Tribunal on 17<sup>th</sup> November 2014, she had 10 years continuous lawful residence. The period relied on in the Respondent's grounds of appeal was outside the relevant period and therefore immaterial to the First-tier Tribunal Judge's decision to allow the appeal.
6. Accordingly, we find that there was no error of law in the decision of the First-tier Tribunal and the Respondent's appeal is dismissed. The decision dated 27<sup>th</sup> November 2014 shall stand.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 22<sup>nd</sup> July 2015

Upper Tribunal Judge Frances