

THE IMMIGRATION ACTS

Heard at Field House
On 7 July 2016

Decision & Reasons
On 26 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

CHARLES OMINNU ADOGA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

S ECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr J Siri, Counsel instructed by Marsh & Partners Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria born on 23 January 1972. He entered the UK, and claimed asylum, on 15 September 1997. His asylum application was refused on 13 December 1998 and he remained in the UK thereafter unlawfully.
2. On 26 June 2012 the appellant made submissions to be granted leave to remain pursuant to Paragraph 276B(i)(b) of the Immigration Rules (14 year continuous residence in the UK).
3. On 3 December 2014 a decision was made by the respondent to refuse the appellant's application for asylum and to remove him as an illegal entrant by way of directions under paragraph 8-10 of schedule 2 to the Immigration Act 1971. The decision also considered the appellant's family and private life, and concluded that his removal from the UK would not be contrary to Article 8 ECHR. With respect to the further submissions made on 26 June 2012, the refusal letter states: " *It is noted that you have been awaiting*

a decision on your further submissions of 26/6/2012 for 2 and a half years." It then says:

"Overall, on assessing the underlying causes for your length of residence in the UK it is found that the vast majority of your time has been within your control and that you have intentionally avoided the UK's immigration authorities in order to prolong that residence"

4. The respondent's refusal letter did not refer to Paragraph 276B(i)(b) of the Rules.
5. The appellant's appeal came before First-tier Tribunal ("FtT") Judge Eban who, in a decision promulgated on 7 January 2016, dismissed the appeal. The appellant did not pursue the asylum claim and the only issue considered by Judge Eban was the appellant's private and family life in the UK. The judge first considered whether the appellant was able to satisfy Paragraph 276ADE and having found that he could not the judge proceeded to consider - and reject - the appellant's appeal under Article 8 ECHR outside the Immigration Rules. No reference was made, or consideration given, to Paragraph 276B(i)(b).
6. The grounds of appeal raise a single issue: that the judge and respondent should have considered the appellant's claim under Paragraph 276B(i)(b).
7. Paragraph 276B(i)(b) was withdrawn on 9 July 2012 and no new applications could be made under it after that date. It provided a route to settlement in the UK after 14 years' continuous residence, even if unlawful, where, having regard to the public interest, there were no reasons why it would be undesirable for the applicant to be given indefinite leave to remain. The Rule set out a number of factors for the respondent to take into consideration.
8. At the error of law hearing Mr Tufan handed me a copy of the Immigration Directorate Instructions Family Migration: Chapter 8 Transitional Provisions: Family members under Part 8 and Appendix FM of the Immigration Rules dated August 2015 ("The Instructions"). This states as follows:

9.2 14 Year Long Residence

9.2.1. Paragraph 276B(i)(b) of the Immigration Rules, which provided a route to apply for settlement in the UK after 14 years' residence, lawful or unlawful, was withdrawn on 9 July 2012.

9.2.2. No new applications may be made under paragraph 276B(i)(b) from 9 July 2012.

9.2.3. Applications made under paragraph 276B(i)(b) which were made before, but not decided by, 9 July 2012, and reconsiderations, will be decided or reconsidered in accordance with that paragraph.

9.2.4. Paragraph 276A2 of the Rules was amended on 6 September 2012. This now provides that a person granted an extension of stay on the basis of Long Residence following an application made before 9 July 2012 will remain subject to the Rules in force on 8 July 2012. They will therefore be eligible to apply for indefinite leave to remain in the UK on the basis of 14 years' Long Residence under paragraph 276C if they meet the requirements of paragraph 276B.

9. It is clear from paragraph 9.2.3 of The Instructions that an application for settlement on the basis of 14 years residence will be decided in accordance with Paragraph 276B(i)(b) of the Rules where it is made before, but not decided by, 9 July 2012.
10. Mr Tufan acknowledged that paragraph 9.2.3 was applicable in this appeal and that the appellant should succeed by reference to it because the appellant's application was made on 26 June 2012 and not decided before 9 July 2012. Accordingly, in accordance with The Instructions, the respondent was

required to determine the appellant's application for leave to remain under Paragraph 276B(i)(b). No such determination has yet been made.

11. Accordingly, the decision of the FtT is set aside as the judge made a material error of law by failing to consider whether the respondent was required to determine the appellant's application under Paragraph 276B(i)(b).
12. I remake the decision by allowing the appellant's appeal to the limited extent that the respondent's decision of 3 December 2014 was not in accordance with the law and the appellant's application for indefinite leave to remain in the UK on the ground of long residence under the rule in force until 9 July 2012 remains outstanding for a lawful decision to be made.

Decision

13. The decision of the FtT contains a material error of law and is set aside.
14. I remake the decision by allowing the appeal to the limited extent that the appellant's application under Paragraph 276B(i)(b) remains outstanding for a lawful decision by the respondent to be made.

Signed

Deputy Upper Tribunal Judge Sheridan

Dated: 25 July 2016