



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/09667/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 29 November 2017**

**Decision & Reasons
Promulgated
On 20 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

O. A.
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Uzoechina, Principal, Patterson & Co Solicitors
For the Respondent: Mr Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria who entered the UK on 3 October 2005 lawfully as a student with the benefit of a visa granted to her until 31 October 2008. That leave to remain was varied subsequently on a number of occasions and on 24 November 2015 the Appellant made her most recent in time application for a variation of her leave to remain. That application was refused on 26 February 2015, and a decision was made in addition to remove her from the UK by reference to Section 47 of the 2006 Act. The Appellant appealed those decisions to the First-tier Tribunal ["FtT"] and her appeal came before Judge Morron at Taylor House on 29

November 2016. He dismissed the appeal under the Immigration Rules and on Article 8 grounds by way of a decision promulgated on 16 January 2017.

2. The Appellant's application for permission to appeal to the FtT was refused but undaunted the Appellant renewed her application to the Upper Tribunal when it was considered by Judge Gill in a decision of 14 September 2017. I say considered because in a lengthy series of reasons Judge Gill adjourned the grant of permission to an oral hearing. That is what comes before me today, with her intention that should I grant permission, which would necessarily involve in her view a consideration of whether or not time should be extended for the making of that application, I would go on and address the merits of the application.
3. Judge Morron noted that leave had been granted to the Appellant to amend her Grounds of Appeal at some earlier point in the history of the appeal in order to advance the argument that she had completed ten years of lawful residence in the UK prior to the date of the hearing. He also noted [54] that the Respondent's case before him was that there had been two significant gaps in the sequence of grants of leave to remain that had been extended to the Appellant; the first lay between 31 July 2009 and 27 May 2010, and the second lay between 15 November 2011 and 17 January 2012. He noted that the Respondent's argument before him was that those periods were lengthy, and of significance, and that there was no application to renew or to vary leave that had been made within time so as to engage the benefits of Section 3C of the 1971 Act. If s3C had been engaged then the effect would have been that the Appellant's leave to remain continued, whilst the relevant application was under consideration. He noted that the Respondent therefore argued that the Appellant could not show a period of ten years' continuous lawful residence in the UK and that as a consequence she had no entitlement to a grant of indefinite leave to remain under paragraph 276B of the Immigration Rules.
4. Following a subject access request for documents from the Respondent's files that was made by the Appellant after the hearing before the judge on 16 December 2016, but before his decision was promulgated on 16 January 2017, the Respondent examined her files held in relation to the Appellant and produced a number of relevant documents to the Appellant's representative. Sadly, those documents were produced by the Respondent too late to enable a request to be made to Judge Morron to reconvene the hearing before him, or, to take into account evidence that had now come to light that was relevant and germane to the issues before him before his decision was promulgated. Promulgation of that decision had occurred four days before the Respondent answered the disclosure request.
5. Before me it is accepted on behalf of the Respondent that the position as advanced to Judge Morron by the Presenting Officer at the appeal was inaccurate. In truth there were no gaps in the periods of leave to remain granted to the Appellant that were not covered by the benefits afforded to her through the operation of section 3C. As a result it is now accepted

before me that the Respondent should have accepted that this was the case at the hearing, and should in turn have formally accepted that the Appellant's application did demonstrate that she met the requirements of the Immigration Rules. She had indeed accrued ten years' lawful residence and thus her application should have been granted. In turn it is now accepted that there is no public interest in continued opposition to the appeal, and it should therefore be allowed.

6. It is plain that what went wrong in the course of this appeal was not the fault of the Appellant who had throughout maintained that she had accrued the relevant period of leave. It is equally plain that Judge Morron proceeded upon an incorrect analysis of what in fact had happened through no fault of his own, and because he had relied upon an incorrect chronology provided to him by the Respondent.
7. I turn then to the question that was deferred to me by Judge Gill; whether the renewed application for permission to appeal was made out of time, and if so, whether time to make it should be extended so as to admit the application.
8. With the benefit of both the Appellant's representative's file, and the Tribunal file, and after some discussion before me, both representatives are now agreed on the following sequence of events. Judge Morron's decision was promulgated by post on 16 January 2017. The First-tier Tribunal Judge refused permission to appeal by decision of 27 July 2017 and the decision was promulgated to the parties by post by way of a notice dated 9 August 2017. That date is the operative date for the calculation of time for the submission of the renewed application to the Upper Tribunal. It is now accepted that the Appellant's initial proposition that time for submission of the application for permission only expired on 24 August 2017 is incorrect; the true deadline was the close of business on 23 August 2017.
9. I have now had the benefit of sight of the fax transmission report that is said to relate to the transmission of the permission application to the Upper Tribunal. That document records that the fax was transmitted on 23 August, although only after the close of business. The transmission of 30 pages began at 18:41 hours, so the reality is that although the Appellant needs an extension of time for one day, the error that led to that is a failure to send the fax some one hour and 40 minutes earlier than it was actually sent.
10. Mr Uzochina informs me that he is a sole practitioner trading under the name of Patterson & Co Solicitors and he accepts that it was his error to miscalculate the time required. He told me that he thought the deadline for submission of the application expired on 24 August (consistently with the position he had adopted prior to the hearing before me) . He accepted that this was a simple error on his part and nothing to do with any fault or failure on the part of the Appellant. That being so I am satisfied that this is an appropriate case for time to be extended given the merits of the substantive application for permission to appeal as analysed above.

Notice of decision

11. In conclusion then my decision is as follows. I extend time to admit the application for permission to appeal to the extent necessary. I grant permission to appeal upon all of the Grounds of Appeal advanced in the application submitted on 24 August 2017. I set aside the decision of Judge Morron promulgated on 16 January 2017 on the ground of common law fairness. I remake the decision of the appeal so as to allow the appeal under the Immigration Rules, and on Article 8 grounds.
12. No fee award is appropriate. When the original application for a variation of her leave was made the Appellant was not entitled to a grant of ILR; her entitlement to such a grant arose subsequently and in the course of the appeal. Thus a fee award is inappropriate.
13. An anonymity direction is made.

Signed

Date: 20 February 2018

Deputy Upper Tribunal Judge J M Holmes