



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

Appeal Number: HU/16353/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 19 December 2018**

**Decision & Reasons Promulgated  
On 04 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**MUNIRA GJERLEK  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Bahja

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a female citizen of Kosovo who was born on 2 September 1971. She first arrived in the United Kingdom in April 2004. The claim for asylum was refused on 28 April 2005 when the respondent also decided to remove the appellant. The appellant appealed against the decision but her appeal was dismissed and she became appeal rights exhausted on 16 August 2005. On 22 June 2017, the appellant made an application for indefinite leave to remain on the basis that she had resided lawfully in the United Kingdom continuously for 10 years. By a decision dated 9 July 2017, the appellant's application was rejected. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 27 February

2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At [19], the judge wrote:

“... there is no issue in this case about any absence from the United Kingdom stop neither was any issue raised as to the public interest, general grounds for refusal, or an English-language qualification stop sole reason for refusal set out in the [refusal letter] was that in the light of the appellant’s immigration history, she has not completed 10 years continuous lawful leave in the United Kingdom and it is on the sole issue of continuous lawful residents that the appeal turns.”

3. Before the Upper Tribunal, both representatives agreed that the only issue concerns the length of continuous lawful residents in the United Kingdom, as described by the judge at [19].
4. The judge held [25] that ‘it is only where there is continuous period of lawful presence (including continuing temporary admission) status prior to the consecutive grant of lawful leave that the temporary admission can, exceptionally, count towards the necessary 10 years requirement.’ The judge rejected the appellant’s submission that the grant of temporary admission to the appellant constituted lawful presence in the United Kingdom. He rejected the appellant’s submission that the decision in *Szoma* [2005] UKHL 64 supported the appellant’s submission that temporary admission amounted to lawful residence. The judge referred to the judgement of the Supreme Court in *T* [2012] UKSC 12 which ‘held that the wording of section 11(1) of the Immigration Act 1971 meant that a person granted temporary admission was not lawfully present in the UK for immigration purposes. It is a ‘fiction’ intended to deny certain benefits of presence or residence in the UK.’[24]. In essence, the grounds of appeal argue that the judge’s interpretation of ‘temporary admission’ is wrong in law.
5. I find that the judge did not err in law. I find that the appellant’s reliance on the judgement in *Szoma* is misguided. The First-tier Tribunal was correct to rely on *T*; the judge was correct to find that the appellant’s temporary admission did not amount to lawful presence in the UK for immigration purposes. The Supreme Court distinguished between the judgement in *Szoma* and *T* concluding that the judgement in the former was relevant only to social security provisions and not immigration status. At [39-40], the Supreme Court observed:

“As Stanley Burnton LJ said in the Court of Appeal, Lord Brown was not deciding any question of irremovability under the 1971 Act in *Szoma*’s case: [2010] 1 WLR 2858, para 45. He was concerned with quite different legislation: see para 5. I am confident that, if his mind had been directed to the issue which arises under the 1971 Act, he would have been less ready than he was, in the context of that case, to hold that Lord Bridge’s analysis in *Bugdacy* of the effect of section 11(1) of the 1971 Act was wrong. For my part, I think that Lord Bridge’s analysis was right and it is directly in point in this case: see para 14, above. I would endorse Sedley LJ’s way of reconciling the decision in *Szoma*

with what Lord Bridge said in Bugdacay in JA (Ivory Coast) v Secretary of State for the Home Department [2010] Imm AR 381, para 20, where he said:

"Illegal entrants who are temporarily admitted rather than detained may thus be lawfully present here in the restricted sense material to the decision in Szoma's case, but they remain without an entitlement to be here."

For these reasons I would hold, provisionally, that the word "lawfully" in article 32(1) must be taken to refer to what is to be treated as lawful according to the domestic laws of the contracting state."

6. The First-tier Tribunal judge observed [27] that the appellant did not rely on any other provisions of the Immigration Rules outside the long residence requirements under paragraph 276B nor did the appellant rely on Article 8 ECHR outside the Immigration Rules.
7. I wholly agree with the First-tier Tribunal judge that the appellant has failed to show that she had achieved lawful residence in the United Kingdom and I find also that the judge's analysis contains an accurate application of the relevant jurisprudence. In the circumstances, the appeal is dismissed.

**Notice of Decision**

8. This appeal is dismissed.

Signed

Date 2 February 2019

Upper Tribunal Judge Lane