



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

Appeal Number: IA/33423/2013

THE IMMIGRATION ACTS

Heard at Glasgow
On 11 November 2014

Determination issued
On 13 November 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AYODEJI SOYOBEDE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by McGlashan Mackay,
Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Handley, promulgated on 1 May 2014, dismissing his appeal against refusal of his application for leave to remain on the grounds of 10 years' residence.
2. I am obliged to both representatives for identifying clearly the relevant features of the immigration history and the Immigration Rules.
3. The respondent's refusal letter dated 23 July 2013 held that the appellant's period of continuous lawful residence was first broken from 6 October 2007 to 17 August 2008. However, in a letter of 5 October 2007 the respondent had explained to the appellant that he had 28 days to return his application in a manner complying with requirements. Mrs O'Brien acknowledged the force of the arguments for the appellant in respect of the period specifically discounted in

the refusal letter. The judge went wrong by considering a point in relation to leave extended under section 3C of the 1971 Act. It was overlooked that the appellant's application of 1 November 2007 was made within the period of 28 days which falls to be disregarded under paragraph 276B(v) of the Rules.

4. Mr Winter acknowledged that there is a further doubtful period not specifically addressed in the refusal letter or the determination, although it appears in the immigration history. The appellant made an application on 28 November 2009, rejected on 21 March 2010. Another unsuccessful application was eventually followed by a successful one made on 24 February 2011. This resulted in leave from 24 June 2011 to 24 June 2013. Mr Winter referred to a letter from the respondent dated 15 June 2011 in response to the appellant's stated intention to seek judicial review. This letter says:

Due to the genuine attempts made by yourself to extend your leave to remain ... and because of the length of time ... between submission of your applications and the rejection of them it has been agreed that we can exceptionally award points for immigration status ...

... We have noted your reasons for requesting a reconsideration of your application and in light of your assertions we have exceptionally decided to reconsider our decision of 15 April 2011. This decision to exceptionally reconsider your application in no way sets a precedent for future applications.

5. This later period is not analysed in the refusal letter, no doubt because the decision maker thought that the earlier break in continuity was decisive. Mrs O'Brien submitted that the letter of 15 June 2011 does not commit the respondent to waive the issue of that gap in residence for purposes of a long residence application. She accepted that the respondent should have considered UKBA guidance, *Long Residence and Private Life, v 3.0*, valid from 11 July 2012. Exceptional reasons to overlook breaks in lawful residence for purposes of long residence applications may include "an administrative error made by the UKBA" (page 15).
6. The respondent has not considered in this case whether to exercise that discretion. That would have to be approached in the light of the whole history, the letter of 15 June 2011, and the terms of the guidance. To that extent the decision under appeal is defective, and a further decision by the Secretary of State is required.
7. The determination of the First-tier Tribunal is **set aside**. The following decision is substituted: the appeal is **allowed** on the grounds that the decision appealed against is **not in accordance with the law**.
8. No anonymity order has been requested or made.



11 November 2014
Upper Tribunal Judge Macleman