



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

Appeal Number: IA/08116/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 6 July 2016**

**Decision & Reasons Promulgated
On 8 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS KADHMIYA FALIH HUSSEIN
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant: Mr C. Avery, Specialist Appeals Team

For the Respondent: Mr A. Burrett, Counsel instructed by Saracens Solicitors

DECISION AND REASONS

1. The Specialist Appeal Team has appealed to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Zahed sitting at Hatton Cross on 17 September 2015) allowing the claimant's appeal (d.o.b. 1 July 1945) against the decision to refuse to grant her leave to remain on the grounds of long residence. The judge allowed the appeal under the twenty year rule in Rule 276ADE and also on Article 8 ECHR grounds outside the rules. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant requires anonymity for these proceedings in the Upper Tribunal.

2. Permission to Appeal was granted on Ground 1, as the claimant had not resided for 20 years in the UK at the date of application. Permission to Appeal was refused on Ground 2, as it was held not to be arguable. Judge Landes held that the judge had given adequate reasons for explaining in effect why her circumstances were compelling, namely that by the date of the hearing she had been in the UK for the length of time which would lead her to qualify under the rules, and that she was aged 70, with all her children and grandchildren living in the UK and with no family or assets in Iraq.

Discussion

3. The judge erred in law in allowing the appeal under the twenty rule, as the claimant had not accrued twenty years' residence at the time of application.
4. The issue is whether the error is material, in view of the fact that the judge also allowed the appeal on Article 8 grounds outside the rules, and permission to appeal has not been granted in respect of that part of his decision.
5. Having heard submissions from both representatives on this issue, I ruled at the hearing that the error was not material. The Secretary of State did not renew a permission application in respect of Ground 2 to the Upper Tribunal, and so the decision of Judge Landes stands. The appellant has thus won her human rights appeal, and it matters not that she has only won it outside the Rules. The consequences in terms of the period of leave that she will be granted will be the same.
6. It is strongly arguable that the findings of fact made by the judge support the finding that the claimant meets the alternative requirement in Rule 276ADE of there being "very significant obstacles" to her reintegration into the country of return. But it is not necessary for me to make a finding on this.

Notice of Decision

7. The decision of the First-tier Tribunal allowing the claimant's appeal on human rights (Article 8 ECHR) grounds did not contain an error of law, and the decision stands.

Signed

Date: 8th July 2016

Deputy Upper Tribunal Judge Monson