Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24645/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 18 March 2019	**On 21 March 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JULIANA ONYINYECHI UHUO
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr Mills, Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. In this decision, I shall refer to the appellant as "the respondent" and to the respondent as the "appellant" (as they respectively appeared before the First-tier Tribunal). The appellant was born on 31 July 1997 and is a female citizen of Nigeria. 21 January 2016, she applied for leave to remain in the United Kingdom on the basis of her private life. By decision dated 19 October 2016, the Secretary of State refused that application. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 23 February 2018, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. I find that the judge erred in law. This was a decision against the refusal of human rights application but both parties acknowledge that the appeal turned on the question of whether the appellant met the requirements of paragraph 276ADE of HC 395 (as amended):

> 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that **at the date of application,** the applicant:
>
> (i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and
>
> (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
>
> (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
>
> (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
>
> **(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment);** or
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.
>
> **[my emphasis]**

3. The judge erroneously held at [9] that the relevant date for the calculation of the period under subparagraph (v) was the date of the hearing at the First-tier Tribunal. In the same paragraph, he observes that the appellant met the requirements of subparagraph (v) 'at the time of the decision.' In both instances, the judges has employed the wrong date. The relevant date was the date of application.

4. Secondly, the judge has miscalculated the date for the commencement of continuous residence. At [9], the judge found that the respondent had been wrong to consider that the appellant had entered the United Kingdom for the last time on 29 July 2007. The judge found that the appellant had first entered on 16 February 2006 and that she had taken a family holiday during two weeks prior to 29 July 2007. The judge found that, 'I am satisfied that her departure on holiday does not break her period of continuously living in the UK. As result at the time of the decision the appellant met the requirements [of paragraph 276ADE].' Paragraph 276A provides:

> 276A. For the purposes of paragraphs 276B to 276D and 276ADE(1).
>
> (a) "continuous residence" means residence in the United Kingdom for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the

> United Kingdom for a period of 6 months or less at any one time, provided that the applicant in question has existing limited leave to enter or remain upon their departure and return, but shall be considered to have been broken if the applicant:

the appellant had left the United Kingdom having overstayed. She had entered on a multi-visa enabling her to come and go from the United Kingdom as a visitor within a two-year period provided that she did not spend longer than six months in the country during any single visit. Having overstayed, the appellant no longer had 'existing limited leave to enter' when she returned. The two-week holiday, therefore, did break the appellant's continuous residence. The correct date for the calculation of the beginning of the period was 29 July 2007 as stated by the respondent and not February 2006.

5. In the light of the judge's errors, I have set aside the decision. I have remade the decision. This is an appeal on human rights grounds and I therefore consider the circumstances as at the date of today's hearing. Although the appellant did not satisfy the provisions of paragraph 276ADE, were she to make the same application today following a considerable delay between the First-tier Tribunal hearing and the Upper Tribunal hearing, then she would meet the requirements of the rule. Taking July 2007 as the commencement date, she has as at today been resident continuously for 11 years and 9 months which represents more than half of her current age (21 years and 8 months). As Mr Mills, who appeared for the Secretary of State, acknowledged that his highly relevant factor in the Article 8 analysis.

6. Generally, I would not remake a decision to achieve the same result as the First-tier Tribunal. However, I have decided to do so in this case rather than to exercise my discretion not to set aside the First-tier Tribunal decision. I have done so to acknowledge that the Secretary of State had good grounds for challenging the First-tier Tribunal decision. The appellant, on the other hand, has benefited from the delays inherent in the appeal system.

Notice of Decision

7. The decision of the First-tier Tribunal promulgated on 23 February 2018 is set aside. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 19 October 2016 is allowed on human rights grounds (Article 8 ECHR).

Signed Date 18 March 2019

Upper Tribunal Judge Lane