



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

Appeal Number: UI-2022-006513
FIRST -TIER NUMBER: FHI - HU/53535/2021

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated
On 10th of November 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**RAJESH TREESON
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. On or about 28 June 2023 I concluded that there had been an error of law, for reasons set out in my decision, and gave the opportunity to the parties to make further representations on the outcome of the appeal.
2. As a result of that, although regrettably somewhat delayed, I received representations from the parties as to the final disposal of the appeal.

3. The Respondent, whose submissions and that of the Appellant were set out in the decision, made further representations concerning the matter which I had not ultimately resolved as to whether or not the appeal had come to an end by virtue of the provisions of Section 104(4A) of the NIAA 2002.
4. I did not resolve that issue in that decision but do so now. The provisions of Section 82 of the NIAA 2002 clearly provide the right of appeal to the Tribunal where a decision has been refused in respect of a protection claim, human rights claim or a revocation of protection issue. The provisions of Section 82(1) and the remainder of the Section plainly address the issue of protection and human rights based claims.
5. Under the provisions of Section 104(4A), an appeal under Section 82(1) as above brought by a person while he is in the United Kingdom shall be treated as abandoned if the Appellant is granted leave to enter or remain in the United Kingdom subject to provisions of Section 4B which do not apply in this case. What is clear is that in fact the Appellant claimed to remain based on his long residence in the United Kingdom not on the basis of a protection or Refugee Convention based claim. That much has been clear and accordingly, on the face of it, I did not find that Section 104 was directly applicable to the Appellant because whilst he had been granted leave through his wife on a Tier 2 basis leave to remain seemingly on 24 March 2023, that basis upon which she had leave arose from her being a worker in the United Kingdom and him being a spouse of the worker. Whereas the Appellant was claiming with admitted gaps that he had been in the United Kingdom the required period. The Appellant was granted leave in line with that of his wife and not on a human rights/ protection claim basis seeking the grant of leave.
6. The appeal is now driven by events to have the appearance of a human rights appeal because that was the legal basis on which the appeal was entertained. If the Upper Tribunal finds, it is submitted, that the Appellant meets the relevant Rules and the alleged gaps in his immigration history

are resolved in his favour then the appeal is technically allowed under human rights and the Appellant would be granted in the normal course of events indefinite leave to remain.

7. What is clear is that the issue as originally raised related to the calculation of time and the considerations which relate to paragraph 55 in the case of Akinola, whereby the effect of a decision of the Secretary of State being subsequently quashed in effect on judicial review puts the clock back to run so that 3C leave continues.
8. I note the guidance of the Secretary of State dated April 2023, which addresses how a withdrawn decision will impact upon 3C leave. The calculation of time was originally addressed by Upper Tribunal Judge Blundell in the grant of permission to which reference is made by me in my decision of 18 June 2023 .
9. I find that paragraphs 13-16 of my decision showed the Respondent really did not have any other basis to assert that any gap in time gave rise to circumstances which meant that leave to remain should be refused. I found that consistent with the Respondent's guidance on long residence which is intended to be followed (Version 18 of 2023). There was nothing argued in the additional representations which indicated any other basis with reference to the public interest or the Appellant's personal circumstances including age, strength of connections, personal history, domestic circumstances, compassionate circumstances or any representations made that militated against the appeal succeeding. I therefore absent of evidence of any cogent case against the Appellant obtaining leave to remain find that the appeal should be allowed and there were no other issues, for example the Appellant's knowledge of English language, which militated against the appeal being allowed.
10. The original decision of First-tier Tribunal Judge Howorth was set aside to the extent that the matter was to be remade in the Upper Tribunal. In the light of the above I concluded that the Appellant had established he had

met the requirements of the Rules and there being no public interest, I find the appeal should be allowed under Article 8 of the ECHR.

DECISION

The appeal is allowed. The Appellant was entitled to leave to remain based on long residence. It is a matter for the Respondent how that is now addressed.

ANONYMITY ORDER

No anonymity order is made.

A handwritten signature in black ink, appearing to read 'T. Davey', written in a cursive style.

Signed

Date: 10th of November 2023

Deputy Upper Tribunal Judge Davey