Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31309/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6 August 2014	**On 7 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MS RASHIDA AKHTAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent/Claimant

Representation:

For the Appellant: Mr A Stone, Counsel instructed by Martyns Rose Solicitors
For the Respondent: Mr G. Harrison, Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Tipping sitting at Taylor House on 20 May 2014) dismissing her appeal against the decision by the Secretary of State to refuse to grant her ILR on the grounds of long residence.

The Grant of Permission to Appeal

2. On 23 June 2014 First-tier Tribunal Judge Reid granted permission to appeal on the ground that it was arguable that the judge had materially erred in law by failing to consider fully the documentary evidence in calculating the appellant's time in the UK.

The Rule 24 Response

3. Mr Pal of the Specialist Appeals Team opposed the appeal, arguing that the FTT judge had directed himself appropriately. It was open to him to find that the appellant had not demonstrated that she had been in the UK before early 1999.

The Hearing in the Upper Tribunal

4. At the hearing before me, Mr Harrison conceded that the Rule 24 Response did not address the criticism that the judge had erred in failing to make a finding on when the "clock stopped".

Reasons for finding an Error of Law

5. The appellant made her application for ILR on the grounds of long residence on 6 July 2012, so her application was governed by the "old" rule (paragraph 276B) and not by the new twenty year rule.

6. The appellant's case was that she had arrived in the UK on 16 June 1997 and had lived here continuously ever since. Judge Tipping found that she had not proved that she had arrived in the UK before early 1999.

7. The first ground of appeal to the UT is that the judge thereby ignored the evidence of Dr Lloyd, who operates as a GP in Oxford and who had signed a letter saying that the appellant had been a patient of his since January 1998. But the judge was not obliged to refer to every piece of evidence that was before him, and he reasonably attached greater weight to primary documents such as bank statements than to the written testimony of witnesses whose evidence had not been tested in cross-examination. Moreover, as noted in the refusal letter, Dr Lloyd had not provided consistent evidence. In a separate letter, also in the respondent's bundle, he only affirmed the appellant's presence in Oxford in 1999. It is recorded in paragraph 9 of the judge's determination that Mr Haque on behalf of the appellant accepted that she had not registered with a GP in Oxford until March 2000. This is the date which appears on her medical card (see paragraph 8 of the determination). Accordingly, it was clearly open to the judge not to treat as reliable Dr Lloyd's assertion that he had known the appellant as a patient since January 1998.

8. The second ground of appeal has much greater merit, and the respondent has no answer to it. The judge erroneously proceeded on the premise that the appellant needed to show fourteen years continuous residence going back from the date of her

application on 6 July 2012. So he dismissed her appeal on the ground that she had not shown she was in the country by 6 July 1998. Under the new twenty year rule, the clock is stopped at the date of application. But under the old fourteen year rule, the clock is only stopped following service of a notice of liability to removal or a notice of decision to remove by way of directions. So in the appellant's case, the clock was not stopped until 10 July 2013 when she was served with an ISI5A notice. By that time, on the judge's finding, she had accrued over fourteen years' continuous unlawful residence.

9. The third ground of appeal is that the judge's finding on Article 8 was erroneous in that he gave inadequate weight to the family life which the appellant had established (as an illegal entrant or overstayer). I consider that the judge has given adequate and sustainable reasons for dismissing the alternative claim under Article 8, and his decision on that issue discloses no discrete error of law. But his decision on the applicability of the old long residence rule is vitiated by a material error of law such that it should be set aside and remade.

The Remaking of the Decision

10. The only issue raised in the refusal letter with regard to the appellant's eligibility for ILR under paragraph 276B was that she had not proved fourteen years' continuous residence. The respondent was only prepared to accept that she had been in the UK since 2012.

11. Mr Harrison does not invite me to revisit the judge's finding that the appellant arrived in early 1999, as evidenced by a provisional driving licence that was issued to her on 1 April 1999.

12. Accordingly, the appellant has discharged the burden of proving that she qualifies for ILR under paragraph 276B of the rules.

Conclusion

13. The decision of the First-tier Tribunal dismissing the appellant's appeal on Article 8 grounds did not contain an error of law, and so the decision stands. But the decision of the First-tier Tribunal dismissing the appeal under the rules contained an error of law, and so the following decision is substituted: the appellant's appeal against the decision to refuse to grant her ILR on the grounds of long residence is allowed under paragraph 276B of the rules.

Anonymity

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed Date

Deputy Upper Tribunal Judge Monson

Fee Award Note: this is **not** part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a reduced fee award of £70.

Reasons: The appellant was ultimately successful on her claim under the rules, but she was not successful on her Article 8 claim.