Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/41062/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13 June 2014	**On 16 June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

KWAKU AGYEMAN ADU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Watterson, Counsel
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Ghana born on 10 January 1965. He has appealed with the permission of the First-tier Tribunal against a decision of First-tier Tribunal Judge Blum dismissing his appeal against the decision of the respondent, made on 27 September 2013, to refuse to grant him settlement on the basis of 14 years' long residence, but allowing the appeal on article 8 grounds. The appellant believes the judge's decision that the "clock stopped" for the purposes of accruing continuous residence as a result of the service of a decision notice ("IS81") on 6 October 1997 was erroneous. The appellant accepts he received this document. The dispute is as to whether this notice had the effect the judge believed it had. The grounds seeking permission to appeal also argue the judge's approach to the issue caused procedural

unfairness to the appellant, who was not given the opportunity to address the effect of the IS81 at the hearing. Permission to appeal was granted to argue all grounds.

2. The respondent has cross-appealed on the grounds that the judge erred in his conduct of the proportionality balancing exercise. The judge found the delay and errors in the respondent's handling of the appellant's case reduced the public interest in his removal. The grounds seeking permission to appeal argue the judge erred in his assessment of the ability of the appellant to re-establish his private life in Ghana. This application had not been decided by the First-tier Tribunal before this appeal was listed on the basis of the grant of permission to appeal made to the appellant. The parties agreed that I should proceed by determining firstly whether Judge Blum's decision contains a material error of law because, if his decision ere set aside and re-made allowing the appeal under the rules, the decision on article 8 would become academic. Mr Bramble did not wish to withdraw the respondent's application so I have reconstituted myself as a Judge of the First-tier Tribunal to decide that application. My decision, refusing to grant permission to appeal, is contained in a separate document.

3. Mr Bramble accepted Judge Blum erred on both the points made in the grounds. I agree. The appellant was not given the opportunity to make submissions on the effect of the IS81 notice which, as seen, was the basis on which Judge Blum determined the appeal against the appellant. This was unfair. Mr Bramble also accepted the notice in question, which was a notice of refusal of leave to enter, was not a notice capable of stopping the clock, as the judge found. The requirement of paragraph 276B(i)(b), on which the appellant relied, was as follows:

> "he has had at least 14 years continuous residence in the United Kingdom, excluding any period spent in the United Kingdom following service of notice of liability to removal or notice of a decision to remove by way of directions under paragraphs 8 to 10A, or 12 to 14, of Schedule 2 to the Immigration Act 1971 or section 10 of the Immigration and Asylum Act 1999, or of a notice of intention to deport him from the United Kingdom."

4. Judge Blum found the IS81 fell within the above because the notice included reference to a proposal to set removal directions and as such manifested a clear intention to remove the appellant. He reasoned that it was irresistibly clear from the circumstances that the notice was issued under paragraph 8 of Schedule 2 to the Immigration Act 1971. However, as explained in Ms Watterson's grounds seeking permission to appeal, the respondent's own internal guidance lists the kinds of documents which can have the effect of stopping the clock and the list does not include an IS81. I find the judge erred in finding the appellant had not accrued 14 years' continuous residence for the reason he gave.

5. I set aside Judge Blum's decision to the extent he dismissed the appeal under the long residence rules and I remake the decision as follows.

6. The respondent's case was that the clock stopped due to the service of form IS82 on 22 January 1998. The appellant denied receiving it. Judge Blum found that the appellant had given the Home Office his correct address and the evidence of the efforts of his former solicitors to obtain information about his immigration status supported his claim not to have received the forms posted to him. These findings have not been challenged and I regard them as preserved. The appellant arrived in the UK on 6 October 1997. The first occasion on which the clock could be said to have stopped was 18 March 2013, when the appellant was served with form IS151A with the refusal of his long residence application. The appellant passed the 14 year mark in October 2011. It follows that the appellant succeeds in showing he met the requirements of paragraph 276(i)(b).

7. That leaves the issues of paragraphs 276B(ii), (iii) and (iv). These read as follows:

> (ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:
>
> (a) age; and
> (b) strength of connections in the United Kingdom; and
> (c) personal history, including character, conduct, associations and employment record; and
> (d) domestic circumstances; and
> (e) previous criminal record and the nature of any offence of which the person has been convicted; and
> (f) compassionate circumstances; and
> (g) any representations received on the person's behalf.
>
> (iii) the applicant does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974;
>
> (iv) the applicant has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless he is under the age of 18 or aged 65 or over as at the time he makes his application."

8. Subparagraph (iii) is not relevant because there is no suggestion the appellant has any convictions. Judge Blum did not reach the point of looking at the public interest factors in his considerations and therefore made no findings on them. I note the respondent also stopped in the refusal letter at the point of deciding the appellant could not show 14 years' continuous residence.

9. Mr Bramble argued the correct determination would be to find the decision was not in accordance with the law because the respondent had not yet given any consideration to the countervailing factors. Ms Watterson argued I should decide the matter myself and there was only one possible outcome, which was that the appeal should be allowed.

10. It is now reasonably clear that it is for the Tribunal to determine whether the factors in paragraph 276B(ii) render it undesirable to grant

indefinite leave on public policy grounds (see *MU ('statement of additional grounds' – long residence – discretion) Bangladesh* [2010] UKUT 442 (IAC), paragraph 12). I therefore disagree with Mr Bramble's submission that the case should be "remitted" to the respondent for further consideration. It is also clear from Judge Blum's findings on article 8 that there are no significantly adverse factors which could lead to refusal on this point. He found the appellant, who is now 49 years of age, had spent 17 years in the UK and that he had established a substantial private life during that time, although he had not partner or family life. He noted the appellant had used a false passport to enter the UK and a false identity to obtain employment. However, he had never gone to ground and he had made concerted efforts to chase up his application. He found the appellant was a churchgoer and had not relied on public funds.

11. The use of false documents is a significant matter, as is absconding for a lengthy period. However, the appellant brought himself to the notice of the authorities. Furthermore, the Court of Appeal in *ZH (Bangladesh)* [2009] EWCA Civ 8 found error in attaching too much significance to matters such as using false documents in the context of a claim by an appellant to have established 14 years' unlawful residence during which he had maintained himself by working illegally. It must also be relevant that Judge Blum found the public interest in removing the appellant was diminished by the significant delays and errors on the part of the respondent which he identified. The factors in paragraph 276B(i)(b) are not exhaustive and this point can be taken into account.

12. Having had full regard to the public interest in general and the factors listed in the rule, I do not find it is undesirable for the appellant to be granted indefinite leave to remain on the grounds of his long residence.

13. The papers show the appellant indicated a willingness to submit a Life in the UK Test certificate through his solicitors and this has not been the subject of any adverse comment from the respondent. I regard the requirement of subparagraph (iv) as having been met.

14. I allow the appeal under paragraph 276B of the rules.

DECISION

The Judge of the First-tier Tribunal made a material error on a point of law and his determination dismissing the appellant's appeal insofar as it was brought under the Immigration Rules is set aside.

The following decision is substituted:

The appeal brought under the Immigration Rules is allowed.

No anonymity direction has been made.

No fee award.

Signed **Date 13 June 2014**

Neil Froom, sitting as a Deputy Judge of the Upper Tribunal