



IAC-PE-SW-V1

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

Appeal Number: IA/14705/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8th May 2015**

**Decision and
Promulgated
On 18th June 2015**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**Stephen Mwanza
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Tarlow, Senior Home Office Presenting Officer

For the Respondent: Mr Lay, Counsel instructed by

DECISION AND REASONS

1. The respondent, Mr Stephen Mwanza date of birth 8th December 1983 is a citizen of Zambia. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Secretary of State for the Home Department [SSHD] against the decision of First-tier Tribunal Judge Oakley promulgated on 23rd December 2014 whereby the judge allowed Mr Mwanza's [the Respondent herein], appeal against the decisions of the

SSHD dated 14th March 2014. The decisions by the SSHD refused Mr Mwanza further leave to remain in the UK and determined to remove him from the UK.

3. Mr Mwanza was seeking leave on the basis of ten years lawful residence. Before me it was agreed between the parties that the sole matter in issue was whether Judge Oakley had addressed his mind to the period of 31st October 2005 to 2nd March 2006 and made a finding that the appellant had lawful leave for that period of time, whether by reason of a concession or otherwise.
4. Whilst a number of other issues had been raised in the grounds of appeal, those were no longer being pursued by the SSHD and it was accepted that judge had not made a material error of law in his assessment of whether the appellant had lawful leave save for the period of the 31st October 2005 to 2nd March 2006. It is the SSHD's case that there was a break in the lawful leave of Mr Mwanza of more than 125 days.
5. The Home Office Policy Guidance on Long Residence permits breaks in the lawfulness of the residence for up to 28 days but not for longer periods.
6. On behalf of Mr Mwanza it was submitted that by reference to paragraphs 3 and 31 of the decision it had been accepted that the appellant had had leave from 21 October 2003 until he lodged his application on 18 July 2013. Mr Mwanza's representative, who had been present at the First-tier hearing, stated that it had been conceded by the SSHD's representative at that hearing that Mr Mwanza had had valid leave for that period of time. There is no reference to a concession in the decision. Nor does there appear to be any reference to a concession in the notes of evidence.
7. In paragraph 3 of the decision the judge refers to the decision of the SSHD and states that it was acknowledged in the Letter of Refusal that Mr Mwanza had leave throughout. The Refusal Letter clearly does not accept that the appellant had lawful leave between 31st October 2005 and 2nd March 2006. The details in the letter of refusal are on page 3 of 7.
8. The chronology according to the Reasons for Refusal Letter was that the appellant had been granted leave on 24 November 2004 as a student and that leave was a valid until 31 October 2005. However the appellant did not make a further application until 16 December 2005 by which time his leave had already expired. Once his leave had expired he was without leave until further leave was granted, which was on 2nd March 2006.
9. Mr Mwanza's representative submitted that the full history of the applications had been before the First-tier Judge and after consideration of that full history it had been conceded by the SSHD's representative that Mr Mwanza had had leave during the period of time indicated. Nowhere does such a concession appear in the decision.

10. Such a concession has not been acknowledged within the decision nor in the notes of evidence. Rather Judge Oakley had referred to the letter of refusal as if it had been accepted that that period was covered by lawful residence. That is not what the letter of refusal states.
11. If a concession was made then I am not going to go behind that concession but that it is a matter to be clarified by Judge Oakley. Judge Oakley can confirm whether such a concession was made. If the concession was made then there is no ground upon which Judge Oakley's decision can be challenged further. If the concession was never made, there is still an issue to be decided whether or not there was a break in the continuity of lawful leave.
12. This appeal is to be considered further by First-tier Tribunal Judge Oakley, who has:-

To address the issue of whether a concession was made or whether he has found that the Appellant had lawful leave between 31st October 2005 and 2nd March 2006 and had not contrary to the HO refusal letter overstayed for any period in 2005/2006.

And to clarify the basis of such finding namely whether there was a concession by the Home Office Presenting Officer to that effect or whether there was any other basis for so finding.

13. I allow the appeal to the limited extent that there is an issue of fact which the judge may or may not have decided and it is for Judge Oakley to make clear as set out above whether that issue of fact has been decided and on what basis it was decided.

Signed

Date

Deputy Upper Tribunal Judge McClure