



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/10936/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 13<sup>th</sup> July 2016**

**Promulgated**

**On 27<sup>th</sup> July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**BIPLAB KUMAR SARKAR**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Youssefian, Counsel for Dj Webb & Co Solicitors London  
For the Respondent: Ms Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh born on 1<sup>st</sup> March 1978. He appealed against a decision of the Respondent dated 3<sup>rd</sup> March 2015 refusing his application for further leave to remain in the United Kingdom based on the Appellant's asserted ten years' continuous lawful residence here and against removal directions. His appeal was heard by Judge of the First-tier Tribunal Symes on 23<sup>rd</sup> December 2015. The appeal was dismissed in a decision promulgated on 8<sup>th</sup> January 2016.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Colyer on 8<sup>th</sup> June 2016. The permission states that the Appellant's long residence application was refused by the Respondent because of his alleged deception and only because of this. The judge found that the allegation of deception had not been discharged by the Respondent. The judge however went on to find that the Appellant had not proven ten years' continuous lawful residence due to two breaks in his leave to remain. The permission states that as this particular issue had not been raised as a reason to refuse the application and the Appellant was not given notice that his accrued lawful residence was an issue, the judge erred by failing to give the Appellant the opportunity to properly address the judge's concern on this issue. The permission goes on to state that the judge failed to consider the Home Office guidance relating to arguable errors of law. Under paragraph 276B(v) of the Immigration Rules anyone awaiting a decision on an application made within 28 days of overstaying will not be prejudiced against because it is late.
3. There is a Rule 24 response on file which states that the judge addresses the breaks in residence in paragraph 20 of the decision and it is clear that the Appellant was well aware that this was an issue. Furthermore the Presenting Officer's note records that this point was conceded by the Appellant's representative. The judge raised this issue as a preliminary point before the hearing.
4. Counsel for the Appellant submitted that on 26<sup>th</sup> May 2016 the Appellant's representative made an application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules. This states that on 25<sup>th</sup> May 2016, (which is clearly after the date of the decision), the representative had obtained documentary evidence through a subject access request made to the Home Office on 27<sup>th</sup> January 2016 which conclusively shows that the First-tier Tribunal Judge had erred in law in dismissing the appeal. With that letter of 26<sup>th</sup> May 2016, General Case Information Database records from the Home Office are attached and these show that the Appellant's continuous lawful residence in the United Kingdom was not an issue in dispute. The letter states that should permission to appeal to the Upper Tribunal be granted the representative seeks to adduce this document in support of the Appellant's hearing before the Upper Tribunal. A further letter was sent on 7<sup>th</sup> July 2016 which states that the letter of 26<sup>th</sup> May 2016 should be treated as an application under Rule 15(2A) of the Tribunal Procedure Rules. Counsel submitted that this evidence was not before the First-tier Judge. The evidence being adduced is a case record sheet with notes by the Home Office which came to light after the First-tier application. Counsel submitted that the Respondent in these notes has accepted that the Appellant has spent a continuous period of ten years lawfully in the United Kingdom. He submitted that this goes to the heart of the issue and the sole reason that the application was refused was an allegation of deception which the judge found could not stand. Counsel submitted that there was no delay in producing these notes once they came to light. As soon as the notes were received a letter was sent to the IAC.

5. The Presenting Officer submitted that these notes clearly make a difference to this claim. They state that the Appellant has spent a continuous period of ten years lawfully in the United Kingdom.
6. The rejection of the application is purely based on the making of false representations or the failure to disclose a material fact for the purpose of obtaining leave to enter. This was not upheld by the judge.
7. The Presenting Officer submitted that she accepts that the Respondent has accepted that the Appellant has been in the United Kingdom for a continuous period of ten years lawfully and she cannot go behind what her colleagues have stated so there is an error of law in the judge's decision.
8. Based on what is before me and in particular the GCID case record sheet now produced, which was not before the First-tier Judge, the First-tier Judge's decision cannot stand. In paragraph 18 the judge states that there is no evidence of the asserted dishonesty by the Appellant before him and there is therefore no barrier to the Appellant's suitability for consideration under the Immigration Rules.
9. As this was the only reason the application was refused and as it is clear that the Respondent has accepted that the Appellant has been lawfully in the United Kingdom for ten years I am going to set aside the First-tier Judge's decision.

### **Notice of Decision**

Because of the evidence before me which has been properly submitted under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules the First-tier Judge's decision, promulgated on 8<sup>th</sup> January 2016 must be set aside.

I am remaking the decision and am granting the Appellant's application for further leave to remain in the United Kingdom based on ten years' continuous lawful residence here.

I allow the Appellant's appeal.

No anonymity direction is made.

Signed

Date **27<sup>th</sup> July 2016**

Deputy Upper Tribunal Judge I A M Murray