



IAC-AH--V1

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

Appeal Number: HU/01683/2020

THE IMMIGRATION ACTS

**Heard at Field House (Remotely)
On: 8 June 2021**

**Decision & Reasons Promulgated
On 23 June 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD FURQAN BAIG
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms A Jones, counsel instructed by Britannia Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge SJ Clarke, promulgated on 5 January 2021. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 1 February 2021.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

3. The respondent entered the United Kingdom on 27 January 2010 with entry clearance as a student and has resided here ever since. Subsequently, he has had applications to extend his leave refused, granted and his leave curtailed on occasion. On 4 January 2020, the respondent applied for indefinite leave to remain in the United Kingdom on the grounds of 10 years' long residence. That application was refused on 13 January 2020 and it is this decision which is the subject of this appeal. The principal reason for refusal was that there was, between 25 September 2012 and 24 February 2014, a gap of 517 days in the respondent's lawful leave to remain which meant that he had not had 10 years continuous lawful residence in the United Kingdom. The respondent did not meet any of the requirements of paragraph 276ADE (1) and there said to be no exceptional circumstances.

The decision of the First-tier Tribunal

4. The Secretary of State did not provide a representative for the hearing before the First-tier Tribunal. The judge accepted the respondent's account that he lodged an appeal, in time, against the decision letter dated 25 September 2012 and that he did not withdraw this appeal until 2014. Consequently, the judge decided that the respondent's leave was extended under section 3C of the 1971 Act and that he had 10 years' continuous leave to remain in the United Kingdom.

The grounds of appeal

5. There was a sole ground of appeal, that the judge made a mistake as to a material fact regarding the issues of timeliness and the date of service of the decision letter dated 25 September 2012.
6. Permission to appeal was granted on the basis sought.
7. A detailed Rule 24 response was received. In essence, the respondent did not accept that there was any material error in the decision of the First-tier Tribunal and the suggested mistake of fact referred to in the grounds was said to be unintelligible. With regard to the claim that the respondent appealed out of time in 2021, the grounds argue that extensive reasons were given for finding that it was made in time.

Procedural matters

8. On 8 February 2021, the parties were sent directions inviting their views as to whether this matter could proceed without a hearing. Ms A Jones of counsel replied on behalf of the respondent, stating that a hearing was necessary given the complexity of his immigration history. No response was received from the Secretary of State.

The hearing

9. Mr Melvin relied on the second paragraph of the grounds of appeal, recognising that the first paragraph was unintelligible. He further relied upon his skeleton argument and a screenshot relating to the respondent's Home Office database entry. Mr Melvin proceeded to make the following points. The First-tier Tribunal materially erred in law in relying on the notices of hearing on the multiple party hearing as evidence that the respondent's appeal was in time. The judge was required to look at the 10-year period prior to the ILR application made in 2020 and was wrong to admonish the Secretary of State for failing to raise out of time issue at an earlier date. Inadequate reasons were given for accepting that the respondent's claim was timely. There was evidence available to show that the decision letter was sent on 25 September 2012. Ms Jones had attempted to muddy the waters before the First-tier Tribunal as to the date the letter was sent. No evidence of correspondence between the previous solicitors and the respondent had been provided and neither had the current solicitors made a Subject Access Request. Mr Melvin invited me to find a material error of law and remake the appeal on the basis of the new evidence provided by the Secretary of State.
10. Ms Jones took issue with the Secretary of State's reliance on a document which was never before the First-tier Tribunal and further argued that the reasons given by the First-tier Tribunal Judge were intelligible and supported by evidence.
11. At the end of the hearing, I indicated that the reasons given by the First-tier Tribunal Judge for concluding that the appellant had appealed in time in 2012 were adequate and that the decision was upheld.

Decision on error of law

12. As indicated above, the Secretary of State did not provide a representative for the hearing at the First-tier Tribunal and nor was any evidence produced to support the claim made in the decision letter that the 2012 appeal was made out of time. A judge cannot be criticised for not considering evidence nor submissions which were never before her. The respondent addressed the Secretary of State's assertion that his appeal was made out of time in a detailed witness statement which was provided in his bundle of evidence served on the Presenting Officers Unit and the First-tier Tribunal on 27 April 2020. The appeal was not heard until 9 December 2020 and it cannot be said that the Secretary of State had insufficient time to provide evidence to support her assertions.
13. The judge provided a series of adequate reasons for preferring the respondent's account to that of the Secretary of State. Those reasons included that the Secretary of State had provided no evidence of service [6]; the Secretary of State's assertions as to the date of service was inconsistent in that the dates 15 September 2012 and 25 September 2012 are given in the decision under appeal [6]; neither the Secretary of State

nor the Tribunal had raised the issue of timeliness of the appeal lodged in 2012 and withdrawn in 2014 [7]; the respondent's recollection of events was preferred because he had attended the hearing to be cross-examined on the point and had provided contemporaneous evidence as to the events of 2012 [8] and furthermore an additional date of 27 September 2012 on the 2012 decision provided further confusion as to the date of service. [8].

14. Given the foregoing, the judge was fully entitled to come to the conclusion that it was more likely than not that the respondent's appeal was lodged in time and that he satisfied the requirement of having ten years' continuous lawful residence in the United Kingdom. The decision of the First-tier Tribunal contained no material error of law and the decision is upheld.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is upheld.

No anonymity direction is made.

Signed:

Date 10 June 2021

Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email