



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2023-000253**

**First-tier Tribunal No:**  
**HU/54748/2021 (IA/11854/2021)**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

9<sup>th</sup> November 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**LAMIN SONKO**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Hussain, Counsel

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Interpreter:

**Heard at Manchester Civil Justice Centre on 5 October 2023**

**DECISION AND REASONS**

1. The Appellant is a national of Gambia, date of birth 30 August 1962, who on 11 December 2020 applied for leave to remain. The Respondent refused his application in a decision dated 4 August 2021.
2. The case was listed before Judge of the First-tier Tribunal Austin (hereinafter referred to as the FTTJ) on 22 November 2022 who subsequently dismissed the Appellant's appeal on human rights grounds.

Permission to appeal was granted to the Appellant by First-tier Tribunal Judge Povey and at a hearing before me on 10 August 2023 the Respondent conceded the FTTJ had erred by:

- a. Wrongly stating in paragraph [24] of his decision that the Appellant's leave had been for less than ten years and overlooking the fact that short gaps in lawful residence may be discounted in calculating ten years continuous residence as identified in Hoque & Ors v SSHD [2020] EWCA Civ 1357.
  - b. The FTTJ had failed to have regard to the fact the Appellant's extended absence from UK had been due to Covid and the respondent's own guidance on long residence states "it may be appropriate to exercise discretion over excess absences in compelling or compassionate circumstances, for example where the applicant was prevented from returning to the UK through unavoidable circumstances."
3. Having found an error in law I adjourned the case to enable the Respondent to consider her position and for the parties, if necessary, to either call further evidence or to simply make oral submissions. At today's resumed hearing, Mr Hussain appeared via cvp today whilst myself and Mr McVeety were present at court, along with the Appellant.
  4. Mr McVeety confirmed that having now reviewed the evidence he acknowledged the period of absence pre-Covid came within the Respondent's own guidance on absence from the country and that the absence through the Covid restrictions on travel did not mean the ten-year period was broken. Taking into account the length of period the Appellant had been in this country since Mr McVeety accepted the Appellant had accumulated ten years continuous leave.
  5. In such circumstances I was satisfied the Appellant met the Immigration Rules and allowed the appeal under article 8 ECHR following the principles in TZ (Pakistan) [2018] EWCA Civ 1109.
  6. No anonymity direction was given.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on points of law. Having previously set aside the decision I have remade this decision and allowed the appeal under article 8 ECHR.

Deputy Judge of the Upper Tribunal Alis  
Immigration and Asylum Chamber  
**5 October 2023**