



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/20930/2013**

Appeal Numbers:

IA/20937/2013

IA/20946/2013

IA/20951/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 9 December 2013**

**Determination
Promulgated
On 11 July 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr HARPREET SINGH SOKHI
Mrs PRABHJOT KAUR SOKHI
MASTER KHUSHDEEP SINGH SOKHI
MASTER SUKHDEEP SINGH SOKHI
(NO ANONYMITY DIRECTION)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants Mr B Singh, Solicitor
(HSBS Law UK Office)

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants appealed with permission granted by First-tier Tribunal Judge Mailer on 11 November 2013 against the determination of First-tier Tribunal Judge Maciel who had dismissed the Immigration Rules long lawful residence element of the Appellants' linked appeals, but had allowed their appeals under Article 8 ECHR, in determination promulgated on 21 October 2013. The Appellants are nationals of India, father and dependant wife and children, who had claimed ILR on the basis of 10 years' continuous lawful residence.
2. The judge had found that the Appellants had not shown 10 years' continuous lawful residence as at the date of the Respondent's decisions, i.e., 20 May 2013. There had been a period without leave between April and August 2003, such that the Appellants' 10 years was not completed until August 2013, i.e., post decision.
3. In the grounds of onwards appeal it was asserted that by virtue of section 3C of the Immigration Act 1971, the Appellants' existing leave to remain was extended from the date of the refusal decision(s) to the determination of their linked appeals, which were, of course, heard on 7 October 2013, by which date 10 years' continuous lawful residence had been completed, notwithstanding the Secretary of State's initial refusal. This was in effect by operation of law.
4. By notice under rule 24 of the Upper Tribunal (Procedure) Rules in the form of a letter dated 28 November 2013, the Respondent conceded that the judge had fallen into error by failing to factor in the section 3C leave to calculation of continuous residence, so that the appeals should have been allowed under the Immigration Rules as well as under Article 8 ECHR. The tribunal did not need to call further upon Mr Whitwell for the Respondent, nor was there any matter which Mr Singh for the Appellants wished to raise.
5. The tribunal agreed with both parties. The judge in an otherwise careful determination had overlooked the effect of section 3C of the Immigration Act 1971. In fairness to the judge, the appeals ought to have been conceded by

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the Respondent in the First-tier Tribunal. In view of the material error of law, the determination must be remade and the appeals under the Immigration Rules are allowed.

DECISION

The making of the previous decision(s) involved the making of an error on a point of law. The decision(s) are remade as follows:

The original appeals are ALLOWED under the Immigration Rules as well as under Article 8 ECHR.

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT

FEE AWARDS

The tribunal makes no fee awards as the Appellants succeeded for reasons other than in their applications to the Secretary of State

Signed

Dated

Deputy Upper Tribunal Judge Manuell