The Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: IA/39253/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On March 6, 2015	**On March 9, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR JEYARAMAN ARIMUTHU KONAR
(NO ANONYMITY DIRECTION MADE**)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, born May 10, 1969, is a citizen of India. The appellant first entered the United Kingdom as a domestic worker on July 22, 2007. His leave was valid until January 17, 2008 and on January 16, 2008 he applied for further leave to remain as a domestic worker but this was refused on February 2, 2008. On February 14, 2008 he made a further application to remain as a domestic worker and on March 20, 2008 this was granted until March 20, 2009. On March 20, 2009 he made a further application to extend his stay as a domestic worker and this was granted on May 11, 2009 extending his leave until May 11, 2010.

2. On May 8, 2010 he submitted an application to extend his stay as a domestic worker but this was rejected on May 27, 2010 as an invalid form had been sent. The respondent wrote to the appellant advising him his application was invalid because the old form was used and this had been replaced with a new form from April 27, 2010. He was advised the fee paid would be used towards any subsequent application but if an application were not submitted within twenty-eight days then steps would be taken to refund the fee. The letter concludes-

> "The submission of a valid application, that is, one on the correct form which complies with the above requirements does not guarantee the application will be successful."

3. It appears the appellant did not submit a further application until July 5, 2010 but this was also rejected on July 7, 2010. On July 21, 2010 the appellant lodged a valid application for leave to remain as a domestic worker. This application was granted and his leave was then extended until January 11, 2012 and was further extended until September 12, 2013.

4. On October 22, 2012 he submitted an application for indefinite leave to remain as a domestic worker. The respondent refused his application on September 13, 2013 and at the same time took decisions to remove them from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006. His application was refused because the respondent was not satisfied he met the requirements of paragraph 159G(ii) and (v) HC 395. The application was further refused under paragraph 276ADE HC 395 and the respondent found there were no exceptional circumstances meriting consideration outside of the Rules.

5. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 29, 2013 arguing there had been no break in the continuous period he had been living in the United Kingdom. The matter came before Judge of the First-tier Tribunal Napthine (hereinafter referred to as the "FtTJ") on September 15, 2014 and in a decision promulgated on October 1, 2014 he allowed the appeal.

6. The respondent lodged grounds of appeal on October 10, 2014 and on November 18, 2014 Judge of the First-tier Tribunal Kelly gave permission to appeal finding there were arguable grounds that the FtTJ had erred in his interpretation of the extant leave provisions.

7. The matter originally came before me on January 6, 2015. Following submissions by Mr Wilding (Home Office Presenting Officer) and Mr Davison (the appellant's representative) I found there had been an error of law.

8. My reasons for making this finding were:

   a. The appellant had on the evidence before the FtTJ failed to submit a valid application.
   b. The FtTJ wrongly calculated the period of extant 3C leave.

9. I required the following from the respondent prior to the next hearing:

   a. A copy of the letter dated July 7, 2010 that the respondent sent to the appellant.

   b. The basis on which the appellant's leave pursuant to his application dated July 21, 2010 was granted.

   c. Skeleton arguments on whether these documents affected the current situation and why the appellant should not be granted an extension to his leave under paragraph 159EA HC 395.

10. On February 4, 2015 Mr Wilding wrote to the Tribunal and indicated that he had been unable to locate the letter dated July 7, 2010 that was said to have been sent to the appellant. However, he had reviewed the case notes fully and concluded that the decision to grant the appellant leave pursuant to his July 2010 application was taken on the basis of the original application, namely May 8, 2010. He therefore conceded there was no gap in the five years continuous residence as the extension of his leave in issued in January 2011 was made on the basis of an in-time application. He agreed the appeal should now be allowed under the Immigration Rules because the appellant satisfied paragraph 159G of those Rules.

11. This information was relayed to the appellant's solicitors and I have dealt with this appeal on the papers.

DECISION

12. There was a material error. I have remade the decision and allowed the appeal under the Immigration Rules in light of the additional information.

13. The First-tier Tribunal did not make an anonymity direction. I see no reason to make an order pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no amendment to the order made in the First-tier.

Signed: Dated:

Deputy Upper Tribunal Judge Alis