



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/41389/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 5 November 2015**

**Decision and Reasons
Promulgated
On 12 November 2015**

Before

**MR JUSTICE PHILLIPS
UPPER TRIBUNAL JUDGE WARR**

Between

**SHERAYA SEERAUJ
(Anonymity Direction Not Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Rene of counsel, instructed by Thoree & Co. Solicitors
For the Respondent: Mr P Naith, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Mauritius born on 19 May 1984. She arrived in this country in 2004 and remained as a student. She applied for indefinite leave to remain on 22 May 2014 on the basis of long residence. On 23 September 2014 she was refused leave to remain under paragraph 276B of the immigration rules on the basis that she had not established 10 years continuous lawful residence.
2. She appealed the decision and her appeal came before a First-tier Judge on 13 May 2015. The difficulty in the way of the appellant was that there

appeared to be a 71 day gap in her residence in 2007. On her case she submitted a valid in-time application for an extension of stay as a student in April 2007. The application was rejected in May 2007 on the basis that required documentary evidence was not included. The applicant re-submitted the application in June 2007 which was again rejected but a third application in July 2007 was successful. The First-tier Judge found that the applicant's period of continuous lawful residence was broken because of the failure to provide documentary evidence in the initial application and that further documentary evidence had accompanied the subsequent application. It was accepted that there had been difficulties because the applicant's passport had been lost. The judge dismissed the appeal.

3. The appellant applied for permission to appeal on grounds settled by Mr Rene, who did not appear below. In the grounds Mr Rene took a point under The Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2005. Permission to appeal was granted by First-tier Judge Robertson as it appeared arguable that the respondent had requested information from the appellant which the appellant had then provided and the respondent had at no stage issued an appealable decision.
4. At the hearing before us counsel took an additional point on the respondent's own chronology which appeared to show that the applicant had been given leave to remain following her application in July 2007 from 20 April 2006 (which counsel submits was a mistake and should have been a reference to 20 April 2007) until 30 September 2008. This would have covered the disputed period.
5. Mr Naith said he had gone through the chronology against the requirements of regulation 17(1) (b) of the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007 (SI 2007/882) which came into force on 2nd April 2007 and would have been applicable at the time the appellant made her application on the 26th of that month. The regulation gave an appellant 28 days (at the latest) to comply with a requirement on notification by the Secretary of State of a failure to meet the requirements of regulation 16 which prescribed the documents that were to accompany the application.
6. Mr Naith said that was satisfied that the applicant complied with the requirements of the regulations and accepted that the appeal should be allowed having had the opportunity to consider the chronology of the various applications.
7. In the light of Mr Naith's acceptance that the appellant qualified under the 10 year rule it is not necessary for us to do other than allow the appeal.
8. It is of course the case that the argument which persuaded Mr Naith to concede the case was not one taken before the First-tier Judge.

Nevertheless we are satisfied that her determination was materially flawed in law and we re-make the decision accordingly.

Appeal allowed

Anonymity Order

An Anonymity direction was not requested and is not made.

Fee Award

The First-tier Judge recorded that no fee was paid or payable and in the premises we make no fee award. We note the point on which the applicant was successful was not argued before the First-tier Judge.

Signed
Upper Tribunal Judge Warr
2015

5 November