



IAC-FH-CK-V1

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

Appeal Number: IA/44911/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 October 2015
Decision given 26 October 2015**

**Decision & Reasons Promulgated
On 9 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS SVITLANA MINAKOVA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kotas, Senior Presenting Officer

For the Respondent: Mr B Hawkin, Counsel instructed by Arlingtoncrown Solicitors

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of the Ukraine, date of birth 7 September 1944, appealed against the Secretary of State's decision, dated 22 October 2014, to refuse the application, dated 21 May 2014, to vary leave to remain and to make removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The matter came before

First-tier Tribunal Judge Abebrese, who in a decision promulgated on 1 June 2015 dismissed the Claimant's appeal with reference to the Immigration Rules but allowed the appeal and remitted it to the Secretary of State for a new decision on Article 8 ECHR issues. Permission to appeal was given by First-tier Tribunal Judge Grimmett on 24 September 2015.

3. Irrespective of the basis of the judge's decision or the grounds of appeal it is common ground between the parties that the Secretary of State have taken into account the fact that the Claimant was previously granted discretionary leave from 25 May 2011 to 24 May 2014 i.e. prior to the new immigration rules w.e.f. 9 July 2012. The Claimant's application should have been considered under the Transitional Arrangements in the Discretionary Leave Policy; an extant published policy (section 10) in 2014. As a result the Secretary of State did not give the appropriate consideration to the application or reasons to reject it, on the basis of criminality or otherwise, which was an error of law.
4. I note the Secretary of State granted discretionary leave to remain on Article 8 ECHR grounds in 2011. It was arguable but for the errors, that Article 8 considerations could have been relevant to the 2014 application. Also it is clear that as a fact the Claimant has now accrued ten years of lawful residence in the United Kingdom. It seems inevitable that the outcome of a proper consideration, whichever path is chosen to be followed, means that the Claimant will not be removed.

NOTICE OF DECISION

The Secretary of State's appeal is dismissed. The Original Tribunal's decision stands and the application is returned to the Secretary of State to await a fresh decision.

No anonymity direction is made.

Signed

Date 5 November 2015

Deputy Upper Tribunal Judge Davey