Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/45830/2014

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 8 September 2015 **On 2 December 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

SHAHANA PARVEZ
(ANONYMITY DIRECTION NOT MADE)
Respondent

Representation:
For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Miss N Malik, Counsel, instructed by No 5 Chambers

DECISION AND REASONS

1. I see no need for and do not make an order restricting publicity about this case.

2. This is an appeal by the Secretary of State against a decision of a First-tier Tribunal Judge allowing the appeal of the present respondent, hereinafter “the claimant”, against a decision of the Secretary of State refusing her leave to remain under the ten year residency route.

3. By the time the First-tier Tribunal heard the case the claimant had completed ten years’ lawful residence but when the decision was made

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she was about two months short. The Tribunal was referred to **<u>MU ("statement of additional grounds" – long residence – discretion) Bangladesh</u> [2010] UKUT 442 (IAC)** which makes it clear that the appeal should be allowed because the lawful residence was completed by the time the Tribunal heard the case. That being the position, the judge allowed the appeal under the Immigration Rules. He further indicated that, if he had not allowed the appeal under the rules, he would have allowed the appeal on human rights grounds.

4. The Secretary of State applied for permission to appeal. I think it important to say here, because the Secretary of State's conduct might not make sense if I do not, that in my experience the grounds of appeal relied upon by the Secretary of State are frequently settled by people who do not have the complete file and have no contact with the people who appeared in the First-tier Tribunal.

5. The grounds complain that the judge had materially misunderstood the evidence. The claimant had not achieved ten years' lawful residence. The lawful residence was interrupted by a long period in which she was in the United Kingdom without permission. According to the Secretary of State she did not have leave between 31 October 2007 and 14 December 2011. If that is right, then the case became potentially complicated because the appeal should not have been allowed under the Immigration Rules but the grounds do not challenge the finding that the appeal should have been allowed on human rights grounds.

6. Ms Malik had the advantage of actually knowing what happened in the First-tier Tribunal. She appeared in the First-tier Tribunal and told me very carefully that the Secretary of State's representative in the First-tier conceded that there had been ten years' lawful residence. The judge's notes are easy to read. Although some things might be thought equivocal they show a very clear note by the judge that the Secretary of State accepted at the hearing that the claimant had completed 10 years continuous lawful residence.

7. It is very clear to me that there was a concession. That might be enough to dispose of the case but it is also right to go a bit further. Ms Malik explained that the concession was the result of careful consideration of the file by the Presenting Officer.

8. At some point in her history the claimant had carelessly allowed her leave to lapse. She made an application to extend her leave a day later than it should have been made. There is no shilly shallying about that. She is quite straightforward about the fact that she made a mistake. Ms Malik also said, although she was not able to back this up with reference to particular documents, that at the material time, and possibly now, a very short delay such as that was covered by policy and was deemed not to count as an interruption in lawful residence. I think that may very well be right.

9. I do not know exactly what happened next but Ms Malik says that the long gap between the application being presented and decided some four years later was not the result of any failure on the part of the claimant but was the result of the Secretary of State initially making the decision badly by getting facts wrong and making a wholly unsustainable decision. By the time that was sorted four years had lapsed. Again I have to say from my experience that is eminently believable.

10. Mr Wilding was at a disadvantage because he did not have the complete file and he was not in a position to add anything to this.

11. I remind myself that Ms Malik is a member of the Bar who has given this factual outline in a considered way. She is entitled to be believed.

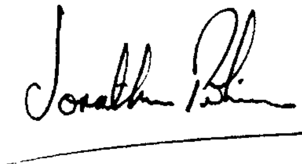
12. I also look at the file and I see that there are things in the file that tend to suggest that she is right, although do not actually prove everything that she recalled. Mr Wilding was not in a position to be as helpful as he should because he has not been given the papers he needs. That is not his fault but that is the position we were in and I have to decide what to do.

13. I am satisfied on what I have heard that when the whole story is put together the First-tier Tribunal Judge's decision was made on the basis of a considered concession on the facts which appears to have been made for perfectly sensible reasons and it follows that the Secretary of State's appeal before this Tribunal ought to be dismissed.

Decision

14. The Secretary of State's appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 30 October 2015