



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/20131/2015**

Appeal number:

THE IMMIGRATION ACTS

Heard at Stoke

On May 5, 2016

**Decision & Reasons
Promulgated**

On May 17, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR DOROTHY TOWERA CHIMBAMBO
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Mills (Home Office Presenting Officer)

For the Respondent: Mr Chimpango (Legal Representative)

DECISION AND REASONS

1. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that for example reference to the respondent is a reference to the Secretary of State for the Home Department.

2. The Appellant is a citizen of Malawi. He entered the United Kingdom on June 20, 2004 as a visitor and was subsequently granted leave to remain as a spouse and then as a Tier 4 partner until January 7, 2013. He then applied for leave to remain as a spouse on January 3, 2013 but this was refused with appeal rights exhausted on December 13, 2013. However, on December 13, 2013 he made a fresh application for leave to remain as a spouse and this was granted until February 8, 2017. On March 9, 2015 he applied for indefinite leave on basis of long residency. The respondent refused this application on May 15, 2015 on the basis he had not produced the Life in the UK certificate.
3. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on May 29, 2015.
4. The appeal came before Judge of the First-tier Tribunal Bircher (hereinafter referred to as the Judge) on August 13, 2015 and in a decision promulgated on September 29, 2016 the Judge allowed the appellant's appeal.
5. The respondent lodged grounds of appeal on October 5, 2015 submitting the Judge had erred in allowing the appeal outright because paragraph 276C made it clear that the discretion lay with the respondent and as the Judge found the Rules were met the appeal should only have been allowed to the extent that the respondent should have been invited to make a lawful decision.
6. Permission to appeal was granted by Designated Judge of the First-tier Tribunal Shaerf on March 2, 2016 on the basis the respondent had not had an opportunity to consider the Judge's decision and the decision should have been remitted back to her for a lawful decision.
7. The matter came before me on the above date and I heard submissions from both representatives.
8. The First-tier Tribunal did not make an anonymity direction. I saw no reason to make one.

SUBMISSIONS

9. Mr Mills relied on the grounds of appeal and referred me to GK (Long residence-immigration history) Lebanon [2008] UKAIT 00011. He referred to paragraphs [23] and [24] of that decision and submitted paragraph 276C of the Rules made clear that "Indefinite leave to remain on the ground of long residence in the United Kingdom may be granted provided that the Secretary of State is satisfied that each of the requirements of paragraph 276B is met." Accordingly, he submitted that since the respondent had yet to exercise that

discretion the appeal could only be allowed under s.86(3)(a) of the 2002 Act insofar as the decision was not in accordance with the law.

10. Mr Chimpango submitted what he described as a Rule 24 response. As it was only served yesterday it could not properly be described as a Rule 24 response but I allowed it to be introduced as submissions. He submitted the Judge had not said he had allowed the appeal outright and the ground of appeal bordered on semantics.
11. Having heard the representatives' submissions, I indicated my findings as set out below.

DISCUSSION AND FINDINGS

12. The Judge's core finding that the appellant had been living here continuously for ten years was unchallenged. The Judge concluded the Rules were met. This too remained unchallenged.
13. The only issue was whether the Judge should have allowed the decision outright or remitted it back to the respondent to consider that aspect of the Rule as Rule 276C indicates that the discretion lies with the respondent.
14. Mr Chimpango did not disagree with the respondent's argument that the discretion to allow indefinite leave lies with the respondent. His submission was that the Judge did not necessarily allow the appeal outright but to use wording from his own legal argument that is I believe "semantics".
15. The Judge stated at both paragraphs [14] and [16] that he allowed the appeal. If the Judge had intended to restrict his grant of the appeal, then it was incumbent on him to say as much.
16. There is therefore an error in law.
17. I do not need to revisit any of the facts of this case and all that remains is required is a fresh and legal decision.

DECISION

18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
19. I set aside that decision to the extent that the appellant's appeal is allowed to the extent that it is remitted back to the respondent, under section 86(3)(a) of the 2002 Act, to exercise her discretion under paragraph 276C HC 395.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I maintain the fee award.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis