Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/12663/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 June 2017	**On 07 July 2017**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MS PEARL NEEQUAYE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Mohanugo, Legal Representative, Moorhouse Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has permission to challenge the decision of First-tier Tribunal Judge Boyes sent on 28 September 2016. The basis of that decision was that the appellant had no right of appeal because the decision made by the respondent dated 1 July 2014 was not an immigration decision under Section 82(2)(d) of the NIAA 2002. The judge stated that "for there to be an 'immigration decision' for the appellant to appeal against, she must have had leave at the date when she made a valid application" (paragraph 23). Earlier the judge had found that:

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"16. The application submitted on the 19 February 2014 was made on form FLR(O) version 12/2013. The Respondent acknowledged receipt of the application by letter on the 20 February 2014.

17. The Respondent then wrote to the Appellant on the 31 March 2014 to inform her that she should have used form FLR(FP). She was told that in order to comply with paragraph A34 to 34D of the Immigration that she had to submit the new form within 7 calendar days of the date of the letter, that no further extension of time would be given and that if the form is not provided within the 7 day timeframe that the application would be rejected as invalid.

18. I accept and find as a fact that the Appellant's representatives received the letter of the 31 March 2014 on the 4 April 2014. It is not unusual for letters from large organisations such as the Home Office not to be posted until several days after they are written. Alternatively it is possible that it was delayed within the postal system. In this case I accept that the letter was not received until the 4 April 2014, which was a Friday, and that practically it would have been difficult for the Appellant to comply within the timescale provided by the Respondent.

19. Whilst the covering letter from the representatives sent with the re-submitted form is dated the 7 April 2014, it can be seen from the postmark on the envelope that the correct form was posted to the Respondent by special next day delivery on the 8 April 2014. It is therefore clear from the chronology that the Appellant and her representative acting promptly on receipt of the letter from the Respondent and forwarded the correct form as quickly as could reasonably have been expected. However, the application was not re-submitted until the 8 April 2014, one day after the deadline set by the Respondent".

2. In granting permission UTJ Smith sated at paragraphs 5 and 6:

"5. There is though an arguable error which is obvious on the face of the Decision. That relates to the terms of the letter dated 31 March 2014. That letter provides that the correct application needed to be sent 'within 7 calendar days of this notification' (my emphasis). The Judge at [17] of the Decision refers to that requirement as being 'within 7 calendar days of the date of the letter'. That arguably makes a difference. At [24] of the Decision, the Judge sets out paragraph 34C of the Rules as that existed at the time which makes clear that notice of invalidity is deemed to be received 'on the second day after it was posted' where notice of validity is given by post. In this case, that would mean that notification was not until 2 April 2014 with the consequence, if that is correct, that the rectified application was made within seven days as it was posted by next day delivery on 8 April 2014.

> 6. If the rectified application were received in time, it is arguable that the Appellant continued to have section 3C leave by virtue of the rectified application. The application made on 2 May 2014 would be a variation of that application and the Appellant's leave would continue to be extended until the date of the refusal on 1 July 2014. If that is right, then the Appellant did have continuing leave at the date of the Respondent's decision under appeal and her appeal would be valid".

3. After discussion between the parties Mr Nath agreed that UTJ Smith's analysis was correct. It is unnecessary for me to say anything further than that paragraph 34C states that an application will be declared invalid "... where it is sent by post, in which case it will be deemed to be received on the second day after it was posted excluding any day which is not a business day". Had the judge properly analysed the facts he would have found that the appellant's rectified application sent on 8 April 2014 was valid. (The judge had clearly accepted that the appellant's representatives did not receive the 31 March 2014 letter until 4 April 2014: see paragraph 18). Mr Nath agreed that if the application was valid, the appellant had continuing leave under Section 3C of the 1971 Act. I find that it was valid.

4. Accordingly the FtT Judge materially erred in law and his decision is set aside.

5. The case is remitted to be heard by the FtT (not before Judge Boyes).

No anonymity direction is made.

Signed Date: 6 July 2017

Dr H H Storey
Judge of the Upper Tribunal