



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17838/2016

THE IMMIGRATION ACTS

Heard at Field House
On 26 July 2018

Decision & Reasons Promulgated
On 14 September 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

Miss POURVI PANKAJKUMAR PANDYA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Jones, Counsel
(Direct Access)

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Reeds on 31 May 2018 against the determination of First-tier Tribunal Judge Raymond who had dismissed the appeal of the Appellant who had sought leave to remain in the United Kingdom on the basis of 10 years' continuous lawful residence and who had also raised Article 8 ECHR grounds. The decision and reasons was promulgated on 15 September 2017.
2. The Appellant is a national of India, born there on 5 December 1977. The Appellant had entered the United Kingdom as a Tier 4 (General) Student on 4 February 2006, which leave to remain was renewed until 23 April 2013, prior to which she sought renewal. Such renewal was refused with no right of appeal, following an allegation of TOEIC cheating made by ETS. There is an issue about service of that Home Office decision.
3. It should be noted now that the TOEIC element of the appeal is of no further concern as First-tier Tribunal Judge Raymond found that the Home Office had failed to prove that allegation to the required standard. There was no cross appeal by the Home Office and those unchallenged findings in the Appellant's favour accordingly stand.
4. It was also asserted by the Home Office that the Appellant's lawful continuous leave had been broken on 6 April 2014, so that by the time the paragraph 276B application had been made (refused on 11 July 2016 and the subject of the appeal heard by First-tier Tribunal Judge Raymond), the Appellant had no leave to remain.
5. The issue of service by the Home Office of the decision dated 6 April 2014 was central to the long residence element of the appeal, and was determined by the judge against the Appellant. There were a number of difficulties with the Appellant's case, but one of the judge's significant findings was that the Appellant had notified her (minor) change of address to the Home Office by letter dated 18 June 2014, accompanied by a certificate of posting "stamped 20.7.14 (sic), a month later in fact". The clear inference is that the Appellant's documents were unreliable and so the Appellant's credibility was undermined.

6. As Mr Jones for the Appellant pointed out in submissions, the certificate of posting as before the judge was stamped “20 JU 14”, which can equally be read as 20 June 2014. The judge’s finding was mistaken and unsustainable.
7. While this issue was explored in dialogue with Mr Jones and Ms Everett, it emerged that the copy of the Appellant’s application to the Home Office dated 23 February 2016 included in the Home Office bundle before the judge was incomplete. All of the even numbered pages were missing. This was not noted in the determination, yet was plainly a document of substantial importance, going to the issue of the Appellant’s address or addresses and their notification to the Home Office and thus as to her credibility generally.
8. In the tribunal’s view, there was a further element which added concern to this combination of errors. No doubt it was unintentional, but the judge expressly himself in unguarded terms open to be interpreted as hostility, e.g., at [25]. Judicial restraint is normally desirable as it contributes to a fair hearing. Such restraint was unfortunately lacking, as Mr Jones submitted.
9. For all of these reasons, the tribunal held that the Appellant’s appeal succeeded. The continuous lawful long residence element of Judge Raymond’s decision and his findings on that issue must be set aside. It was not possible to proceed to an immediate rehearing as the Home Office bundle was incomplete. It is a matter for the Home Office but it may be sensible for the decision under appeal to be reviewed prior to the remitted hearing.

DECISION

The appeal is allowed

The making of the previous decision involve the making of a material error on a point of law, on the continuous lawful long residence issue. That part of the decision is set aside, to be reheard in the First-tier Tribunal by any judge except First-tier Tribunal Judge Raymond.

Signed

Dated 26 July 2018

Deputy Upper Tribunal Judge Manuell