Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04414/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 November 2019	**On 11 December 2019**
Extempore Decision	

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MS EMELITA LARGO QUIDLAT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Ume-Ezeoke, Counsel, instructed by Vine Court Chambers
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant is a citizen of the Philippines who entered the UK on 19 August 2009.

On 21 June 2018 she applied for leave to remain on the basis of long residency and her private life. The application was refused. In respect of her long residency claim, the respondent stated that paragraph 276B of the Immigration Rules could not be satisfied because the appellant had spent less than 10 years in the UK.

The appellant appealed to the First-tier Tribunal where her appeal came before First-tier Tribunal Judge Herbert ("the judge") on 23 April 2019. The judge dismissed the appeal. The appellant is now appealing against that decision.

Neither the appellant nor a representative on her behalf attended the hearing in the First-tier Tribunal. The judge proceeded to consider and determine the appeal nonetheless.

It is apparent from a review of the Court file that the notice of hearing was sent to the incorrect address (for both the appellant and her representative) and I accept the evidence of the appellant that she was not aware of the hearing.

This is a clear case of procedural unfairness, as the appellant, through no fault of her own, did not have notice of – and therefore did not attend, despite wishing to do so –the hearing. I advised the parties that I would, on this basis, set aside the decision and my preliminary view was that the matter should be remitted to the First-tier Tribunal to be heard afresh.

Mr Ume-Ezeoke, on behalf of the appellant, submitted that I should proceed to remake the appeal on the basis that the appellant has accrued over ten years of continuous lawful residence such that the requirements of paragraph 276B of the Immigration Rules are now satisfied. Ms Jones accepted that the appellant now satisfies the ten years' continuous residence requirement under paragraph 276B and that, in the refusal letter, length of residence was the only reason paragraph 276B was said to be not satisfied. She could not identify any suitability or other reasons why the appellant should not be granted leave on the basis of 10 years continuous residence.

As explained in *TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department* [2018] EWCA Civ 1109 at [34]:

> *"where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."*

Given the time the appellant has spent in the UK, and the relationships she has established, I am satisfied that article 8(1) is engaged. Ms Jones did not contest this and I note that in the reasons for refusal letter the respondent accepted that the appellant enjoys a degree of private life in the UK.

Removal would be disproportionate under article 8(2) for the reason given in *TZ*: as the appellant satisfies the requirements of the Rules (in this case, the Rule at Paragraph 276B), it would be disproportionate for her to be removed.

Notice of Decision

The decision of the First-tier Tribunal is set aside.

I remake the decision by allowing the appeal.

No anonymity direction is made.

Signed

Upper Tribunal Judge Sheridan

Dated: 9 December 2019