IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003774

First-tier Tribunal No: HU/53494/2021
IA-13193-2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9 September 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MANIAM THAVARAJAH

Respondent

Representation:
For the Appellant: Ms S Cunha, Senior Presenting Officer
For the Respondent: Ms N Bustani, instructed by Oaks Solicitors

Heard at Field House on 5 August 2024

DECISION AND REASONS

1. The Secretary of State appeals with the permission of Judge Easterman against the decision of Judge Mill ("the judge"). By his decision of 20 January 2022, the judge allowed Mr Thavarajah's appeal against the Secretary of State's refusal of his human rights claim.

2. To avoid confusion, I will refer to the parties as they were before the First-tier Tribunal: Mr Thavarajah as the appellant and the Secretary of State as the respondent.

Background

3. The appellant is a Sri Lankan national who was born on 5 September 1962. The chronology of this case is critical to its resolution and must be set out in some detail. I take what follows largely from the judge's summary at [8]-[15] of his decision.

4. The appellant entered the United Kingdom on 29 June 2008. He claimed asylum on 2 July 2008. That claim was refused on 16 September 2009. On 29 September 2009, the appellant lodged an appeal to the Asylum and Immigration Tribunal. On 2 March 2010, the First-tier Tribunal (which had, by then, replaced the AIT) dismissed the appellant's appeal. Permission to appeal against that decision was sought but that application was refused by the FtT on 31 March 2010 and by the Upper Tribunal on 2 June 2010. The appellant had therefore exhausted his appeal rights.

5. The appellant made further representations on 22 September 2011. The respondent refused to treat those representations as a fresh claim under paragraph 353 of the Immigration Rules. The date of that decision is not clear from the papers.

6. On 14 July 2014, the appellant applied for leave to remain on Article 8 ECHR grounds. That application was refused with no right of appeal on 13 October 2014. I suspect, although it is not clear from the papers, that the claim was certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002.

7. On 13 March 2015, the appellant applied for leave to remain on Article 8 ECHR grounds for a second time. That claim was 'rejected' on a date which is not before me.

8. On 7 August 2015, the appellant made further representations in connection with his asylum claim. The respondent refused to treat those representations as a fresh claim. That decision was subsequently reconsidered, with the respondent reaching the same ultimate conclusion on 12 April 2016.

9. In August 2016, however, the respondent reconsidered the decision which was made on 13 October 2014, following the settlement of judicial review litigation in connection with that decision under reference JR/14214/2015. She refused the application afresh on 23 August 2016, but this decision carried a right of appeal.

10. The appellant duly appealed to the First-tier Tribunal and his appeal was heard by Judge L Rahman on 15 March 2018. On 3 April 2018, Judge Rahman allowed the appellant's appeal on Article 8 ECHR grounds. He found, in summary, that the appellant enjoyed a family life with his daughter, who was (he found) a qualifying child who could not reasonably be expected to leave the United Kingdom with her father.

11. The respondent did not appeal against Judge Rahman's decision and, on 16 May 2018, the appellant was granted leave to remain as a parent until 16 November 2020.

12. On 10 November 2020, the appellant applied for leave to remain on the basis of his private life. The application was accompanied by a covering letter from the appellant's solicitors. Two submissions were made in that letter. It was

submitted that the appellant continued to enjoy a family life with his daughter, who had been granted ILR and had made an application for naturalisation. It was also submitted as follows:

> Although the applicant is eligible for ILR under long residence rules, we make further extension because he has not passed the relevant exams . The Applicant was initially granted TA under section 11 of the 1971 and was subsequently granted Discretionary Leave. Therefore, TA should be considered as lawful residence under the rules. However, he has not sat for the English exam and Life in the UK test due to the current circumstances. Please note that he visited Sri Lanka in Feb 2020 and was unable to return until June 2020 because of the Covid 19 lockdown and travel restrictions. Therefore he did not have the time to prepare for the exams. However he intends to sit for the exams next year and intends to make an application for ILR.

13. The respondent considered and refused that application under paragraph 276ADE of the Immigration Rules, and on Article 8 ECHR grounds, on 28 June 2021. No consideration was given to the submission on long residence.

The Appeal to the First-tier Tribunal

14. The appellant appealed to the First-tier Tribunal.

15. On 10 November 2021, the appellant's solicitors filed an Appeal Skeleton Argument in compliance with the FtT Procedure Rules. It was submitted in that skeleton argument that the FtT should 'consider the application under the ten year long residence route because the appellant submitted representations and asked the respondent to consider the application under the ten year rule.' The submission was that the appellant had enjoyed ten years of continuous lawful residence by reference to the fact that he had been on temporary admission before he was granted limited leave to remain. Whilst the appellant was unable to satisfy the English language requirement in paragraph 276B of the Immigration Rules, he was eligible for an extension of stay under paragraph 276A1. Further submissions were also made about the appellant's Article 8 ECHR claim outside the Immigration Rules.

16. In the review which followed the Appeal Skeleton Argument, the respondent engaged with the appellant's submissions on long residence and maintained that he was not eligible for leave on that basis because he 'has not satisfied all of the requirements set under the 10 year long residence rules'. The conclusions in respect of paragraph 276ADE and Article 8 ECHR outside the Rules were maintained.

17. The appeal then came before the judge, sitting at Hatton Cross, on 19 January 2022. The appellant was represented by Philip Nathan of counsel. The respondent was represented by a Presenting Officer. The judge heard oral evidence from the appellant. His daughter was present but the Presenting Officer did not seek to ask her any questions and she was not called. Submissions were made by both representatives before the judge reserved his decision.

18. In his reserved decision, the judge recounted the appellant's immigration history in some detail, at [8]-[15]. He noted that the appellant's first human rights appeal had been successful before Judge Rahman and he indicated that he would treat that decision as his starting point in accordance with *Devaseelan*

[2003] Imm AR 1: [17]. The judge noted at [19]-[21] that the appellant's daughter was now married and British and that she had not lived with the appellant since November 2020.

19. At [22] of his decision, the judge considered the submissions made by the representatives on the long residence rules. The judge summarised the appellant's status at the relevant times in the following way:

> The Respondent's representative accepts that the appellant was granted Temporary Admission on 2 July 2008, initially until 26 January 2011 upon which date he was granted further Temporary Admission. This period of Temporary Admission came to an end briefly on 11 July 2016 for a period of 2 days until 13 July 2016 when he was again granted Temporary Admission which subsisted until he was granted limited leave to remain in the UK after his former successful Article 8 appeal.

20. The judge noted at [23] that the appellant had been granted permission to work as a chef in 2012 and that he had supported himself and his daughter without recourse to public funds. He noted the submission that there was a shortage of such chefs in the UK: [24]. The judge noted at [25] that the appellant had been present in the UK for more than 13 years; that he had been paying tax and national insurance; and that he was a skilled worker.

21. At [26], the judge stated that the appellant could communicate in English although he had not attained any qualifications and had relied upon the services of an interpreter during the hearing. At [27], he concluded that the appellant was of good character; that he had no convictions; and that he had complied with reporting restrictions and conditions when on temporary admission.

22. At [28], the judge recorded that the appellant had been advised to proceed down the same route as his daughter, who had secured ILR on the long residence route after completing ten years long residence and passing the relevant English language test. He accepted that the appellant had been unable to pass the English test before making his application for leave to remain, and that this was as a result of the pandemic. He accepted this explanation as credible at [30].

23. At [31], the judge noted that the respondent had failed in the decision under challenge to identify that the appellant had made submissions seeking an extension of stay on the ground of long residence in the UK under paragraph 276A1 of the Immigration Rules.

24. At [32]-[33], the judge noted that the stance adopted by Mr Nathan had shifted slightly during the hearing. It had originally been submitted that the appellant had enjoyed lawful residence from 2008 onwards, by reference to his temporary admission and his leave to remain, both of which amounted to lawful residence under paragraph 276A(b) of the Immigration Rules.

25. By the end of the hearing, however, it had been accepted by Mr Nathan that there was a period of two days in 2016 when the appellant had been detained, which had interrupted the period of temporary admission. Mr Nathan submitted that this was unfortunate, and that steps should have been taken to secure a declaration that this period of detention was unlawful; the appellant had an outstanding application at the time and was not subject to imminent removal. The judge concluded [33] by noting that "[b]ut for the technicality over these 2

days the appellant would meet the necessary 10 year continuous lawful residence component."

26. At [34], the judge recorded (correctly) that it was not for him to find that the appellant's detention in 2016 had been unlawful. He stated that he was entitled to take all the facts into account, however, and that "the spirit of the 10 years period has been fulfilled by the appellant." The next paragraph was in the following terms:

> [35] There is an expectation in appropriate cases that the Respondent should adopt flexibility and approach applications fairly. Given that the only issue here is the 2 day period which breached the Appellant's lawful residence then I would have expected the Respondent to exercise flexibility in favour of the Appellant. It seems to me that the reason why this did not happen is perhaps best explained by the fact that the relevant decision maker failed to identify that the Appellant was seeking a further period of limited leave under Rule 276A1 and instead erroneously focused upon Rule 276ADE .

27. At [36], the judge found that there was a compelling reason to justify a freestanding Article 8 ECHR assessment because the appellant met "the spirit" of paragraph 276A1. The judge then undertook an assessment of Article 8 ECHR outside the Immigration Rules, concluding that there was no public interest in the appellant's removal and that the "average member of the British public would most likely find it to be fair and reasonable to grant the appellant a further period of time limited leave." He therefore concluded that it would be disproportionate to refuse the application for further leave: [39]. The decision concluded as follows:

> [40] In allowing the appeal under Article 8 of the ECHR, consideration of the Appellant's circumstances will now fall back to the Respondent for the purposes of a relevant grant of leave. The appeal having been materially successful with regards to Paragraph 276A1, the Appellant can expect a further period of limited leave. In addition to the Appellant requiring in due course, for the purposes of a fresh application for leave to be made, to take the steps necessary to evidence sufficient knowledge of the English language and sufficient knowledge about life in the UK, in accordance with Appendix KoLL, it may be, if so advised, that efforts now require to be made seeking a declarator that his 2 day period of detention commencing on 11 July 2016 was unlawful as the same issue will possibly present itself in the event of such further application being made with reference to Paragraph 276B of the Immigration Rules.

The Appeal to the Upper Tribunal

28. On 28 January 2022, the Secretary of State sought permission to appeal to the Upper Tribunal. The two grounds are poorly drafted. By the first, it was contended that the judge had misdirected himself in law in finding that the spirit of paragraph 276A1 was met despite counsel's concession that the appellant's temporary admission had been broken in 2016. By the second, it was submitted that the judge had given weight to immaterial matters and had erred in finding that there were very significant obstacles to the appellant's re-integration to Sri Lanka.

29. Judge Easterman considered these grounds to be arguable. As I understand it, Judge Easterman's decision was made on 14 February 2022, although it was seemingly uploaded to the MyHMCTS portal on 5 September 2022.

The Application to Review the Decision of the First-tier Tribunal

30. On 31 January 2022, and therefore before Judge Easterman's decision was made, the appellant's solicitors applied for a review of Judge Mill's decision. They argued that counsel had been wrong to concede that the events of 2016 had broken the appellant's lawful residence and that the judge should have found that the appellant met the requirements of paragraph 276A1, rather than finding that he met the 'spirit' of that provision.

31. On 14 February 2022, Resident Judge Holmes refused to review Judge Mill's decision.

Parallel Pre-Action Correspondence

32. On 26 January 2022, the appellant's solicitors took the step which had been foreshadowed at [40] of Judge Mill's decision, and sent a Letter Before Action to the respondent. It was maintained in that letter that the appellant had been unlawfully detained in 2016. The Secretary of State was invited to confirm that the appellant's detention had been unlawful and to provide compensation for the same.

33. On 13 May 2022, the appellant's solicitors reached an agreement with the Government Legal Department that the appellant would receive damages in an agreed sum. I will return to consider that correspondence in greater detail below.

Proceedings Before the Upper Tribunal

34. The first listing of this appeal was before UTJ Gleeson and DUTJ Sills on 31 July 2023. That listing proved to be ineffective because documents had not reached the respondent and because there was insufficient time in the court day to remedy the problem. The appeal was duly relisted before me on 5 August 2024. It is not clear from the Upper Tribunal's records why there was a delay of more than a year.

35. The appellant's solicitors filed a response to the grounds of appeal on 18 July 2024, although it bears a date of 2 August 2023. That response was accompanied by an application to adduce further evidence. The further evidence concerned the lawfulness of the appellant's detention (as above) and evidence of other cases "in which Temporary Admission was counted towards continuous residence". Those arguments were developed in a skeleton argument which was filed and served on 31 July 2024.

Submissions

36. Given the protracted history of these proceedings, I gave the advocates time in which to ensure that they each had the relevant documents. On resuming the hearing, Ms Cunha confirmed that she was aware of the chronology I have outlined above, that she had all of the documents, and that she was ready to proceed.

37. Ms Cunha submitted that the appellant was not entitled to rely upon his temporary admission from 2008 onwards as lawful residence. He had been granted temporary admission initially because of his asylum claim but that claim had failed and his appeal rights had been exhausted. It was only some years later that he had finally been granted leave to remain and there was no connection between the grants of temporary admission from 2008 and the eventual grant of leave. It was only where there was such a connection that temporary admission could count as lawful residence. Ms Cunha submitted that her argument in this regard was supported by *SC (Jamaica) v SSHD* [2017] EWCA Civ 2112; [2018] 1 WLR 4004, at [54] and [73] in particular. Consequently, it was only the period of temporary admission from July 2016 which could be counted as lawful residence.

38. Ms Cunha accepted that Judge Mills, and the Secretary of State's grounds of appeal, were wrong in suggesting that there had been two periods of detention in 2016. She accepted that there had been one period of detention in July 2016. That detention was not unlawful, and the judge was wrong to hold that the appellant could even meet the 'spirit' of the Immigration Rules.

39. Ms Bustani submitted that the judge had fallen into error in concluding that the appellant was only able to meet the spirit of the Immigration Rules. It was in fact clear that he was able to meet paragraph 276A1 in full. The relevant chronology was straightforward. The applicant had been granted temporary admission when he claimed asylum on 2 July 2008. He had permission to work from 2012. He had been granted limited leave to remain on 16 May 2018 as a result of Judge Rahman's decision in 2018. It was not open to the Secretary of State to submit that the two days of detention in 2016 had broken the appellant's lawful residence, since it had clearly been accepted that that detention was unlawful and the appellant had received damages in the sum of £2500.

40. Ms Bustani submitted that there was nothing in the authorities which supported Ms Cunha's submission that there had to be some sort of linkage between the temporary admission and the leave which was eventually granted.

41. Ms Bustani submitted that the respondent's appeal was unmeritorious even if she was wrong in her submission about the two day detention in 2016. The judge had undertaken a very thorough consideration of the Article 8 submissions and had not treated the "spirit of the Immigration Rules" conclusion as determinative.

42. In reply, Ms Cunha submitted that there had been two distinct periods of temporary admission: one in connection with the asylum claim and one in connection with the human rights claim. Ms Cunha was unable to assist me with the origin of the judge's observation that the appellant's temporary admission had come to an end in 2011. She confirmed that the temporary admission documents which were available to her (identifiable by the Immigration Service form number IS96) granted open ended temporary admission, rather than finite periods. She maintained the submission that the first period concerned the appellant's asylum claim, whereas the second period concerned the human rights claim. The appellant was not entitled to aggregate the two periods.

The Immigration Rules

43. I am concerned in this appeal with provisions of the Immigration Rules which were deleted by HC590 on 11 April 2024, but which were in effect at the time of

the decisions which were made by the respondent and the judge. Prior to their deletion, those paragraphs provided as follows.

44. Paragraph 276A provided various definitions of terms which appeared in the subsequent long residence rules. Amongst those definitions was this:

> (b) 'lawful residence' means residence which is continuous residence pursuant to:
>
> (i) existing leave to enter or remain; or
>
> (ii) temporary admission within section 11 of the 1971 Act (as previously in force), or immigration bail within section 11 of the 1971 Act, where leave to enter or remain is subsequently granted; or
>
> (iii) an exemption from immigration control, including where an exemption ceases to apply if it is immediately followed by a grant of leave to enter or remain.

45. Paragraph 276A1 provided for an extension of stay on grounds of long residence in the United Kingdom where an applicant was able to meet each of the requirements in paragraph 276B(i)-(ii) and (v). It therefore made provision for those who were unable to meet all of the requirements for indefinite leave to remain under paragraph 276B, including the English language and Knowledge of Life in the UK requirements which this appellant cannot demonstrably meet.

46. Paragraph 276B(i) required that an applicant "has had at least 10 years continuous lawful residence in the United Kingdom". Paragraph 276B(ii) required that there should be no reasons why it would be undesirable for the individual to be given leave on grounds of long residence. And paragraph 276B(v) required that the applicant should not be in the UK in breach of the immigration laws. That provision was subject to certain well-litigated exceptions with which I am not concerned in this appeal.

Analysis

47. The appellant entered the UK in June 2008 and claimed asylum on 2 July 2008. He was granted leave to remain on 16 May 2018. His subsequent application for further leave was made in time. His leave was therefore extended by operation of section 3C of the Immigration Act 1971 whilst the application was decided and whilst this appeal is pending. The judge was undoubtedly correct to hold that he has enjoyed lawful residence since 2018.

48. The controversy in this appeal focuses, instead, on the period or periods prior to the grant of limited leave to remain. The judge concluded that the appellant had enjoyed temporary admission from July 2008 to May 2018 but that there had been an interruption of two days in July 2016, when the appellant was detained. The appellant now submits that this conclusion was wrong, and invites me to uphold the FtT's decision to allow the appeal on Article 8 ECHR grounds for reasons other than those given by the judge. There is a properly constituted response to the grounds of appeal, raising that argument in compliance with rule 24(1B) of the Tribunal Procedure (Upper Tribunal) Rules 2008, and Ms Cunha raised no objection to the admission of that argument. It is with that argument,

rather than the respondent's grounds of appeal, that I propose to begin my analysis.

49. Ms Cunha did not object to the admission of the additional evidence upon which that argument is primarily based. I am satisfied that it is proper to admit that evidence under rule 15(2A) of the Procedure Rules. It was not available to the First-tier Tribunal and there has been no unreasonable delay in adducing it. No mention was made before me of the three-part *Ladd v Marshall* [1954] 1 WLR 1489 test for the admission of such evidence but I am also satisfied that the evidence meets those tests. It could not have been produced at trial because it did not exist at that stage. It is obviously credible evidence, comprising as it does correspondence between two firms of solicitors engaged in pre-action correspondence. And it might have had an important influence on the outcome, bearing as it does on the sole basis on which the judge concluded that the appellant's temporary admission had been interrupted.

50. As I have explained above that evidence takes the form of correspondence between the appellant's solicitors and the Government Legal Department following pre-action correspondence which began very shortly after the decision of the FtT in this case. It is apparent from that correspondence that litigation was avoided upon the respondent agreeing to pay damages to the appellant. I was told by Ms Bustani that a sum of £2500 in damages was subsequently paid to the appellant.

51. What I have not been able to find within that correspondence is any formal acceptance on the part of the respondent that the applicant's detention in 2016 was unlawful. It is difficult to see any other reason why damages might have been paid to the appellant, however, and there is no evidence from the respondent to suggest that there was any other basis for making that payment. The settlement followed on from a clear pre-action letter which alleged that the two day period of detention was unlawful and the damages which were paid to the appellant seem to fall within the correct range for a short period of unlawful detention for a person in the appellant's position. The respondent has had ample opportunity to provide evidence to show that these damages were paid for a reason other than an acceptance that the appellant's detention was unlawful but there is no such evidence before me. The only proper inference is that the Government Legal Department accepted that the two day period of detention was unlawful for the reasons given in the pre-action letter and that damages were paid accordingly.

52. Before the judge, the appellant's counsel accepted that the two day detention in 2016 interrupted his otherwise continuous temporary admission. Ordinarily, such a concession would have been correctly made, since temporary admission and detention are mutually exclusive under s11(1) of the Immigration Act 1971. A person cannot, in other words, be temporarily admitted whilst they are detained under immigration powers. In this case, however, where it is accepted that the appellant's detention was unlawful, it cannot be the case that such a period of detention interrupted the appellant's temporary admission. To hold otherwise would be to deny the appellant the benefit of that temporary admission as the result of an unlawful act, which would surely be unconscionable. In my judgment, therefore, Ms Bustani is correct in her submission that the unlawful detention did not have the effect of interrupting the appellant's temporary admission. In holding otherwise, the judge erred, albeit through no fault of his own.

53. Having accepted the appellant's submission in respect of the short period of detention, I turn to consider Ms Cunha's remaining objections to the appellant's claim that he accrued ten years continuous lawful residence from July 2008.

54. The point upon which Ms Cunha primarily focused is not one which appears in the Secretary of State's grounds of appeal. It is the point which I have summarised at [37] above: that there must be some sort of connection between the temporary admission and the leave to enter or remain which is subsequently granted. With reference to the chronology which I have set out in some detail above, Ms Cunha submitted that the appellant had been granted temporary admission in 2008 in order to pursue an asylum claim which failed, and it was only in 2018 that he was granted leave to remain on grounds entirely unrelated to that claim.

55. There was no application to vary the Secretary of State's grounds orally or in writing and I see no reason to permit the Secretary of State to raise an entirely new (and novel) argument without proper notice to the appellant or the tribunal in this way. The point was evidently developed by Ms Cunha on her feet and took Ms Bustani by surprise. Had I been asked to permit a late and unparticularised variation of the grounds so as to permit this argument, I would have refused permission.

56. In any event, there is no merit in Ms Cunha's argument. I reach that conclusion for two reasons. The first concerns the nature of temporary admission. There was a tendency during Ms Cunha's argument (as I think she accepted) to elide the concepts of temporary admission under s11 of the Immigration Act 1971 and statutorily extended leave under section 3C of that Act. As is well known, the latter provision provides protection to a person who makes an 'in time' application for leave to remain, by extending their leave whilst the application and any subsequent appeal is pending. The statutory extension of the leave is therefore tied or connected to the application made to the Secretary of State; it is that application which engages the provision and the statute provides that the extension shall come to an end when the application or the appeal is finally decided.

57. Temporary admission is (or was, before its replacement with immigration bail) a different creature. It is granted by an Immigration Officer to a person who is otherwise liable to be detained. Form IS96 records the date on which the temporary admission was granted but no end date is given. Temporary admission would be brought to an end by a person's detention or removal, or by their being granted leave to enter or remain. Other formal notices might also bring temporary admission to an end, including a notice that a person is liable to removal as an illegal entrant. But there is no statutory mechanism which is comparable to that which is found in section 3C, which brings temporary admission to an end at the point that an application or appeal is finally determined. Temporary admission may therefore continue despite the fact that applications and appeals are resolved adversely to an applicant.

58. The second reason is that the plain wording of paragraph 276A(b) does not support Ms Cunha's argument that there must be some sort of connection between the original basis for the temporary admission and the leave which is subsequently granted. The relevant words in the paragraph are these: "'lawful residence' means residence which is continuous residence pursuant to … temporary admission … where leave to enter or remain is subsequently granted." Those words convey no intention on the part of the draftsman to require there to

be a connection between the original basis for the grant of temporary admission and the basis upon which leave is subsequently granted.

59. Ms Cunha sought to support her argument with reference to *SSHD v SC (Jamaica)* but what was said there was said in a different context and is of no assistance to her. *SC (Jamaica)* was a deportation case in which one of the questions which arose was whether the appellant had been lawfully resident in the UK for most of his life, as required by s117C(4)(a) of the Nationality, Immigration and Asylum Act 2002 and paragraph 399A(a) of the Immigration Rules. SC had applied for asylum as his mother's dependent in December 2002, and had been granted temporary admission as such. SC maintained that his temporary admission should count towards his lawful residence as he had subsequently been granted leave to remain. The Secretary of State maintained that lawful residence in this context could not include temporary admission. Ryder LJ (with whom Davis and Henderson LJJ agreed) found for SC in that regard, holding at [57] that lawful residence for the purposes of paragraph 399A(a) runs from the date of application for refugee status. Whilst there was some discussion of paragraph 276A(b) in the judgments of Ryder and Davis LJJ, there is nothing in the Court of Appeal's decision as a whole to suggest that the provision should be interpreted in the manner for which Ms Cunha contended.

60. In any event, I very much doubt that Ms Cunha's suggested approach would be workable in practice. If there must be a connection between the basis upon which temporary admission is granted and the subsequent grant of leave, that would necessarily give rise to difficult cases. Two examples will suffice to illustrate the point.

61. Consider, firstly, a person who is granted temporary admission after having applied for asylum on the basis of his religious belief, making no mention of any Article 8 ECHR claim. On appeal against the refusal of his protection claim, however, he is permitted to raise his relationship with his wife and newly born British child, which leads the judge to allow his appeal on Article 8 ECHR grounds. There is in this example no connection between the basis upon which temporary admission was granted and the basis upon which leave to remain was ultimately secured but it surely would not be suggested that the temporary admission enjoyed during the pendency of the asylum claim could not count as lawful residence under paragraph 276A(b).

62. Consider, secondly, a person who is granted temporary admission upon lodging an asylum claim based on his political opinion. The claim fails and an appeal is dismissed but no steps are taken to bring the temporary admission to an end. Shortly after the dismissal of the appeal, there is a regime change in his country of nationality and it is accepted by the Secretary of State, upon further representations being made, that he is now a refugee and is granted status as such. Here, there is limited 'connection' between the claim originally made and the grant of leave to remain but it is undeniably the case that he enjoyed temporary admission and was 'subsequently granted leave', as required by paragraph 276A(b)(ii).

63. In my judgment, the proper approach is to give that paragraph of the Immigration Rules its plain and ordinary meaning, and I reject Ms Cunha's suggestion that paragraph 276A(b)(ii) requires there to be some sort of connection between the temporary admission and the leave which is subsequently granted. Where an applicant enjoys a period of continuous temporary admission and is subsequently granted leave to remain, the entirety

of that period may properly be counted as lawful residence under paragraph 276A(b). In this case, therefore, the fact that the appellant was granted temporary admission upon claiming asylum but was granted leave to remain on an Article 8 ECHR basis some years later does not prevent him from relying on his continuous temporary admission as lawful residence for the purposes of paragraph 276A1 of the Immigration Rules.

64. I have previously explained why I have concluded that the judge erred in deciding that the appellant's temporary admission was interrupted by his detention in 2016. I asked Ms Cunha at the hearing whether there was anything else, other than that two day detention, which was said to have interrupted the temporary admission which the appellant seemingly enjoyed from 2008 to 2018. Although Ms Cunha was able to locate additional IS96 documents which granted the appellant temporary admission in January 2011, June 2013 and September 2013, she accepted that there was nothing to show that these were anything other than renewals of the temporary admission which had previously been granted, and she was not able to point to anything which showed that the original temporary admission had been brought to an end by notice. As Ms Bustani noted, in any event, the Secretary of State had not previously sought to submit that there was any such interruption. The entire focus of the case had been on the two day period in 2016, and the unchallenged finding of the judge was that "[b]ut for the technicality over these 2 days the appellant would meet the necessary continuous 10 year lawful residence component."

65. My conclusion on the two day period of detention disposes of the respondent's first ground of appeal. The judge was in error in finding that the appellant met the 'spirit' of paragraph 276A1 of the Immigration Rules because he was actually able to meet all of the requirements of that paragraph.

66. The respondent's second ground of appeal makes little sense, and Ms Cunha wisely opted to say nothing about it in her submissions. It seems to proceed on the basis that the judge found that there would be very significant obstacles to the appellant's re-integration to Sri Lanka but he actually made no such finding. The remainder of the ground re-iterates the facts of the case and amounts to nothing more than a disagreement with the judge's ultimate conclusion as to proportionality.

67. Ms Bustani invited me to make a finding that the appellant meets the requirements of paragraph 276A1 and to substitute a decision allowing the appeal on Article 8 ECHR grounds for that reason, per *TZ (Pakistan) & Anor v SSHD* [2018] EWCA Civ 1109; [2018] Imm AR 1301, at [34]. It is not open to me to take that course in circumstances in which that paragraph of the Immigration Rules was deleted with immediate effect on 11 April 2024. That provision and paragraph 276B were deleted on that date and replaced with Appendix Long Residence. That appendix is different in several respects, the most significant of which for present purposes is that temporary admission no longer counts as lawful residence: paragraph LR 3.2 refers.

68. The appellant is entitled, however, to a decision that the Secretary of State's grounds of appeal establish no material legal error on the part of the judge. The only error into which he fell was to conclude that the appellant's claim under paragraph 276A1 of the Immigration Rules was rather worse than it was. Rather than finding that the appellant met the spirit of that provision, the reality was that the appellant met the letter of it. Had the judge appreciated that, and given the remaining findings that he made, he would inevitably have allowed the

appeal on Article 8 ECHR grounds. The Secretary of State's appeal will therefore be dismissed and the decision of the FtT to allow the appeal on Article 8 ECHR grounds shall stand.

Notice of Decision

The Secretary of State's appeal is dismissed. The decision of the FTT shall stand.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 August 2024