



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/27602/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27th January 2015**

**Decision & Reasons
Promulgated
On 4th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MISS ADEBIMPE GANIYAT ADERINTO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adjarho - Legal Representative

For the Respondent: Mr P Nath - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge M A Khan issued on 16th September 2014 relative to the Appellant's appeal against the decision of the Respondent made on 18th June 2013 to refuse leave to remain on human rights grounds and to remove her from the United Kingdom. The decision of Judge Khan was to allow the appeal "to a limited extent in that it is not in accordance with the

law". His reason for making this decision was that he found that the Respondent had failed to consider or to make any finding under the Immigration Rules in force prior to July 9th 2012 and the pre-July 2012 case law on Article 8 ECHR. He proceeded on the basis that the application having been submitted on 7th July 2012 prior to the introduction of the amended Immigration Rules on 9th July 2012, the Appellant was entitled to have her case considered under the 'old classic' Article 8 case law and under paragraph 297 of the Immigration Rules.

2. It is submitted in the Grounds of Appeal that Judge Khan erred in failing to direct himself to the decisions **Odelola v Secretary of State for the Home Department [2009] UKHL 25** and **Kumar, R (on the application of) the Secretary of State for the Home Department [2014] EWHC 644 (Admin)** or any of the other numerous authorities where the proposition that absent saving transitional provisions it is the Rules in force at the date of decision that apply and not those at the date of application. It is submitted in the grounds that **Edgehill and Another v Secretary of State for the Home Department [2014] EWCA Civ 402** is not authority for the contrary proposition. It is submitted that the judge erred in failing to hear the appeal properly.
3. I do not intend to discuss all the relevant case law at this juncture. Suffice it to say that what is submitted in the grounds is correct and supported by several recent decided cases. Judge Khan clearly erred in law. The Appellant has not had a fair or proper hearing in the First-tier Tribunal.

Notice of Decision

I therefore remit the appeal to the First-tier Tribunal to be heard de novo before a Judge other than M A Khan.

No anonymity direction is made.

Signed

Date: 3rd February 2015

N A Baird
Deputy Judge of the Upper Tribunal