



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12504/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9 July 2018

Decision & Reasons Promulgated
On 12 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

ELIZABETH MAKINDE OREBIYI JOHNSON
(NO ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Abdar a Legal Representative
For the Respondent: Mr Tarlow a Home Office Presenting Officer

DECISION AND REASONS

1. The respondent refused the appellant's applications for leave to remain on 29 April 2016. Her appeal against this was dismissed by First-tier Tribunal Judge Clarke ("the Judge") following a hearing on 27 March 2018 with a key finding that she had not been here for 20 years.
2. It had, however, been found by Judge White at an earlier hearing (IA/17308/2007) [19], "that she has been here continuously since December 1994."
3. Designated Judge McCarthy granted permission to appeal (14 May 2018) on the ground that it is arguable that in rejecting the claim to have been here for 20 years, the Judge "does not explain why she believed the well-established principles in *Devaseelan* did not apply. If the appellant in fact met the 20-year requirement of

paragraph 276ADE (1)(v) then the public interest in her expulsion would have to be viewed differently.”

4. No Rule 24 notice was filed. Mr Tarlow conceded that the Judge did materially err as claimed. The matter should be remitted as. Mr Abdar agreed.
5. I agree. The Presidential Guidance for retention in the Upper Tribunal has not been met as there has been no fair hearing.

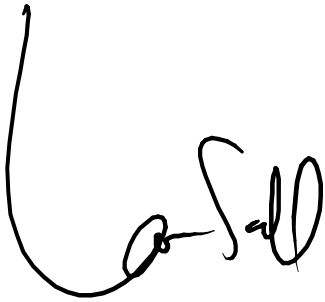
Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter for a de novo hearing, not before Judge Clarke.

Signed:

A handwritten signature in black ink, appearing to read 'L. Saffer', written in a cursive style.

Deputy Upper Tribunal Judge Saffer
9 July 2018