



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

Appeal Number: IA/19312/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13 May 2015**

**Determination
Promulgated
On 15 May 2015**

Before

**The Hon Mr Justice Edis
Upper Tribunal Judge Southern**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**EMMANUELLA FUNMI OGAZUMA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondent: No appearance or representation

DECISION AND REASONS

1. The Secretary of State has been granted permission to appeal against the determination of First-tier Tribunal Judge Andonian who, by a determination promulgated on 15 December 2014, allowed the appeal of this claimant against the removal decision made under Section 47 of the Immigration, Asylum and Nationality Act 2006. The issue at the heart of the appeal was whether or not the claimant had established ten years' continuous residence in the United Kingdom such as to qualify for leave to


remain under the Immigration Rules. The Secretary of State submitted that that period of continuous residence had not been accumulated because an application lodged at some stage in her immigration history during her period of residence in the United Kingdom had been rejected as invalid. The judge heard submissions and evidence about that issue and made a clear finding of fact at paragraph 5 of his determination that he did not accept that the application in 2007 categorised by the Secretary of State as invalid was that at all.

2. Today the claimant does not appear and is not represented and it has been established that that is because notice of the hearing had not been received by her or by her legal representative. However, in view of what we say next, no purpose would be achieved in adjourning the hearing to enable them to attend.
3. Mr Duffy, who appears for the Secretary of State, accepts realistically that if the finding at paragraph 5 of the determination whereby the judge did not accept that the 2007 application could be regarded as invalid stands undisturbed, there is no basis upon which he can challenge the outcome of this determination unless he is granted leave to amend his grounds. Again realistically and entirely properly he makes no such application and on that basis the determination is one that does not disclose material legal error we dismiss the appeal to the Upper Tribunal and direct that the determination of the First-tier Tribunal shall stand.

Notice of Decision

The appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal, allowing Ms Ogazuma's appeal, is to stand.

Signed 
Upper Tribunal Judge Southern

Date 14 May 2015