



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/02244/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**On 28th November, 2014, 3rd June,
2015 and
1st April, 2016**

**Decision & Reasons
Promulgated
On 26th April 2016**

Before

**UPPER TRIBUNAL JUDGE CHALKLEY
DEPUTY UPPER TRIBUNAL JUDGE KAMARA**

Between

**MS JUNIOR CHIKURUKUTA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: 28th November, 2014: Ms C Soltani, Solicitor, Iris Law Firm (Gateshead)

3rd June, 2015: Ms S Akinbola of Counsel, instructed by Iris Law Firm (Gateshead)

1st April, 2016: Ms S Akinbola of Counsel, instructed by Iris Law Firm (Gateshead)

For the Respondent: 28th November, 2014: Ms L Kenny, Home Office Presenting Officer

3rd June, 2015: Ms A Fijiwala, Home Office Presenting Officer

1st April, 2016: Ms A Fijiwala, Home Office Presenting Officer

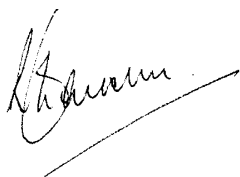
DECISION AND REASONS

1. The appellant is female, a citizen of Zimbabwe and was born on 10th January, 1971. She appeals against a decision of the respondent, taken on 12th December, 2013 to refuse to grant her indefinite leave to remain in the United Kingdom on the basis of long residence. At the hearing on 28th November, 2014 Upper Tribunal Judge Chalkley found that both the Secretary of State and the Immigration Judge had erred in law following the decision in *Edgehill* [2014] EWCA Civ 402 by failing to apply the pre-July, 2012 Immigration Rules. He was persuaded to adjourn the hearing to enable the respondent to produce original documents which, the appellant maintained, demonstrated that she had been in the United Kingdom for twenty years. The matter was adjourned at the hearing on 3rd June because the Home Office had failed to produce the appellant's passport in order that the appellant could retake the English language test. The Presenting Officer said that she would seek permission to release the passport.
2. When the matter appeared before me today we were advised that the Presenting Officer and Counsel had agreed between themselves that the appropriate course would be for the Upper Tribunal to allow the appellant's appeal to the extent that the original decision was not in accordance with the law so that the matter would then be referred back to the Secretary of State in order that she could remake her decision.
3. We expressed considerable concern at the delay in this matter and the lack of caseworkers within the Home Office to take a pragmatic view given that this appellant has been in the United Kingdom now for some 21 years and a considerable amount of public money has been expended on maintaining a decision which, it now appears, the Secretary of State accepts was not in accordance with the law.
4. Following the appellant's decision to appeal her appeal was heard by First-tier Tribunal Judge Kaler at Taylor House on 28th August, 2014. Ms Akinbola appeared on behalf of the appellant during the course of that hearing and made submissions to the judge, including that the decision was wrong and in accordance with the decision in *Edgehill* the appellant should have benefited from transitional provisions. The judge found that the appellant had not established that she had been in the United Kingdom continuously between 1995 and 1999.
5. The reason we were persuaded to adjourn the hearing was because it was said that the Home Office had retained documents belonging to the appellant which the appellant had submitted with her application which demonstrated that she had been in the United Kingdom since 1995.
6. We concluded that the First-tier Tribunal had erred in law.
7. It has now been accepted on behalf of the Secretary of State that the original decision of the Secretary of State of 12th December, 2013 was not in accordance with the law. To that extent this appeal is allowed.

8. We trust that the Secretary of State will now be able to reach a decision without any further undue delay.
9. Although this determination has been prepared by Upper Tribunal Judge Chalkley it is the decision of us both.

Notice of Decision

This appeal is allowed to the extent only that it remains for the Secretary of State for the Home Department to make a lawful decision on the appellant's application on 25th August 2009.

A handwritten signature in black ink, appearing to read 'Chalkley', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Chalkley