



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000228
First-tier Tribunal No:
HU/03899/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

GRACE CHIPO MHLANGA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, Counsel instructed by Turpin Miller LLP
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 11 March 2024

DECISION AND REASONS

1. This is an appeal by a citizen of Zimbabwe against the decision of the Secretary of State refusing leave to remain on human rights grounds. The appeal has previously been determined unsatisfactorily and a decision of the First-tier Tribunal was set aside by Upper Tribunal Judge Allen.
2. The appellant entered the United Kingdom on 26 September 2001 and was able to have her leave extended until 30 September 2003. On 9 October 2003, slightly out of time, she made an application for further leave and was given leave to remain until 9 November 2004. She has lived in the United Kingdom since then without permission. That is not to her credit. Immigration Rules are there to regulate conduct and people are expected to obey them but, apart from being in the United Kingdom without permission, nothing to her discredit is known.

3. I have to decide if the refusal of permission is an interference with her private and family life and if it is, if it is lawful and proportionate. It plainly is an interference. In her time in the United Kingdom she has established a significant private life involving herself in the church and close relationship with her members of her family; these things are not of enormous importance but, given the length of her stay in the United Kingdom, they have become significant. Clearly refusing permission to remain is an interference with that.
4. In the ordinary course of events people who do not satisfy the requirements of the Rules have trouble showing that refusal is disproportionate but whilst this application has been underway the appellant has succeeded in being in the United Kingdom for more than twenty years and the relevant Rule is now perfectly plain, namely that where a person has been in the United Kingdom for over twenty years and they are over 18 ordinarily, in the absence of special circumstances, they are entitled to remain.
5. Mr Wain, correctly, reminded me that it does not follow as night follows day that a person is entitled to remain and there still has to be the question of whether the decision is proportionate but he could not point me to anything that suggests that this is a case that is an exception to the ordinary circumstances where the Rules show that a person would be entitled to remain.
6. It follows from the fact that the Rules allow it that it is ordinarily going to be disproportionate to refuse it and indeed there is authority to precisely that effect from the Court of Appeal which was cited before me.
7. There is no point making a big meal out of this, this is a claimant who has stayed in the United Kingdom for long enough to be entitled to remain. Removal would be disproportionate and I allow her appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 June 2024