Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/08417/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2 November 2015	**On 23 November 2015**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

Jacqueline Edgehill

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms J. Fisher, Counsel, instructed by Duncan Lewis & Co., Solicitors
For the Respondent: Mr P. Deller, Senior Home Office Presenting Officer

NOTICE OF WITHDRAWAL
pursuant to Rule 17(1), (2) and (5)

1. When this appeal was before the Court of Appeal as *Edgehill & Anor v Secretary of State for the Home Department* [2014] EWCA Civ 402 on 2 April 2014, (Laws and Jackson LJJ and Lady Justice Black), Laws LJ (with whom the other members of the Court agreed) directed in paragraphs 35-37 in relation to this appellant:

> 35. The Upper Tribunal reached its decision on 11th February 2013. By then JE had lived continuously in the UK for more than 14 years (the period specified in rule 276B of the old rules). As can be seen from paragraphs 31-33 of its decision, the Upper Tribunal placed substantial weight on the fact that this was less than the period of 20 years specified in the new rules.
> 36. In my view the Upper Tribunal fell into error in treating the minimum period of 20 years specified in the new rule 276ADE as a relevant consideration. If the Upper

Tribunal had not made this error of law, it is far from clear that it would have reached the same decision.

37. In those circumstances, if my Lord and my Lady agree, the Upper Tribunal's decision will be quashed and JE's appeal will be remitted to the Upper Tribunal for reconsideration.

2. In *Singh and Khalid v the Secretary of State for the Home Department* [2015] EWCA Civ 74 (12 February 2015), the Court of Appeal (Lady Justice Arden, Lewison and Underhill LJJ) reconsidered *Edgehill & Anor v Secretary of State for the Home Department* with reference to HC 565 which came into force on 6 September 2012 and which required decision makers to apply the Immigration Rules found in HC194 as the Tribunal had originally done. Underhill LJ said:

56. The foregoing analysis has regrettably been somewhat dense, but I can summarise my conclusion, and the reasons for it, as follows:

(1) When HC 194 first came into force on 9 July 2012, the Secretary of State was not entitled to take into account the provisions of the new Rules (either directly or by treating them as a statement of her current policy) when making decisions on private or family life applications made prior to that date but not yet decided. That is because, as decided in *Edgehill*, "the implementation provision" set out at para. 7 above displaces the usual *Odelola* principle.

(2) But that position was altered by HC 565 – specifically by the introduction of the new paragraph A277C – with effect from 6 September 2012. As from that date the Secretary of State was entitled to take into account the provisions of Appendix FM and paragraphs 276ADE–276DH in deciding private or family life applications even if they were made prior to 9 July 2012. The result is that the law as it was held to be in *Edgehill* only obtained as regards decisions taken in the two-month window between 9 July and 6 September 2012.

(3) Neither of the decisions with which we are concerned in this case fell within that window. Accordingly the Secretary of State was entitled to apply the new Rules in reaching those decisions.

57. I should observe that both the decisions with which this Court was concerned in *Edgehill* were made after 5 September 2012, i.e. outside the window referred to above. It follows that, although its reasoning about the effect of HC 194 was, I believe, correct, the outcome would have been different if it had been referred to the changes introduced by HC 565 – which it was not. Mr Blundell acknowledged that that was so when the point was put to him in the course of his submissions. That is rather remarkable. It appears that one of the (admittedly many) objects of HC 565 was to "clarify" that the provisions of Appendix FM and paragraphs 276ADE–276DH should apply to pending applications; yet in a case which raised that very issue the Secretary of State neglected to rely on it. That might prompt second thoughts as to whether Mr Blundell's submissions based on HC 565 can indeed be right. But I fear that the true explanation is that the responsible officials in the Home Office have at least some of the same difficulties in keeping up with the consequences of the kaleidoscopic changes in their own rules as the rest of us do. There are other instances of that in the confusions which occurred in relation to *Haleemudeen* (see para. 39 above) and the failure to

identify the form in which the Rules stood at the date of the decision in Ms Khalid's case (see para. 52).

3. When I gave directions on 11 March 2015, I asked the appellant to respond to this point which was raised by Mr Bourne QC in his note to the Tribunal at the Case Management Review. The appellant did not respond.

4. At the hearing before me on 2 November 2015, the appellant did not regard the continuation of these proceedings as serving any useful purpose and sought to withdraw her appeal. I agreed to this.

5. Mr Deller expressed the view that with the passage of time, any assessment of the claim based on events which are now past history is likely to be unhelpful.

6. The effect of this decision is that the challenge to the decision of First-tier Tribunal Judge Kanagaratnam dismissing the appellant's appeal against the decision of the Secretary of State to refuse her a certificate of a right of abode is no longer pursued. His decision will, accordingly, stand. The appeal formally stands as withdrawn.

7. The parties are now free to agree the best way forward or, in default of agreement, for the appellant to rely upon such legal rights as are now available to her.

RULING

The appeal before the Upper Tribunal stands as withdrawn pursuant to Rule 17 (1) and (2) of the Tribunal Procedure (Upper Tribunal) Rules 2008

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
18 November 2015