



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

Appeal Number: IA/19105/2014

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On 2nd November 2015

On 4th November 2015

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

**Jerry Uwaifo
(no anonymity direction made)**

Respondent

Representation:

For the Appellant: Mr Tarlow, Senior Home Office Presenting Officer

For the Respondent: Mr Aghayere, Freemans Solicitors

DETERMINATION AND REASONS

1. The Respondent is a national of Nigeria born 21st July 1959. On the 26th March 2015 the First-tier Tribunal (Judge Shamash) allowed his appeal against the Secretary of State's decision to refuse to vary his leave to remain and to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999. The Secretary of State now has permission¹ to appeal

¹ Permission granted on the 15th June 2015 by First-tier Tribunal Judge Osbourne

against that decision.

2. The matter in issue is a narrow one. In the decision before Judge Shamash the Secretary of State had applied the 'new' Immigration Rules set out in Appendix FM and paragraph 276ADE of the Rules. At the hearing the HOPO had conceded that this was not the correct approach, following the decision in Edgehill and Bhoyroo [2014] EWCA Civ 402. The human rights application had been made "sometime in 2010" so, Edgehill suggested, the Secretary of State should have decided the application in line with the Transitional Provisions, ie the 'old' rules. This had a particular significance for the Respondent, who at the date of application "may have clocked up 14 years unlawful residence".
3. Judge Shamash followed the HOPOs concession and allowed the appeal to the extent that the decision was "not in accordance with the law": the decision was remitted back to the Secretary of State to enable a fresh decision to be taken.
4. The Secretary of State now appeals on the basis that she had, notwithstanding the concession made by the HOPO, been correct to assess this claim in light of the 'new' Rules. That is because this decision fell outwith the 'Edgehill window' of the 12th July 2012, when the new Rules and their Transitional Provisions were introduced, to 6th September 2012 when HC 565 introduced paragraph A277C into the Rules. Any decision taken after the 6th September 2012 fell to be considered under the new provisions. Reliance is placed on the decision in Singh and Khaled [2015] EWCA Civ 74.
5. Before me Mr Aghayere sought to defend the decision on the grounds that a) the HOPO had made a concession b) Edgehill had been good law at the date of the determination and c) the matter had been remitted to the Secretary of State to enable the decision to be remade.

Error of Law

6. At the date that this appeal was heard the decision in Edgehill had been supplanted by that in Singh. It was therefore a clear error to have followed the former, regardless of what the HOPO thought. The decision fell to be considered under the new rules, which is exactly what the Respondent did.
7. The decision is therefore set aside and with the agreement of the parties the matter is remitted to the First-tier Tribunal to enable the Appellant to have his substantive appeal heard.

Decisions

8. The determination of the First-tier Tribunal contains an error of

law and it is set aside.

9. The matter is remitted to the First-tier Tribunal for *de novo* hearing.
10. I was not asked to make a direction for anonymity and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce
2nd November 2015