



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

Appeal Number: IA/28715/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 December 2015**

**Decision and Reasons  
Promulgated  
On 5 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**MS AGNES SEWDAT**

(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Mrs S Bassiri-Dezfouli, Counsel instructed by Pillai & Jones  
Solicitors

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal T Judge M R Oliver (hereinafter referred to as the FTTJ), promulgated on 10 July 2015.
2. Permission to appeal was granted by FTTJ Landes on 1 October 2015.

**Background**

3. The respondent was granted limited leave to enter the United Kingdom as a visitor from 24 February 2002 until 4 August 2002. She was granted

further leave to remain as a volunteer until 13 August 2004. She was refused further grants of leave on 18 October 2004 and 25 October 2004. An application made for leave outside the Rules was granted until 5 July 2006. A number of further applications were either rejected as invalid or refused thereafter. The last such application, made on 15 February 2011, was refused on 26 June 2014.

4. According to the reasons for refusal letter, there were no suitability concerns and therefore the respondent's case was considered in relation to family life as a partner or parent. Nonetheless, the respondent could not meet the eligibility requirements in either category, as she had not informed the Home Office that she had a partner or child. The appellant's case was also said to fall outside paragraph 276ADE of the Rules and there said to be no exceptional circumstances. In essence, the respondent was considered to be an overstayer who ought to have returned to her country where there were no circumstances beyond her control preventing her from returning there.
5. In her grounds of appeal, the respondent argued that her application was wrongly decided under the new Immigration Rules. Reference was made to the respondent's family life with the children of her nephew, whom she was said to have raised since birth and whose parents depended on the respondent in order to work. It was also said that the respondent had no ties to her country of origin and met the requirements of paragraph 276ADE. In addition, she was described as "an old lady, of fragile health with no other family or ties with her country of origin."

#### The hearing before the FTTJ

6. The FTTJ noted that the respondent had initially applied for leave to remain on human rights grounds on 3 December 2010. She had sent letters from her nephew, his wife and their children with the application for reconsideration of that decision. The FTTJ decided that the decision of 26 June 2014 was not in accordance with the law because the application was made before the introduction of the new Article 8 Rules of July 2012. He therefore remitted the matter to the Secretary of State to make a lawful decision.

#### Error of law

7. The grounds of appeal argue that the FTTJ materially misdirected himself because of the effect of the decision in Singh v SSHD [2015] EWCA Civ 74. The decision in this case did not fall within the two month
8. FTTJ Chamberlain granted permission, finding there to be an arguable error of law for the FTTJ not to consider the appellant's family life with his wife outside the Rules and also not to consider section 117B of the 2002 Act (as amended). FTTJ Chamberlain was disinclined to reject the other grounds but noted that the birth of the child post-dated the hearing.
9. The Secretary of State's response of 23 June 2015 stated that the respondent opposed the appellant's application. The reply argued that the FTTJ considered the appellant's circumstances in some detail in the

decision and rejected the appellant's assertions that it would not be possible for the couple to live in Lagos. The FTTJ also noted that the adult child of the sponsor was pursuing a degree and living independently of her mother. It was also said that the FTTJ noted the absence of any exceptional grounds; that the conclusion was one open to the FTTJ that the grounds were no more than a mere disagreement with the FTTJ's findings.

### The hearing

10. Mr Bramble's submission was brief and to the point, in that in view of Singh, the FTTJ got it wrong regarding which Rules were applicable in this case. Mrs Bassiri-Dezfouli could only agree; stating that the appeal hearing took place only around three weeks after the judgment in Singh was reported.
11. I briefly indicated that I accepted that the FTTJ had made a material error of law in finding that the Secretary of State had considered the wrong version of the Immigration Rules and I therefore set aside his decision in its entirety.
12. I would have been in a position to proceed to remake the decision had the appellant and her witnesses attended the hearing before me. Inexplicably, the appellant was said to be at home in Brighton and her witnesses were also said to be not available. Mrs Bassiri-Dezfouli asked me not to penalise the appellant, notwithstanding that the second of the standard directions, which accompanied the notice of hearing directs parties to prepare for hearings before the Upper Tribunal on the basis that the decision could be remade at the hearing. At the same time, I take into consideration the fact that the previous judge heard no evidence from the appellant or her witnesses or any submissions. In these circumstances, I considered that I had little option other than to remit the appeal to be heard *de novo*.
13. No anonymity direction was made by the FTTJ and I am aware of no reasons for making such a direction now.

### Conclusion

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision to be re-made.

The appeal is to be remitted to the First-tier Tribunal, at Hatton Cross, to be decided by any judge other than FTTJ M R Oliver, with a time estimate of 2 hours. No interpreter is required.

Signed

Date: 20 December 2015

Deputy Upper Tribunal Judge Kamara