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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/49178/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 March 2016	**On 25 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

NANCY NDUNGU
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Magne, Solicitor
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has requested an anonymity direction to protect the identity of the relative whom she is visiting in the UK. I refuse this application for two reasons. Firstly, the public interest in proceedings being open to the public prevails owing to the remote and speculative nature of the risk identified. Secondly, there is no need to identify the person concerned in any event.

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2. The appellant is a citizen of Kenya born on 20 March 1978. She entered the UK on 10 May 2014 as a family visitor with leave to enter valid until 15 October 2014. On 14 October 2014 she made an application on form FLR(O) requesting further leave as a visitor. She wanted to extend her stay for family reasons.

3. The application was refused for reasons set out in a letter dated 19 November 2014 which can be summarized as follows. Paragraph 44(ii) of the Immigration Rules, HC395, provided that one of the requirements for an extension of stay as a visitor was that the applicant had not already spent, or would not as a result of an extension of stay spend, more than six months in total in the UK. The appellant, having arrived on 10 May 2014, had passed the six months limit on 10 November 2014.

4. The appellant appealed and her appeal was heard by Judge of the First-tier Tribunal Boyd on 22 July 2015. The respondent was unrepresented. The appellant was represented by Mr Magne who explained to the judge that the respondent had made an error in calculating the six-month period. The appellant's passport showed she had left the UK on 23 May 2014 and returned on 19 July 2014. The intervening period should not have counted. The appellant could have been granted leave to up to the expiry of her visa (see article 2(4) of the Immigration (Leave to Enter and Remain) Order 2000).

5. The judge accepted that the appellant had not been in the UK during that period and the respondent had miscalculated. He calculated the appellant could have been granted leave in compliance with paragraph 44(ii) until 2 January 2015. Noting that date had now passed, he wrote:

> "18. Accordingly, therefore, the appeal is allowed to the extent that the appellant should have been awarded an extension of her Visa from its date of expiry up to a maximum of 26 weeks but the appellant is entitled to no further extension of Leave as that extension period has now expired."

6. However, the judge concluded his decision as follows:

> "The appeal is dismissed under the Immigration Rules."

7. In her grounds seeking permission to appeal the appellant complained that the judge's findings were contradictory. As a result of the finding in the first sentence of paragraph 18 the appellant was entitled to a finding that the decision was not in accordance with the law. Permission was refused by the First-tier Tribunal but granted by Upper Tribunal Judge Rintoul.

8. The representatives made submissions on the issue of whether Judge Boyd's decision contained a material error of law. I have recorded these in full in the record of proceedings and taken them into account. It is not necessary to set them out.

9. I find Judge Boyd's decision does contain contradictory findings and must be set aside. In the circumstances, which are not in dispute, that the appellant had left the UK, she was entitled to re-enter for a further six-months or until the

expiry of her visa, if earlier. Having made an in-time application, the respondent should have applied paragraph 44(ii) on the basis of the short time spent in the UK since her last arrival in July 2014. Having identified the error in the respondent’s calculations, the Judge should have allowed the appeal as not in accordance with the law. Instead he purported to go on to dismiss the appeal.

10. I set aside the decision of the First-tier Tribunal and substitute the decision which should have been made. It will now be for the respondent to give proper consideration to the appellant's application.

NOTICE OF DECISION

The First-tier Tribunal made a material error of law and its decision dismissing the appeal is set aside. The following decision is substituted:

The appeal is allowed to the extent the decision made by the respondent was not in accordance with the law.

Signed **Date 14 March 2016**

Judge Froom,
sitting as a Deputy Judge of the Upper Tribunal