



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2023-  
002238  
(UI-2022-

000321)

First-tier  
EA/12218/2021

Tribunal No:

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

12<sup>th</sup> October 2023

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**KUDIRAT AKOLADE KAZEEM ODEYEMI**

**(NO ANONYMITY ORDER MADE)**

**and**

**Secretary of State for the Home Department**

Appellant

Respondent

**Representation:**

For the Appellant: Ms Longhurst-Woods  
For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 9 October 2023

**DECISION AND REASONS**

1. I set aside the decision of the First-tier Tribunal in a decision promulgated on 22 September 2022. My reasons were as follows:
2. The appellant is national of Nigeria who was born on 20 September 1976. She applied for a confirmation of a right to reside under the EU Settlement Scheme as a 'person with a Zambrano right to reside'. 3. The First-tier Tribunal is a decision promulgated on 7 January 2022, allowed the appeal. the Entry Clearance Officer now appeals, with permission, to the Upper Tribunal. 4. The grant of permission summarises the Entry

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Clearance Officer's grounds as follows: The grounds assert that the Judge erred in that; (1)there was a procedural irregularity in that the Judge was not provided with the Respondent bundle which had been served on the Tribunal by email dated 17/12/21, and (2)the Judge incorrectly followed the case of Akinsanya which was before the Court of Appeal at the time of the hearing. 5. The parties agree that the second ground is no longer the relevant; the Secretary of State lost her appeal in the Court of Appeal in Akinsanya [2022] EWCA Civ 37. 6. Mr Hussain, for Ms Odeyemi, agreed that ground one was made out and that the procedural irregularity required the appeal to be heard *de novo*. 7. In the circumstances, I set aside the First-tier Tribunal's decision. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*. Notice of Decision The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

3. Following the submissions of Ms Longhurst-Woods for the appellant, Mr Diwnycz, who appeared for the Secretary of State, did not seek to pursue the appeal and made no submissions. Both representatives accepted that the appellant had no leave to remain (including section 3C leave, which had expired) at all material times. There was no dispute that the Court of Appeal judgments in *Velaj v Secretary of State for the Home Department* [2022] EWCA Civ 767 and *Akinsanya v Secretary of State for the Home Department* [2022] EWCA Civ 37 did not contradict the reasoning of the First-tier Tribunal judge. The representatives agreed that the reasoning of the First-tier Tribunal at [13] was correct:

The Appellant's application was pursuant to Appendix EU. Regardless of it being a more stringent test, it does not exempt people who may obtain limited or indefinite leave to remain if they were to apply. People with leave to remain are exempt. The Appellant did not have leave to remain. She was therefore not exempt.

4. In the circumstances, I dismiss the respondent's appeal

### **Notice of Decision**

The Secretary of State's appeal is dismissed.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 9 October 2023**