



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

Appeal Number: HU/14644/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7 March 2019**

**Decision & Reasons Promulgated
On 3 April 2019**

Before

**THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE GLEESON**

Between

**JUNIOR CHIKURUKUTA
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Akinbolu, instructed by Iris Law Firm

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Zimbabwe born in 1971, appeals against the decision of First-tier Tribunal Judge Hembrough who, following a hearing at Harmondsworth on 17 October 2017, dismissed the appellant's appeal against the decision of the respondent to refuse her human rights claim. Permission to appeal to the Upper Tribunal was granted by its Vice President in November 2018, consequent upon the quashing by the High Court of an earlier decision of the Upper Tribunal to refuse permission to appeal.

2. At the hearing before us, Mr Wilding conceded the appeal. He accepted that Judge Hembrough's decision should be set aside for error of law and the decision re-made, allowing the appeal on human rights grounds. In the light of all the evidence, it was more likely than not that the appellant arrived in the United Kingdom before 6 March 1999. Accordingly, she satisfied the provisions of paragraph 276ADE of the Immigration Rules and it would be a disproportionate interference with her accepted Article 8 rights to remove her, given that she satisfied the requirements of the Immigration Rules.
3. The Upper Tribunal accepts that concession. The essential error in Judge Hembrough's decision was that he regarded himself as bound by an earlier appeal decision of Judge Kaler, in so far as that decision appeared to make findings of fact regarding the appellant's presence in the United Kingdom. Whilst it is entirely appropriate to have regard to findings made by a judge whose decision has subsequently been set aside (as Judge Kaler's was by the Upper Tribunal in 2016), in the present case the findings of fact of Judge Kaler were infected by legal error and so should not have been relied upon.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. We set aside that decision and re-make the decision in the appeal by allowing it on human rights grounds.

Signed

Dated: 1 April 2019

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber