



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

Appeal Number: IA/40955/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 1 September 2014**

**Determination
Promulgated
On 17 September 2014**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HARRISON OGBONNAYA ODI

Respondent

Representation:

For the Appellant: Mr A McVeety, Senior Presenting Officer
For the Respondent: Mr K Ayileka, Adonai Beulah Solicitors

WITHDRAWAL OF APPEAL

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge A Simpson who for reasons given in her determination dated 20 March 2014 allowed the appeal by the

respondent, whom I shall refer to as the claimant, under the Immigration Rules. The claimant had made application for indefinite leave to remain under the long residence provisions of paragraph 276B of the Rules but his application had been refused. This was because he had been without valid leave for a six week period between 7 June and 22 July 2010. The judge found exceptional circumstances in the case which included the Secretary of State's conduct in 2010. He found that an application for further leave to remain made by the claimant in February in 2010 should have been granted when it fell for consideration and so consequently would not have resulted in a hiatus in leave.

2. At the hearing before me I explored with the parties the events that occurred in 2010. Unfortunately the position remained as obscure and as muddled as it was before the first-tier tribunal judge. In summary, it appears that the Secretary of State refused the claimant's application on 7 June 2010 on the basis that he had not paid the increased fee which came into force on 6 April 2010 without regard to the timing of the application. It appears also that the claimant's fee for the application had been taken by the Secretary of State and it was the correct amount so far as he was concerned when paid.
3. Sensibly Mr McVeety took instructions and considered that the historic injustice which appears to have occurred in 2010 could not sustain the Secretary of State's appeal which he withdrew.
4. I gave my consent in the absence of any opposition from Mr Ayileka. As a consequence the decision of the First-tier Tribunal allowing the appeal under the Immigration Rules stands.

Signed

Date 16 September 2014



Upper Tribunal Judge Dawson