



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

Appeal Number: IA/19439/2013

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 30 July 2014**

**Decision & Reasons  
Promulgated  
On 24 March 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**LESEGO OLIVIA PULE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms P Bakshi, instructed by Samuel Ross, Solicitors  
For the Respondent: Mr M Diwncyz, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Lesego Olivia Pule, was born on 16 July 1974 and is a citizen of Botswana. The appellant had applied for leave to remain in the United Kingdom on the basis of the length of her residence in this country and under Article 8 ECHR. There was some debate at the hearing as to when she made her application and how the date of application might

affect the Immigration Rules applied but, recent changes in relevant jurisprudence have rendered that debate otiose. Her application was, in any event, refused by the respondent on 14 May 2013 under paragraph 276ADE of HC 395 (as amended).

2. Her appeal came before Judge Cameron sitting at Taylor House in the First-tier Tribunal on 3 March 2014. In a determination promulgated on 14 March 2014, he dismissed the appeal. However, he did conclude that, contrary to the contents of the respondent's refusal letter, the appellant's application fell to be considered under the Immigration Rules which pertained prior to 9 July 2012. [36] He therefore assessed her long residence on the basis that she had to meet a minimum period of residence of fourteen years (which the appellant claims she was able to satisfy). The refusal letter of the respondent at [12] considered that the appellant had made her application on 18 July 2012, after the change of Rules on 9 July. She therefore had to meet the new twenty-year period of continuous residence in the United Kingdom, a period which she is, by any analysis of the evidence, incapable of meeting. It was not argued before the Upper Tribunal that she met any of the exceptions to the "new" Rules.
3. The lengthy submissions regarding the date on which the appellant made her application have been rendered academic by the judgment of the Court of Appeal in *Singh* [2015] EWCA Civ 74. The Court of Appeal held at [56] as follows:

The foregoing analysis has regrettably been somewhat dense, but I can summarise my conclusion, and the reasons for it, as follows:

(1) When HC 194 first came into force on 9 July 2012, the Secretary of State was not entitled to take into account the provisions of the new Rules (either directly or by treating them as a statement of her current policy) when making decisions on private or family life applications made prior to that date but not yet decided. That is because, as decided in *Edgehill*, "the implementation provision" set out at para. 7 above displaces the usual *Odelola* principle.

(2) But that position was altered by HC 565 - specifically by the introduction of the new paragraph A277C - with effect from 6 September 2012. As from that date the Secretary of State was entitled to take into account the provisions of Appendix FM and paragraphs 276ADE-276DH in deciding private or family life applications even if they were made prior to 9 July 2012. The result is that the law as it was held to be in *Edgehill* only obtained as regards decisions taken in the two-month window between 9 July and 6 September 2012.

(3) Neither of the decisions with which we are concerned in this case fell within that window. Accordingly the Secretary of State was entitled to apply the new Rules in reaching those decisions.

4. Even if the appellant had made her application before 9 July 2012 (which is by no means certain) the decision of the respondent was taken after 6

September 2012 when HC 565 came into effect. Consequently, her application fell to be considered under “new” Rules, including the 20 year provision.

5. In those circumstances, the appellant’s appeal is dismissed.

**NOTICE OF DECISION**

This appeal is dismissed.

Signed

Date 28 February 2015

Upper Tribunal Judge Clive Lane