



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

Appeal Number: HU/06691/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> May 2017**

**Decision & Reasons Promulgated  
On 05<sup>th</sup> June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ELLIOT GARIKAI MUNTHALI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer

For the Respondent: Ms Makunzva of the Immigration Practitioners Service

**DECISION AND REASONS**

1. This is an appeal brought by the Secretary of State, with permission, against the Decision of Judge of the First-tier Tribunal Boardman who allowed Mr Munthali's appeal on human rights grounds, against the Secretary of State's decision of 9 September 2015 to refuse to vary his leave to remain brought on human rights grounds.

2. Mr Munthali is a citizen of Zimbabwe whose date of birth is recorded as 22 February 1972. He first entered the United Kingdom on 30 October 2001 and thereafter made several successful applications for leave to remain until on 30 September 2010 his leave was said by the Secretary of State to have expired. However, he made an application on or about 30<sup>th</sup> September or 1<sup>st</sup> October 2010. The actual date of the application is moot but for reasons which follow is somewhat academic because it is common ground that if the application made at that time was made no less than ten days after the expiry of leave then a period of grace would be given such that continuity is not broken in calculating the ten-year period of long residence.
3. Before me, the issue in this case narrowed to one single issue. At all material times the Respondent has been working alongside a church in Brighton supported by that church. Judge Boardman observed that the Secretary of State's refusal of leave in 2010 was wrong because there was sufficient evidence before him, Judge Boardman, that at the material time not only did the church have sufficient funds but having regard to the totality of the evidence, though not express but clearly implicit in his decision, the church would have applied those funds for the benefit of Mr Munthali.
4. Mr Duffy for the Secretary of State takes exception. He in fact drafted the grounds in this matter. He submits that whilst there was some evidence before Judge Boardman of the means available to the church there was no sufficient evidence that entitled the judge to find that those funds would have been applied for the benefit of Mr Munthali at the material time.
5. I have read the decision with care. One must read the decision and reasons as a piece. The judge heard from a number of witnesses. He found the evidence credible and it is of note that the church has supported Mr Munthali throughout. The standard of proof relevant was and remains one of balance of probabilities.
6. It seems to me looking at this decision that it was open to the judge to make the finding that he did. I observe in any event that even if Mr Munthali did not strictly speaking meet the ten-year Rule this was a case in which the private life of Mr Munthali was deserving of considerable weight. There were many factors weighing in his favour. The starting point is the immigration rule which provides that if a person has been in the United Kingdom lawfully for ten years then subject to anything untoward, the public interest gives way to it. If a person comes close to meeting the immigration rule then as was said in the case of **Patel [2013] UKSC 72** whilst there is no such thing as a "near-miss" justifying the grant of the relief being sought, other factors may be sufficient to weigh in an individual's favour.
7. There is very little in my judgment which weighs against the Respondent in this appeal to the Upper Tribunal. That was clearly the view Judge

Boardman so that even if there is an error of law it is not material in this case.

8. I find that there is no material error of law in this appeal. If I am wrong about that then in any event, I would have remade the decision in the favour of the Respondent to the appeal in the Upper Tribunal such that the decision in the First-tier Tribunal would have been reaffirmed.

**Notice of Decision**

9. The appeal to the Upper Tribunal is dismissed.

**Signed**

**Date:** 2 June 2017

**Deputy Upper Tribunal Judge Zucker**