



IAC-AH-LEM-V1

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

Appeal Number: IA/29657/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 6 February 2017**

**Decision & Reasons  
Promulgated  
On 06 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR OLUFEMI ABIMBOLA FAGBOLADE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mrs Aboni, Senior Home Office Presenting Officer  
For the Respondent: Not present or represented

**DECISION AND REASONS**

1. The appellant, Olufemi Abimbola Fagbolade, was born on 9 December 1980 and is a male citizen of Nigeria. He applied for indefinite leave to remain in the United Kingdom on the basis of the length of his residence. His application was made on 10 December 2014 and was refused by the Secretary of State on 7 August 2015. The appellant appealed to the First-

tier Tribunal (Judge James) which, in a decision promulgated on 20 April 2016 allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The judge erred in law such that the decision falls to be set aside. The judge should not have allowed the appeal outright. The judge should have found that, the Secretary of State having accepted that the appellant had been living in the United Kingdom continuously for a period of more than ten years, remitted the matter to the Secretary of State to exercise her discretion which remains vested only in her.

### **Notice of Decision**

The decision of the First-tier Tribunal which was promulgated on 20 April 2016 is set aside. The finding that the appellant had been continuously in lawful residence in the United Kingdom for more than ten years is preserved. The appeal of the appellant against the decision of the respondent dated 7 August 2015 is allowed to the extent that the matter is returned to the Secretary of State so that she may exercise her discretion as to whether to grant the appellant leave to remain.

No anonymity direction is made.

Signed

Date 20 February 2017

Upper Tribunal Judge Clive Lane