



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/31110/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Birmingham

Decision & Reasons

On 20 June 2017

Promulgated

On 28 June 2017

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**TENDAYI LEE JANYURE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Tendayi Lee Janyure, was born on 22 May 1977 and is a male citizen of Zimbabwe. The appellant had been granted discretionary leave to remain for a period of three years on 27 July 2011. On 30 June 2014, the appellant applied for further leave to remain. That application was refused by the decision of the respondent dated 1 April 2015. The appellant appealed to the First-tier Tribunal (Judge James) which, in a decision promulgated on 12 October 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I was greatly assisted by Mr Mills, for the respondent, who was able to explain the background of the grant of leave to this appellant. Although the letter of grant of 27 July 2011 is silent as to the reasons for granting discretionary leave, it is apparent from two screenshots produced by Mr Mills that the reason had been the fact that the appellant has an ongoing relationship with two children, C and S. Both C and S attended court with Mrs Makoni, the mother of the appellant and the principal carer of both children. As Mr Mills explained, a letter was written to the appellant by the respondent on 4 March 2015 asking for details of the appellant's contact with C and S. When no response was forthcoming, the appellant's application for further leave to remain was refused. This refusal letter records, "*your application has been considered on the evidence you originally submitted*". The author of the letter considered that the appellant's circumstances "*do not remain the same as your previous grant of leave*". In the absence of particulars regarding the relationship between the appellant and C and S, the application was refused. When the appeal came before Judge James, he found that the appellant has an ongoing relationship with both C and S; in other words, he made findings relating to the very matters which had been raised by the respondent in her letter of 4 March 2015 to which the appellant had not responded. Mr Mills told me that, in the light of the judge's findings, the policy of the Secretary of State would be to extend the appellant's leave to remain for a further period of three years. At the end of that period, the appellant would be in a position to apply for settlement. Given that this is an "old" case (predating 5 April 2015), the judge should have allowed the appeal to the limited extent that the matter is returned to the Secretary of State in order to follow her own policy and to grant a further period of three years' leave to remain.
3. Judge James did the best that he could with the material before him but he did not, like the Upper Tribunal, have the advantage of a representative from the Secretary of State before him at the hearing.

Notice of Decision

4. The decision of the First-tier Tribunal which was promulgated on 12 October 2016 is set aside. I have remade the decision. The appeal of the appellant against the decision of the Secretary of State dated 1 April 2015 is allowed to the limited extent that the matter is remitted to the Secretary of State for further consideration of the appellant's application and on the basis of the findings as regards contact between the appellant and his children as set out in the First-tier Tribunal's decision.
5. No anonymity direction is made.

Signed

Date 23 June 2017

Upper Tribunal Judge Clive Lane