



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11944/2019

THE IMMIGRATION ACTS

Held at Field House
On 19th August 2020

Decision & Reasons Promulgated
On 24th August 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROQUITA BARANDA AFAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr. T Lindsay, Senior Presenting Officer

For the Respondent: Mr. S Bellara, Counsel, Direct Access

DECISION AND REASONS

1. In this decision the appellant is referred to as the Secretary of State and the respondent is referred to as the claimant.
2. This is an appeal by the Secretary of State against the decision of Judge of the First-tier Tribunal Davey ('the Judge') sent to the parties on 31 December 2019 by which the claimant's appeal against a decision to refuse to grant her leave to remain on human rights (article 8) grounds was allowed.

3. Judge of the First-tier Tribunal Boyes granted the Secretary of State permission to appeal on all grounds by a decision dated 31 March 2020
4. The Judge did not issue an anonymity direction and the parties did not seek one before me.
5. By a decision dated 11 June 2019 the Secretary of State refused the claimant's application for settlement on the ground of 10 years' lawful residence. The Secretary of State refused the application by a decision dated 11 June 2019. It was accepted that the claimant had accrued 11 years and 9 months lawful residence between 7 September 2007 and the date of decision. The Secretary of State proceeded to refuse the application under paragraph 276D of the Immigration Rules ('the Rules') with reference to paragraph 276B(iii) and 322(2) on the ground that a TOEIC certificate relied upon in a previous application had been obtained through deception.
6. The grounds of appeal identify two challenges with the first being that the Judge materially erred as to fact by concluding that he did not have evidence before him establishing that the claimant had submitted the TOEIC in question as part of a 2013 application for further leave to remain in this country.
7. Mr. Bellara confirmed, on instruction, that the Judge did have relevant documents before him and so accepted that the Judge had materially erred in law. I am satisfied that the claimant's concession as to the error of law was correctly made and conclude that the only appropriate decision is to set aside the decision of the Judge with no findings of fact to stand.

Remaking the decision

8. Both representatives indicated that the matter should be remitted to the First-tier Tribunal.
9. I have considered the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. I am satisfied that the effect of the material error identified above has been to deprive the parties of a fair hearing before the First-tier Tribunal and so it would be just to remit the matter to the First-tier Tribunal: paragraph 7.2(a) of the Joint Practice Statement.

Notice of decision

10. The decision of the First-tier Tribunal involved the making of a material error on a point of law and the Judge's decision promulgated on 31 December 2019 is set aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
11. The matter is remitted to the First-tier Tribunal for a fresh hearing before any judge other than Judge of the First-tier Tribunal Davey.

12. No findings of fact are preserved.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Date: 20 August 2020

