



IAC-AH-CO-V1

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

Appeal Number: IA/07109/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> December 2015**

**Before**

**UPPER TRIBUNAL JUDGE RENTON**

**Between**

**RUNYARO MADGE NTABENI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Mavaza of Walters Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a female citizen of Zimbabwe born on 23<sup>rd</sup> July 1966. She first arrived in the UK on 14<sup>th</sup> September 2000 when she was given leave to enter as a student until 31<sup>st</sup> October 2001. Thereafter the Appellant was granted successive periods of leave to remain as a student, a nurse (supervised practice), a work permit holder, and a Tier 2 (General) Migrant until 5<sup>th</sup> August 2012. On 12<sup>th</sup> July 2012 the Appellant applied for indefinite leave to remain as a Tier 2 (General) Migrant. That application was

refused on 25<sup>th</sup> February 2013 for the reasons given in a Notice of Decision of that date. At the same time the Respondent decided to remove the Appellant under the provisions of Section 47 Immigration, Asylum and Nationality Act 2006. The Appellant appealed, and her appeal was heard by Judge of the First-tier Tribunal Stokes sitting at Taylor House on 27<sup>th</sup> August 2014. He decided to dismiss the appeal under the Immigration Rules and also on human rights grounds for the reasons given in his Decision dated 8<sup>th</sup> October 2014. The Appellant sought leave to appeal that decision, and on 2<sup>nd</sup> December 2014 such permission was granted but only as regards the Section 47 removal decision.

### **Error of Law**

2. I must first decide if the Judge made an error of law in respect of his Section 47 removal decision so that it should be set aside. At the hearing, I heard brief submissions from Mr Whitwell and Dr Mavaza. Mr Whitwell conceded that the Section 47 removal decision had been made at the same time as the decision to refuse the application for leave to remain and was therefore made not in accordance with the law. The Judge should have made a finding accordingly, and his decision to dismiss the appeal against the Section 47 removal decision was therefore made in error of law and should be set aside. In Mr Whitwell's submission, now that the provisions of the Crime and Courts Act 2013 had come into force I should remake the decision of the Judge by referring the matter to the Secretary of State for a further removal decision to be made.
3. I agreed with the submission of Mr Whitwell for reasons I need not explain as the issue was conceded by him.

### **Decision**

There was an error of law in the decision of the Judge relating to the Section 47 removal decision. I set that decision aside. I remake that decision by deciding that the decision of the Respondent was not in accordance with the law and therefore to that extent I allow the appeal of the Appellant and direct that the Section 47 removal decision be referred again to the Secretary of State for another decision.

### **Anonymity**

The First-tier Tribunal did not make an order for anonymity and I find no reason to do so.

Signed

Dated

Upper Tribunal Judge Renton

**TO THE RESPONDENT**  
**FEE AWARD**

Although I have allowed the original appeal of the Appellant to a limited extent, I make no fee award as the Appellant's substantive appeal was unsuccessful.

Signed

Dated

Upper Tribunal Judge Renton