



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

Appeal Number: IA/19019/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 April 2015**

**Determination Promulgated
On 28 May 2015**

Before

DEPUTY JUDGE DRABU CBE

Between

Mrs VICTORIA OLATUNDE
ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Cooke of Counsel instructed by Chris & Co, Solicitors.
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria. She is married to Mr Moses Cole, a national of Sierra Leone who came to the UK as an asylum seeker in 2002 and has been living in the UK lawfully since. The appellant's application for leave to remain in the United Kingdom on the basis of her family and private life was refused by the respondent and that decision on appeal was upheld by Judge Naphtine, a Judge of the First Tier Tribunal for reasons given in the determination promulgated on 4 December 2014.
2. The appellant was granted permission to appeal to the Upper Tribunal by Judge Pooler, a Judge of the First Tier Tribunal. In giving reasons for the

decision to grant permission to appeal, Judge Pooler took the view that in the light of some of the positive findings made relating to the genuine and subsisting relationship between her and her husband who is present and settled in the UK, the grounds of appeal upon which permission to appeal was being sought raised arguable issues of law on findings relating to relocation and proportionality.

3. After hearing arguments from Counsel and Mr Nath, I decided that the decision of Judge Napthine, is in material error of law for reasons identified in the grounds of the application and also the contents of paragraph 59 of the decision where the Judge said that the couple could re-locate to Sierra Leone, not realising that the sponsor is a refugee from Sierra Leone. The decision of Judge Napthine is accordingly set aside.
4. For administrative reasons and at the request of the parties, I directed that the appeal be re-heard at Hatton Cross by a Judge other than Judge Napthine and that in the re-hearing all issues will be at large.

K Drabu CBE
Deputy Judge of the Upper Tribunal.

Date: 22 May 2015

Anonymity Direction:

On the facts of this case anonymity direction is neither necessary nor appropriate.

The direction made by Judge Napthine on fees is retained.

K Drabu CBE
Deputy Judge of the Upper Tribunal.

Date: 22 May 2015