Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/01583/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
On 11 July 2014	**On 30 July 2014**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

FATIMETU UMORU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr G Jack, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Nigeria who was born on 12 November 1957, appeals with permission in the decision of First-tier Tribunal Judge North. For reasons given in her determination dated 10 March 2014, the judge dismissed the appeal against the decision refusing to vary the applicant's leave to remain and to remove her dated 16 December 2013.

2. The history is as follows. In an application dated 30 October 2013 the appellant applied further leave to remain with a different employer from the one for which she had been granted leave to enter. The respondent refused the application because she was not satisfied the appellant had been continuously employed as a domestic worker in the private

household of the same employer with whom she had entered or joined the United Kingdom and thus did not meet the requirements of 159D(iii):

> *" ... has continued to be employed for the duration of leave granted as a domestic worker in the private household of the employer with whom the applicant entered or joined in the United Kingdom; ...*"

3. Furthermore, the respondent considered in the light of the change that if she did not meet the requirements of paragraph 159D(iv):

> "... continues to be required for employment for the period of the extension sought as a domestic worker in a private household that the employer lives in ..."

4. In her grounds of appeal to the First-tier Tribunal the appellant relied on an endorsement on her visa that "changes must be authorised". She claimed to be entitled to change employer as she had made her application on 19 March 2012 before the Rules changed on 6 April that year. She had been granted her visa after a successful appeal. The appellant relied on a letter addressed to the Secretary of State and dated 4 October 2013 giving details of the change of employer.

5. The judge determined the appeal on the papers as requested by the appellant. She concluded that the appellant had not demonstrated that approval had been granted for the change and concluded that the appellant was not employed by the same person for which her original leave to enter had been granted and thus did not meet the requirements of the above Rules.

6. Permission to appeal was granted on the basis it was arguable that the appellant was entitled to change her employer without the respondent's consent, based on her application having been made before 6 April 2012. In her grounds of application the appellant referred to a failure by the judge to take into account the fact that her initial application was made before the changes in April 2012 with reference to a guidance from the Home Office website from which she quotes:

> "You are allowed to move from another job after you have arrived in the UK, if the job is similar in skill to your original job. If you change your employer after you entered you must write to tell us. You do not need to make a formal application until you need to apply to extend your stay."

7. Mr Jack conceded that the Secretary of State had applied the wrong rule when deciding the application. He provided me with a copy of the Rules in force at the time of the decision and drew my attention to paragraph 159EA which is in these terms:

> "159EA. The requirement for an extension of stay as a domestic worker in a private household for applicants who enter the United Kingdom under Rules in place before 6 April 2012 are that the applicant:

(i) last entered the UK with a valid entry clearance as a domestic worker in a private household under Rules in place before 6 April 2012; and

(ii) has continued to be employed for the duration of leave granted as a domestic worker in a private household; and

(iii) continues to be required for employment for the period of the extension sought as a full-time domestic worker in a private household under the same roof as the employer or in the same household that the employer has lived in and where evidence of this in the form of written terms and conditions of employment in the UK are set out in Appendix 7 and evidence that the employer resides in the UK; and

(iv) does not intend to take employment except as a full-time domestic worker in the private household referred to in sub-paragraph 159EA(iii); and

(v) meets the requirements of paragraph 159A(i) and (vii); and

(vi) must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded."

8. Mr Jack's initial view was that although the wrong rule had been applied having regard to the appellant's immigration history, she could not succeed because she could not meet (iv) of paragraph 159A which is in these terms:

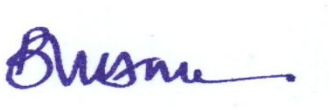
> "(iv) intends to leave the UK at the end of six months in the United Kingdom or at the same time as the employer, whichever is the earlier; and …"

9. On reflection he changed this submission and corrected his misunderstanding that 159EA(v) provided that an applicant should meet the requirements of paragraph 159A(i) *to* (vii) rather than as appears in the Rule itself at 159A(i) *and* (vii).

10. Mr Jack accepted that the appeal should succeed and invited me to allow the appeal against the decision refusing leave to remain.

11. I set aside the decision of the First-tier Tribunal on the basis that the judge had applied the wrong rule. I remake the decision by allowing the appeal against the Secretary of State's decision dated 16 December 2013. The application for leave to remain remains pending before the Secretary of State for lawful consideration.

Signed Date 29 July 2014



Upper Tribunal Judge Dawson