



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

Appeal Number: OA/07207/2013

THE IMMIGRATION ACTS

Heard at Field House

On 16 June 2014

Determination

Promulgated

On 1 July 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS NONDUMISO BONGEKA SIPHESIHLE DLAMINI

Respondent

Representation:

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

For the Respondent: Mr S Mahmud, Counsel

NOTICE OF WITHDRAWAL

1. The appellant refused the application of the respondent for entry clearance to the UK as a returning resident. The refusal was under paragraph 320(7A) of the Immigration Rules on the ground that the respondent had failed to disclose on her application form that she had a conviction in the UK for criminal damage, for which she received a conditional discharge.

2. At an oral hearing the First-tier Tribunal Judge allowed the respondent's appeal on "immigration grounds". The appellant was granted permission to appeal that decision.
3. At the hearing before me Mr Whitwell produced the unreported decision of Mr Justice Green and Upper Tribunal Judge Dawson in the case of Mrs I G Omenma appeal number IA/09829/2013 which determination was promulgated on 22 May 2014.
4. It is clear from the wording of that determination that the effect of Section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 is that a person who has received a conditional or absolute discharge does not make a false representation if the answer is "no" when asked if he has ever been "convicted" of an offence.
5. Mr Whitwell took instructions at the hearing and sought consent under Rule 17(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to withdraw the appeal. Mr Mahmud, acting for the respondent, had no objection and on that basis I consented to the withdrawal of the appeal.
6. The result is that the decision of the First-tier Tribunal Judge that the appeal of Ms Dlamini is allowed therefore stands.

Signed

Date

Upper Tribunal Judge Pinkerton