



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

Appeal Number: IA/25603/2013

THE IMMIGRATION ACTS

Heard at Field House

On 26 June 2014

Determination

Promulgated

On 2 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

**DIRISA MULINDWA
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Daykin, Counsel, instructed by Tuckers Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

NOTICE OF WITHDRAWAL

1. This is an appeal that was allowed on Article 8 grounds at the First-tier. For clarity and convenience, however, I will refer to the parties as they were at the First-tier hearing.
2. The Secretary of State had been given permission to appeal against a decision allowing the appellant's appeal on Article 8 grounds. This

decision was by First-tier Tribunal Judge Thomas, in a determination promulgated on 31 March 2014.

3. At the hearing before me Mr Jarvis, for the Secretary of State, sought leave to withdraw the Secretary of State's case before the Upper Tribunal. The basis of this application was that, on the factual findings, the requirements under Appendix FM for leave to remain on Article 8 grounds as a parent, with reference to the exception (EX1) appear to have been met. Although this aspect was not considered in the First-tier hearing the various challenges to the approach to Article 8, based on **Gulshan** and other cases, became academic. Mr Jarvis indicated that the appellant would be given leave, initially for a 30 month period.
4. There were some discussions as to whether the appellant would have to remain on the ten year route to settlement or whether, alternatively, he could show that he came within Rules other than EX1 alone, which would permit him to switch to the five year route. No clear answer emerged, but the appellant's representatives will consider the matter further and advise the appellant on the possibility of further submissions being made at a later date.
5. Having considered the matter I gave leave for the withdrawal of the Secretary of State's case in accordance with Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
6. As a consequence of the withdrawal the judge's decision allowing the appeal on Article 8 grounds stands.

Signed

Date

Deputy Upper Tribunal Judge Gibb