



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

Appeal Number: IA/08448/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 11th October 2013

**Determination
Promulgated**

On 24th October 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SIMON IGBINEDION

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Welsh, Counsel, instructed by French & Company
For the Respondent: Mr S Spence, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Bircher made following a hearing at North Shields on 11th June 2013.

2. The Appellant is a citizen of Nigerian born on 3rd June 1984. He entered the UK as a Tier 4 (General) Student on 18th January 2011 and submitted an application for further leave to remain on 2nd July 2012 on the basis of his marriage to Angela Onkutwlie Mokgwathi, who has refugee status in the UK.
3. The Respondent was not satisfied that each of the parties to the marriage intended to live permanently with the other as his or her spouse but the judge found the Appellant and his wife to be entirely credible and was satisfied that this was a subsisting marriage. She dismissed the appeal on the grounds that the sponsor had only leave to remain until 9th July 2015 and was therefore not settled in the UK. She also dismissed the appeal on Article 8 grounds.
4. The Appellant made a number of challenges to the determination, in detailed grounds, which do not need to be recited here. When granting permission to appeal Designated Judge Campbell observed that the judge had also erred in failing to conclude that the decision to refuse to vary leave was unlawful and had failed to apply Adamally and Jaferi [2012] UKUT 00414.
5. At the hearing Mr Spence conceded that there were multiple errors in this determination.
6. This application was made on 2nd July 2012, a week before the change in the Immigration Rules, on 9th July 2012 impeding the decision in FH (Post-flight spouses) Iran [2010] UKUT 275 to provide for the admission of post-flight spouses of refugees with limited leave.
7. Given that the changes in the Rules, one week after the application, and before the date of decision, meant that the Appellant could fulfil the requirements therein, Mr Spence said that he could not submit that there was a legitimate aim in refusing the application on Article 8 grounds.
8. Accordingly, whilst the Appellant could not meet the applicable requirements of the Rules, he succeeds on human rights grounds. He enjoys family life with his wife in the UK. Removal would interfere with his right to family life and the Respondent does not identify any legitimate aim which could be served by his removal.

Decision

9. The decision of the judge is set aside. It is remade as follows. The Appellant's appeal is allowed on human rights grounds.

Signed

Date

Upper Tribunal Judge Taylor