

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/15123/2013



Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

**On 6th November 2013
Prepared**

**Determination
Promulgated**

On 29th November 2013

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR FRANKLYN OSEZELE AYEWOH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ayewoh, (in person)

For the Respondent: Mr Steward, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant Franklyn Osezele Ayewoh is a citizen of Nigeria born 19th November 1976. On 21st July 2011 the Appellant was granted limited leave to remain in the United Kingdom until 26th February 2013 as a Post-Study Student. On 25th February 2013 he applied for variation of his leave to remain. By a decision dated 16th April 2013 that application was refused and a Section 47 removal notice was served.

2. The Appellant appealed that decision. The grounds of appeal clearly stated that the Appellant claimed that the decision made on 16.04.2013 was incompatible with his Article 8 ECHR rights to a private life.
3. The appeal was dealt with on the papers, at the Appellant's request, by First-tier Tribunal Judge Thomas who in a determination promulgated on 28th August 2013, dismissed the appeal.
4. I find that the Judge has erred in that determination in that he has fundamentally overlooked the basis upon which the appeal fell to be determined. He has considered the Appellant's position under the Immigration Rules only, despite stating in paragraph 1 of the determination,

"His application was refused on 26th April 2013 and he appeals that decision under Section 82 of the Nationality, Immigration and Asylum Act 2006 and on human rights grounds".

The determination contains no consideration of the main ground upon which the Appellant was appealing, namely Article 8 ECHR private life.

5. Because the Judge misunderstood the basis on which he was required to determine the appeal, the parties have been denied a proper hearing. For that reason, I have decided to send the appeal back to the First-tier Tribunal for that Tribunal to rehear the matter. None of the findings made by First-tier Tribunal Judge Thomas are preserved. Mr Steward who appeared on behalf of the Respondent was in agreement with this course of action. The Appellant, who appeared before me in Bradford, was unsure whether he wished to have an oral hearing or whether he was content for the matter to be reheard on the papers. I explained that the rehearing would be on the papers unless he informed the Tribunal Service that he wished to change it to an oral hearing. The First-tier Tribunal will need to fully consider the grounds of appeal, at the rehearing. The rehearing will take place at Bradford as the Appellant now lives there.

DECISION

6. The determination of the First-tier Tribunal which was promulgated on 28th August 2013 is set aside. I direct that the appeal should be heard again in the First-tier Tribunal (not Judge Thomas) and the decision remade by that Tribunal.

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated