



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

Appeal Number: IA/00135/2013

THE IMMIGRATION ACTS

Prepared at Field House On the Papers

On 8 January 2014

Determination

Promulgated

On 22 January 2014

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BABA IBRAHIM OLU-AUDU

Respondent

DETERMINATION AND REASONS

1. For ease of reference, I shall throughout this determination refer to Mr Olu-Audu, who was the original appellant, as “the claimant”, and to the Secretary of State, who was the original respondent, as “the Secretary of State”.
2. The claimant, who is a national of Nigeria, was born on 30 September 1975. His appeal against the Secretary of State’s decision refusing his application to vary leave to remain in the UK as the partner of a person present and settled here was allowed by First-tier Tribunal Judge Holt, both

under the Immigration Rules and under Article 8, following a hearing before her at Bennett House, Stoke-on-Trent, on 30 April 2013.

3. The Secretary of State appealed against this decision and on 3 October 2013 I granted her permission to appeal under the Rules, but refused her permission to appeal in respect of the substantive decision under Article 8, for reasons which I gave.
4. At the same time, I gave notice of the Tribunal's Provisional Decision, which was that the Tribunal intended to re-make the decision, allowing the claimant's appeal under Article 8. I also made it clear, for the avoidance of doubt, that the Tribunal's view was that the decision to remove the claimant pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006 was not in accordance with the law, in accordance with existing jurisprudence.
5. When giving Notice of the Tribunal's Provisional Decision, I informed the parties that I would consider any representations as to why the Tribunal should not give a formal determination in the terms set out in that notice, so long as these were filed with the Tribunal by no later than seven days after the notice had been sent to the parties.
6. The file has now been put before me again, no representations having been received from either party in the meantime.
7. Accordingly, I now formally make the decision which I had indicated to the parties that I would make.

Decision

I set aside the determination of First-tier Tribunal Judge Holt as containing a material error of law, and substitute the following decision:

The claimant's appeal against the Secretary of State's substantive decision refusing to vary his leave to remain is allowed, under Article 8.

For the avoidance of doubt, the decision of the Secretary of State to remove the claimant under Section 47 of the Immigration, Asylum and Nationality Act 2006, was in any event not in accordance with the law.

Signed:

Date: 17 January 2014

Upper Tribunal Judge Craig