



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

**Appeal  
Number**

**IA/48763/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 June 2014**

**Notice sent  
On 30 June 2014**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Chukwinwike James Ijomah  
(Anonymity direction not made)**

**Appellant**

**and**

**Secretary of State for the Home Department  
Respondent**

**Representation**

For the Appellant: No appearance.

For the Respondent: Ms. J. Isherwood, Home Office Presenting  
Officer

**NOTICE OF WITHDRAWAL**

**Tribunal Procedure (Upper Tribunal) Rules 2008 r.17(5)**

1. This case was listed before the Upper Tribunal today as an appeal against the decision of First-tier Tribunal Judge Blum promulgated on 31 March 2014, dismissing the Appellant's appeal against the Respondent's decision dated 8 November 2013 to refuse to vary leave to remain and remove him from the UK.

2. The Appellant is a national of Nigeria born on 22 July 1983. He entered the UK on 15 March 2009 with leave as a student valid until 31 July 2012. On 3 July 2012 he applied for a variation of leave to remain as the spouse of a British citizen, Ms Lucy Imayuse Aghayere. On 27 September 2013, whilst the Appellant attended for interview by the Respondent, Ms Aghayere failed to attend. In due course, by way of a 'reasons for refusal' letter dated 8 November 2013, the Appellant's application was refused; a Notice of Immigration Decision refusing variation of leave and containing a removal decision was produced on the same date (and served on 12 November 2013). The Respondent refused the Appellant's application with reference to paragraph 284(vi) of the Immigration Rules - i.e. on the basis that the Respondent was not satisfied that the marriage was subsisting, or that the couple intended to live together permanently as husband and wife. Paragraph 322(10) was also invoked by reason of Ms Aghayere's failure to attend for interview. The Respondent also gave consideration to the Appellant's case pursuant to Appendix FM of the Rules and paragraph 276ADE.

3. The Appellant appealed to the IAC. Although he initially requested that his appeal be dealt with at a hearing, his representatives subsequently wrote to the Tribunal asking that the case be determined without a hearing 'on the papers'. The First-tier Tribunal Judge exercised his discretion to determine the appeal without a hearing (determination at paragraph 6), and dismissed the Appellant's appeal for reasons set out in his determination.

4. The Appellant sought permission to appeal which was granted by First-tier Tribunal Judge White on 14 April 2014.

5. There was no appearance today by or on behalf of the Appellant.

6. The Tribunal has received a letter from the Appellant dated 26 June 2014 acknowledging the fact of the listing of the appeal before the Upper Tribunal, but stating: "*I humbly write to apply for a withdrawal of my case*". The Appellant refers to a matrimonial breakdown, that his wife has left the matrimonial home, and that he is in the process of obtaining a divorce, "*and so will not continue with the case*".

7. I am satisfied that the letter from the Appellant constitutes "*notice of the withdrawal of [his] case*" within the meaning of rule

17(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The Upper Tribunal's consent is required for a notice of withdrawal to take effect (rule 17 (2)). I give that consent.

8. Necessarily the consent is to the withdrawal of the Appellant's case as it stands before the Upper Tribunal. The effect of the withdrawal of his case before the Upper Tribunal is that his challenge to the decision of the First-tier Tribunal comes to an end, and the decision of the First-tier Tribunal stands.

9. This is the same outcome as I would likely have reached in any event had it been necessary to give consideration to the bases of the Appellant's challenge to the decision of the First-tier Tribunal. In my judgement the Grounds in support of the application for permission to appeal to not disclose even an arguable error of law, but amount to an effective disagreement with the evaluation of the First-tier Tribunal Judge. Indeed in granting permission to appeal Judge White does not identify any merit in the Grounds, but raises matters of his own motion in respect of the interplay between the Rules pre- and post- the amendments of 9 July 2012. I do not detect any relevant error: the RFRL appropriately addresses the application by reference to the pre- 9 July 2012 Rules, and then appropriately pursuant to paragraph A277C also addresses the case by reference to the post- 9 July 2012 rules - which would in any event inform any assessment in respect of Article 8. Judge Blum also considers the 'old' Rules first, and then the 'new' Rules in the context of evaluating Article 8. In as much as Judge Blum made no express reference to **MF (Nigeria)** and **Gulshan**, I am unable to discern how this could have made any material difference once the Judge had concluded, at paragraph 16, that he was not persuaded the Appellant was in a genuine and subsisting relationship with Ms Aghayere.

10. Be that as it may, it is unnecessary to reach any conclusions in circumstances where the Appellant's case is now withdrawn.

11. This Notice is given pursuant to rule 17(5) of the Procedure Rules.

### **Outcome**

12. The Appellant's challenge to the decision of the First-tier Tribunal is withdrawn.

13. The decision of the First-tier Tribunal stands.

**Deputy Judge of the Upper Tribunal I. A. Lewis 27 June 2014**