Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/51558/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 21 October 2014	**On 28 October 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr FELIX KUKWENCH
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Jeshani, Counsel
(instructed by Aston Brooke Solicitors)
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

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Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Grant-Hutchison on 11 September 2014 against the determination of First-tier Tribunal Judge Cresswell who had dismissed the Appellant's appeal in a determination promulgated on 14 July 2014.

2. The Appellant is a national of Cameroon, born on 4 August 1978, who had applied for leave to remain in the United Kingdom under Appendix FM and paragraph 276ADE of the Immigration Rules, which was refused by the Secretary of State on 19 November 2013. The judge made adverse credibility findings as to the Appellant's claimed relationship with his partner, held that the Immigration Rules were not satisfied and that any breach of the Appellant's right to respect for his private life was proportionate.

3. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Grant-Hutchison because she considered that it was arguable that the judge had (a) made perverse or irrational findings (b) erred in finding the date on which the Appellant had completed his studies; and (c) not given the Appellant the opportunity to address the lack of cohabitation when assessing the claimed family ties.

4. The Respondent indicated by a rule 24 notice that the onwards appeal was opposed. Standard directions were made.

Submissions – error of law

5. Mr Jeshani for the Appellant relied on the grounds of onwards appeal on which permission to appeal had been granted. The judge ought to have raised concerns about the evidence with the Appellant at the hearing. The judge had acted perversely. Although less weight could be attached to the Appellant's partner's witness statement because of her inability to attend the hearing, it was an error of law to give no weight to the witness statement at all. The judge misunderstood the Appellant's evidence as to the date when he had ceased his studies, which was in June 2013, not June 2003. The judge's finding that the

Appellant was not in a relationship was unreasonable. That error carried over into the judge's family life findings.

6. Mr Wilding for the Respondent submitted that there was no perversity and that the submissions on behalf of the Appellant simply amounted to disagreement with the judge's decsion.

No material error of law finding

7. The tribunal indicated that it found that the judge had not fallen into material error of law. The grant of permission to appeal must be seen as overly generous. The experienced judge had heard and seen the Appellant, and reached conclusions which were open to her. The tribunal reserved its determination which now follows.

8. The judge had not misunderstood the facts. The context of [15(vii)] of the determination shows that "June 2003" was simply a typographical error for June 2013: see, e.g., [15(iv)] and [14(i)]. The judge's point was that the Appellant shifted his ground when giving evidence. That point was well supported by the examples identified.

9. It is trite law that weight is a matter for the judge. It is similarly trite law that perversity is a high hurdle. The present decision was not perverse by any stretch of the imagination. The judge gave at least 5 separate reasons for finding that the alleged relationship which the Appellant advanced did not exist: see [15(iii)], [15(v)], [15(viii)] and [15(ix)] of the determination. The Appellant produced witness statements from various persons, none of whom attended the hearing, and it was open to the judge to assess them as they stood. That was the judge's task. They were not witness statements made by the Appellant and he was not in a position to explain what those statements might or might not amount to. It was plain that the judge had properly weighed and considered all of the evidence produced, and had given sufficient reasons to support her findings and decision.

10. Given that the judge found that the Appellant was unable to satisfy the Immigration Rules, and the adverse findings reached on the family life claim advanced, all that remained to be considered under Article 8 ECHR was the evidence of the Appellant's private life, such as it was. The

judge correctly applied the relevant authorities such as MF (Nigeria) [2013] EWCA Civ 1192 and Gulshan (Article 8 – new rules – correct approach) [2013] UKUT 00640 (IAC).

11. There was no material error of law in the determination and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell **21 October 2014**

TO THE RESPONDENT
FEE AWARD

The appeal was dismissed so there can be no fee award

Signed **Dated**

Deputy Upper Tribunal Judge Manuell **21 October 2014**