Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10314/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 18 December 2018	**On 04 March 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IGNATIUS EMEKA ONYEKWERE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr Ikegwuruka, Almond Legals
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I shall refer to the appellant as respondent and the respondent as the appellant, as they appeared respectively before the First-tier Tribunal. The appellant was born on 31 July 1969 and is a male citizen of Nigeria who entered the United Kingdom in September 2007 with entry clearance as a student. He was granted further periods of leave an application which he made on 6 September 2017 was refused by the respondent in a decision dated 6 September 2017. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 26 January 2018, allowed the appeal on human rights grounds (Article 8 ECHR).

2. The judge considered a number of matters in the course of his decision. At the time of the hearing, the appellant was engaged in research for a PhD. He sought to argue before the judge that he had completed 10 years of lawful residence in the United Kingdom. The judge recorded that the appellant had been absent from the United Kingdom in the relevant 10 year period for a total of 965 days. The judge had regard at [18] for the respondent's guidance on long residence and concluded that leave to remain should be refused 'unless there are compelling circumstances' [20]. The judge then considered Article 8 ECHR outside the rules. In the context of the Article 8 appeal, the judge then examined the reasons given by the appellant for having been absent from the United Kingdom during the 10 year period. At [35], he found that the appellant 'has not adduced sufficient evidence to show that it was necessary or reasonable for him to be out of the country to the extent as found above.' The judge gave detailed reasons finding that there were not compelling circumstances justifying the appellant's absences from the United Kingdom. He therefore rejected the appellant's claim for indefinite leave to remain on the basis of long residence.

3. However, at the very end of his decision, [39] the judge wrote:

> "However, I consider that the respondent's refusal of indefinite leave to remain is not the end of the matter. That is because the appellant is pursuing a PhD registered in the United Kingdom and has had leave to study in the United Kingdom since 2007. The circumstances, when placed in the context of the evidence as a whole, amount to compelling reasons showing that he should be granted sufficient leave to at least complete his studies."

4. The respondent challenges the judge's decision on the grounds that the judge has used Article 8 ECHR is a general dispensing power. The respondent argues that the United Kingdom does not have an obligation to respect and individuals wish to access an education here. The judge has given no details of any evidence adduced regarding the strength of the appellant's connections within the United Kingdom nor has the judge indicated what compelling circumstances, if any, might outweigh the strong public interest in maintaining effective immigration control. I agree. The judge's analysis is entirely sound as regards the application of the immigration rules and his consideration of the respondent's policy regarding long residence. Only at the very end of the decision does the judge fall into error by finding that the appellant should be granted sufficient leave 'at least to complete his studies.' It is important when the tribunal considers an appeal on Article 8 grounds that proper attention is given to the basis of the appeal, whether it be based on private or family life. In the absence of any evidence linking the article 8 appeal to either private or family life, there existed no basis for the judge to allow the appeal at all. I have no doubt that the judge felt sympathy for an appellant who wishes to remain in the United Kingdom to complete his PhD. However, as the Supreme Court in *Patel* [2013] UKSC 72 held, 'the opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under

Article 8 ECHR.' Judge appears to have ignored that principle and in doing so he has fallen into legal error. Accordingly, I set aside his decision. I have proceeded to re-make the decision. In the light of what I say above, I dismiss the appeal of the appellant against the decision of the respondent dated 6 September 2017.

Notice of Decision

5. The First-tier Tribunal decision is set aside. I have remade the decision. I dismiss the appeal of the appellant against the decision of the respondent dated 6 September 2017

Signed Date 2 February 2019

Upper Tribunal Judge Lane