



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

**Appeal Number: IA/28375/2013  
IA/28379/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> August 2014**

**Determination Promulgated  
On 7<sup>th</sup> August 2014**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**DONALD GANDAWA  
TRAAVONE GANDAWA**

Respondent

**Representation:**

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer  
For the Respondent: unrepresented; appeared in person

**DETERMINATION AND REASONS**

1. Mr Deller on behalf of the Secretary of State withdrew the decision to refuse to vary the leave of Traavone Gandawa and to remove him by way of directions under s47 Immigration Asylum and Nationality Act 2006: he is now a British Citizen and thus not removable. The appeal before me is thus concerned only with Donald Gandawa and I have omitted reference to the child Traavone save as where necessary in reaching my decision.

**Error of law**

2. Donald Gandawa had sought a variation of leave to remain as the spouse of and father of a child who had applications pending for indefinite leave to remain.

Those applications were refused by the SSHD on 20<sup>th</sup> June 2013 and the appeal was heard and determined by the First-tier Tribunal following a hearing on 22<sup>nd</sup> January 2014. The First-tier Tribunal judge allowed the appeal under the Immigration Rules.

3. At the date of application the claimant's spouse and one child had applied for but not been granted indefinite leave to remain. Between the date of decision and date of hearing she and the child were granted ILR. That child and Traavone have now, subsequent to the determination of the First-tier Tribunal, registered as British Citizens. In [20] the First-tier Tribunal judge found that the claimant could not meet the requirements of the Immigration Rules. He then went on to consider Article 8 but failed to consider this in accordance with relevant jurisprudence. He then concluded by allowing the appeal under the Immigration Rules.
4. The judge has clearly erred in law not only in reaching a conclusion that Mr Gandawa met the requirements of the Immigration Rules – he did not and then finding that removal would be disproportionate without taking proper or any account of relevant jurisprudence.
5. I set aside the decision to be remade.

#### **Remaking of the decision**

6. Mr Deller very properly confirmed that in the light of the facts as they now stand and in the light of current legislation and jurisprudence the proper course of action is for this appeal to be allowed under the Rules as they clarify and apply the Strasbourg jurisprudence in Article 8 and under Article 8 if applied direct.
7. I accordingly allow the appeal on all grounds.

#### Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remake the decision by allowing the appeal of Donald Gandawa (IA/28375/2013) against the decision of the SSHD to refuse to vary his leave and to remove him.

There is no longer an extant appeal by Traavone Gandawa (IA/28379/2013), the Secretary of State having withdrawn the decision appealed against.

Date 7<sup>th</sup> August 2014

Judge of the Upper Tribunal Coker