



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

Appeal Number: IA/17692/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 21 January 2015**

**Decision & Reasons Promulgated
On 4 February 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SEUN RILWAN ANIFOWOSE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss Johnstone, a Senior Home Office Presenting Officer
For the Respondent: Miss Khan, instructed by Jackson & Canter, Solicitors

DECISION AND REASONS

1. The respondent, Seun Rilwan Anifowose, was born on 11 March 1990 and is a male citizen of Nigeria. I shall hereafter refer to the appellant as the respondent and the respondent as the appellant as they appeared respectively before the First-tier Tribunal.

2. The appellant appealed against a decision of the respondent dated 2 April 2014 refusing him indefinite leave to remain in the United Kingdom. First-tier Tribunal (Judge Ransley) in a determination promulgated on 4 August 2014, allowed the appeal on human rights grounds (Article 8 ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal.
3. The appellant entered the United Kingdom in October 2012 with leave to enter as a Tier 4 (Student) until 30 January 2014. On 29 January 2014, he made a further application to remain in the United Kingdom on Article 8 (family life) grounds. The appellant's partner (Ms Fox) is 19 years old and is a British citizen. The couple have a young child which was 8 weeks old at the date of the hearing before the First-tier Tribunal. The judge found that the appellant is actively seeking a permanent job and was likely to obtain work with an annual gross salary of around £18,000 per annum.
4. The grounds of appeal assert that the judge failed to apply *Gulshan* (Article 8-new rules-correct approach) [2013] UKUT 640 (IAC). The respondent asserts that there were no exceptional circumstances in this case nor would there be an unjustifiably harsh outcome if the appellant were required to leave the United Kingdom. The grounds assert that the appellant and his partner could continue their family life together in Nigeria. Alternatively, the appellant could apply for entry clearance out of country as the partner of Ms Fox.
5. Miss Khan, for the appellant, submitted that the judge clearly found that there were "compelling circumstances" arising from the fact that the appellant's son had been born shortly before the hearing. Further, the judge had found that [16] Ms Fox could not reasonably be expected to live with the child and the appellant in Nigeria and that there was a "strong bond between the appellant, Ms Fox and their baby son" [17]. She submitted that Article 8 ECHR was properly engaged in this appeal, there being no *Gulshan* "threshold" for the appellant to cross, as the respondent asserts (see *MM* [2014] EWCA Civ 985).
6. I find that I agree with Miss Khan. It is clear that it is not correct in law to impose any "hurdle" which an appellant must cross before his or her circumstances under Article 8 ECHR may be considered by the Tribunal. As the Court of Appeal has made it clear, the proper application of the Immigration Rules and Article 8 ECHR should lead to the same result. The judge was entitled to find that there was a strong relationship between Ms Fox and the appellant and that they intended to continue their relationship together with their young child. She was also entitled to find that, in all the circumstances, it would be unreasonable to expect Ms Fox and the child to relocate to Nigeria. Those were not findings which the circumstances rendered inevitable; indeed, another Tribunal may have come to an entirely different view. However, that is not the point. The judge reached findings on the evidence which were open to her and supported those findings with clear and adequate reasoning. The Upper Tribunal should, in those circumstances, hesitate before interfering with

the First-tier Tribunal's decision. I had been given no good reason by the Secretary of State for doing so in this case.

NOTICE OF DECISION

7. This appeal is dismissed.

No anonymity direction is made.

Signed

Date 2 February 2015

Upper Tribunal Judge Clive Lane