



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number:
IA/19545/2014**

THE IMMIGRATION ACTS

**Heard at Manchester
On December 11, 2014**

**Determination Promulgated
On December 15, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR DESTINY IGHODEFEYI
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr McVeety (Home Office Presenting Officer)

For the Respondent: Mr Atuegbe (Legal Representative)

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, born September 5, 1982 is a citizen of Nigeria. On September 30, 2013 he submitted an application for limited leave to remain as the father of a British child and the partner of a

British citizen. The respondent refused his application under the Immigration Rules on April 10, 2013 under Appendix FM and in particular sections R-LTRP or R-LTRPT.

3. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on April 23, 2014. On August 18, 2014 Judge of the First Tier Tribunal Foudy (hereinafter referred to as the "FtTJ") heard his appeal. She allowed the appeal under Section EX.1 of Appendix FM based on the relationship with the child.
4. The respondent lodged grounds of appeal on September 3, 2014 and on October 6, 2014 Judge of the First-tier Tribunal Vaudin d'Imecourt granted permission to appeal finding it arguable the FtTJ may have erred in light of the decision of Sabir (appendix FM-EX1 not freestanding) [2014] UKUT 00063 (IAC).
5. Mr McVeety accepted there was no merit to the grounds of appeal. The FtTJ correctly applied EX.1 in this appeal because the appellant was not caught by the provisions of Section E-LTRP.2.1 because he was an overstayer and not a visitor. He was therefore not excluded from the provisions and could rely on Section EX.1. There had, rightly or wrongly, been no challenge to the FtTJ's findings at paragraphs [14] to [15] of her determination and he did not seek to persuade me to consider any additional grounds of appeal.

DECISION

6. There was no material error of law I uphold the original decision.
7. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated: **December 15, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

There was no application for a fee award and I uphold the original fee award decision.

Signed:

Dated: **December 15, 2014**

Deputy Upper Tribunal Judge Alis