



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

Appeal Number: HU/05714/2016

THE IMMIGRATION ACTS

Heard at Field House

On 26th February 2018

**typed, corrected, signed and sent to
Promulgation on 13th February 2018.**

**Decision & Reasons
Promulgated
On 15th March 2018**

Before

Upper Tribunal Judge Chalkley

Between

**LAMIN [D]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Habtemariam, Immigration Advice Service

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant arrived in the United Kingdom some time in 2003. He arrived on a visit visa and when it expired he remained in the United Kingdom illegally. In May 2011 he was encountered by immigration authorities and arrested. He claimed asylum but then withdrew his application a month later. Further submissions were rejected and on 19th October 2015, the appellant made application to the respondent for leave

to remain in the United Kingdom on the grounds of his private and family life. The family life in question was with Ms [J], who is also originally from Gambia and the parties' son [A], who was born on 29th October 2010. The application was refused by the respondent on 17th February 2016 and the appellant appealed to the First-tier Tribunal. The appeal was heard by First-tier Tribunal Judge Fowell at Newport on 28th September 2017.

2. In the letter from the respondent to the appellant advising him that his application for leave to remain was being refused (it is dated 17th February, 2016), it is accepted by the respondent that he has a relationship with his partner and that he meets the suitability requirements of S-LTR of paragraph R-LTRP.1.1.(d)(i). When considering EX1 of the immigration rules, the refusal letter says, "*you have a genuine and subsisting relationship with your partner however they are Gambian with leave to remain in the United Kingdom*".
3. The judge appears to have acknowledged that the refusal letter accepted that the appellant and his partner were in a genuine and subsisting relationship but refers in paragraph 4 of the determination to the fact that his partner is not settled in the United Kingdom. The judge heard oral evidence from the appellant and from Ms [J] and it appears that he was asked by the Presenting Officer to note discrepancies between their evidence, suggesting that they were in fact no longer in a subsisting relationship. The judge then concluded at paragraph 32 that he was not satisfied that the appellant had shown on the balance of probabilities that this is a genuine relationship or that they live together.
4. The respondent having initially accepted that the parties were in a genuine relationship it was not for the judge then to make an adverse finding without having first given notice to the appellant's representatives and given them an opportunity to apply for an adjournment in order that they may adduce further evidence to deal with the point that had earlier been accepted by the respondent. See *RM (Kwok on Tong HC 395, as amended ("immigration rules") 395 Para. 320) [2006] UKIAT 39*.
5. As a result, I am satisfied that the judge has erred in law. The determination cannot stand. **I set it aside.**
6. Given the inevitable delays that occur when part-time judges adjourn matters I have concluded that the matter must be remitted to the First-tier Tribunal if lengthy delays are to be avoided. The matter should be heard afresh by a judge other than First-tier Tribunal Judge Fowell. None of the First-tier Judge's findings are preserved.

Richard Chalkley

Upper Tribunal Judge Chalkley