



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/25613/2013

THE IMMIGRATION ACTS

Determined at Field House
On 3rd December 2013

Determination Promulgated
On 9th December 2013

By
**THE HON. MR JUSTICE MITTING
UPPER TRIBUNAL JUDGE MARTIN**

Between

MR BRIAN EDWARD CUNNINGHAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani (Quality Solicitors (AZ Law))

For the Respondent: Mr P Duffy (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant before the First-tier Tribunal is a citizen of the United States of America born 19th August 1980. He appealed to the First-tier Tribunal against a decision of the Secretary of State of 5th June 2013, refusing to vary his leave to remain on the basis of his marriage to a British national. The First-tier Tribunal allowed his appeal, on Article 8 grounds, in a determination promulgated on 21st October 2013. Designated Judge Baird granted the Respondent permission to appeal to the Upper Tribunal.

2. Appendix FM applied to the application. The decision does not make clear which parts of the Rule governing the requirements for the grant of limited leave to remain as a spouse the Appellant did not meet. The decision referred to the Appellant not meeting the requirements of paragraph FM R-LTRP 1.1(d) because EX.1 did not apply. However it is plain that as the Appellant meets the requirements of R-LTRP 1.1 (c), EX.1 is irrelevant. Mr Duffy on behalf of the Secretary of State accepted that was the case and having taken instruction, sought permission to withdraw the appeal before the Upper Tribunal. Ms Anzani agreed.
3. Consent of the Upper Tribunal is required for a party to withdraw its case. It being plain that the Appellant meets the requirements of the Rules for limited leave to remain as a spouse and the Immigration Rules being deemed Article 8 compliant by the Secretary of State, the Appellant is entitled to succeed and so we consent to the Secretary of State withdrawing her case.
4. Accordingly with our consent, and pursuant to rule 17(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008, this appeal is recorded as "Withdrawn with the consent of the Upper Tribunal."
5. The effect of the Appellant's case being withdrawn from the Upper Tribunal is that the proceedings before the Upper Tribunal are at an end. There is no appeal before the Upper Tribunal and the First-tier Tribunal's decision shall stand.

Signed:

Upper Tribunal Judge Martin

Date: 3rd December 2013