Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA 26604 2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 27 May 2014	**On 26 June 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABUDU LATIFU RAJI

Respondent

Representation:
For the Appellant: Mrs H Ephraim-Adejumo, Counsel instructed by Okafor & Co Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing on human rights grounds an appeal by a citizen of Nigeria against a decision of the First-tier Tribunal to refuse to vary his leave and to remove him from the United Kingdom.

2. At paragraph 10 of the determination the First-tier Tribunal Judge says in terms: "I will not follow **Gulshan** for the reasons given above." This is a reference to the reported decision of the Tribunal in **Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC)** which is a decision of Mr Justice Cranston sitting with Upper Tribunal Judge Taylor.

3. It is not the business of the First-tier Tribunal to decline to follow decisions of the Upper Tribunal. The decision is binding and it should have been followed. I fairness to the First-tier Tribunal Judge she has had more regard to the decision in Gulshan than this infelicitous might suggest but the failure to follow it is plainly an error of law.

4. The decision in **Gulshan** has proved to be controversial for reasons that are not particularly plain to me. There is a wealth of jurisprudence dealing with the application of Article 8 of the European Convention on Human Rights to immigration cases, both from this Tribunal, and perhaps more importantly from the Court of Appeal and beyond.

5. All that is required in **Gulshan** is that the Rules introduced by the Secretary of State are taken seriously and are followed systematically and are used to see if the circumstances of the person's case entitle them to remain. Sometimes they will. For example, people who have been in the United Kingdom for particularly long periods of time may well be able to remain even if there is no other merit in their cases. In many cases a person will not satisfy the requirements of the Rules but the exercise of following them through is a good tool to analyse their case because it throws up the weak and strong points; weak in the sense of showing what they fail to do to meet the ordinary requirements of the Rules, strong in the sense that it may show up the circumstances that make the cases particularly compelling.

6. This is precisely what the First-tier Tribunal Judge started to do. She has noted that the claimant is over 18 years old and under 25 years old, that he has not lived in the United Kingdom for 20 years, and he has not lived in the United Kingdom for more than half his life. Neither did she accept that the claimant has lost ties with the country to which he would be sent. This is explained at paragraph 5(4) of the determination where the judge clearly concluded that the claimant has ties in the Ivory Coast and so cannot rely on paragraph 276ADE(vi) of HC 395.

7. All of these findings point to the claimant's appeal being dismissed but the First-tier Tribunal Judge allowed the appeal.

8. The decision is **Gulshan** does not claim to decide that all cases ought to be allowed solely with reference to the Rules. What **Gulshan** makes plain is that where an appeal cannot be allowed under the main parts of the Rules then, absent out-of-the-ordinary circumstances, it cannot be allowed properly. Ordinary circumstances are considered fully by the Rules. It is sometimes said that there must be "compelling circumstances not sufficiently recognised under the Rules" or "non-standard and particular features demonstrating that removal would be unjustifiably harsh".

9. The First-tier Tribunal Judge should have followed **Gulshan** and looked to see firstly if the claim should have been allowed under the Rules (it can't) and then, secondly, if there were compelling circumstances or non-standard and particular features demonstrating that removal would be unjustifiably harsh. This approach might have been in the judge's mind but she did not spell it out.

10. The applicant is a young man. He was born in January 1993 and so is just 21 years old. He has been in the United Kingdom since he arrived in 2005 when he was aged 12 years. Although he is a national of Nigeria he has never lived in that country. The Secretary of State intends to return him to the Ivory Coast where he grew up.

11. This is not a case where he has any of the very strong elements to his private and family life that weigh heavily in the balancing exercise. He is no doubt close to his immediate family in the United Kingdom and may well regard his cousins as if they were his brothers and sisters and may well regard his aunt and uncle as if they were his parents. The fact is that he is of an age where he should be looking for independent living and the relationships with his immediate family are not relationships that carry much weight in the balancing exercise absent circumstances of special dependency such as extreme disability of something of that kind which thankfully are not present here.

12. He does have a close relationship with a girlfriend and that is something which is part of his private and family life that is entitled to be respected. The First-tier Tribunal Judge rejected the suggestion that they live together but they clearly spend a lot of time together and appear to have an intimate relationship. That is their business. It is not uncommon for young people to live like that.

13. His girlfriend, for want of a better description, is of a similar age to the claimant. She says that she hopes they will marry one day. Perhaps they will. She says in her statement that she has no experience of life outside the United Kingdom. That might be right. There was nothing in her evidence before the Tribunal or in the claimant's evidence before the Tribunal that began to show that she could not settle with him in the Ivory Coast. Neither is there anything to show that in due course the relationship could not be rekindled and the appellant could return to the United Kingdom as a fiancé or a husband if that is how they chose to organise their private life. There is nothing to indicate that this could not happen. This is not a deportation case. If the claimant leaves promptly he will not face a lengthy ban on returning to the United Kingdom.

14. It follows therefore that this is a case of a young person who has spent quite a lot of his formative years in the United Kingdom but is not a United Kingdom national, who has no particular strong ties with the United Kingdom, whose removal would not disrupt the relationships that are highly protected, such as the relationship between a parent and a minor child or a relationship between husband and wife, neither are there any unusual or exceptional circumstances which begin to satisfy the requirement for compelling circumstances features that make removal unjustifiably harsh.

15. If the First-tier Tribunal Judge had applied **Gulshan** properly the judge would have concluded that the claimant cannot satisfy the requirements of the Rules but would also have concluded that there are none of the special circumstances necessary that make it right to allow the appeal outside the Rules.

16. I am not surprised that special circumstances are not listed in the determination because they are just not present in this appeal. This is a case of a judge choosing to allow an appeal of someone for whom the judge felt a degree of sympathy. At one level I can understand that. It is right that somebody is prepared to stand back and think a little and ask if it is really necessary to remove somebody from a country where he has grown up and spent much of his life to a country where he where he has no strong links, even though he clearly has ties. The fact is that there are a lot of people in those circumstances and in

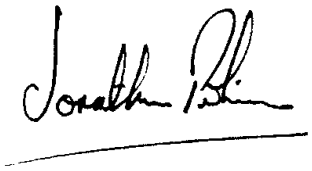
the absence of some compelling feature immigration control requires such people to be removed or the whole idea of control would become meaningless.

17. Although I am going through papers looking for things to assist the claimant I cannot find anything that would justify the conclusion reached. It follows therefore that I agree with the Secretary of State's grounds that the First-tier Tribunal failed to apply **Gulshan** in the way it should have been applied which is the way I have indicated above.

18. I have therefore reached the conclusion that the First-tier Tribunal has reached a decision that not open to it on the evidence and I have to set aside that decision and substitute the decision dismissing the claimant's appeal against the Secretary of State's decision.

19. I realise this would be exceedingly unwelcome to a person who thought that he had been successful and I have reminded myself of the need not to substitute my judgment for the First-tier Tribunal's decision but to ask myself if the First-tier Tribunal's decision was right in law, and for the reasons I have given I am persuaded that it was not and I therefore correct the error in the way that I have indicated.

20. I therefore allow the Secretary of State's appeal against the First-tier Tribunal's decision. I set aside the decision of the First-tier Tribunal and I dismiss the claimant's appeal against the Secretary of State's decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 24 June 2014