



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

Appeal Number: IA/32320/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 15th July 2014

Determination

Promulgated

On 25th July 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OMONIYI OLABODE AFELUMO

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer

For the Respondent: In person

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Turnock made following a hearing at Bradford on 23rd December 2013.

Background

2. The claimant is a citizen of Nigeria . He was granted leave to enter the UK on 12th October 2008 as a student until 31st March 2010 when he was granted leave to remain as a Tier 1 (Post-Study) Migrant until 27th March 2012.
3. On 30th May 2012 he was granted discretionary leave to remain in the UK on human rights grounds under Article 8 of the ECHR until 22nd June 2013. On that day he made a combined application for leave to remain in the UK as the dependent partner of a points-based system migrant and for a biometric residence permit, but his application could not succeed under the Rules because he had not last been granted leave as the spouse of person with leave under another category of the Immigration Rules who has been granted leave to remain as a points-based system migrant.
4. The judge allowed the appeal on Article 8 grounds.
5. The Secretary of State sought permission to appeal on the grounds that the judge had not applied the case of Gulshan (Article 8 - new Rules - correct approach) 2013 UKUT 00640 which states that an Article 8 assessment should only be carried out when there are compelling circumstances not recognised by the Rules.
6. Permission to appeal was granted by Judge Reid on 16th April 2014.
7. Mr Diwnycz relied on his grounds.

Findings and Conclusions

8. This challenge amounts to a mere disagreement with the decision and nothing more. The judge recorded that the claimant's spouse suffered from diabetes and required support from him. There was medical evidence to show that her illness proved a challenge for her in managing both her children and her university course. She is studying on a PhD research programme in materials engineering at Sheffield Hallam University.
9. The judge recorded that there was no suggestion that the claimant and his wife were not in a position to support themselves. He works as a volunteer for a charity. Moreover he was previously granted leave to remain on a discretionary basis in order to enable him to remain with his wife and children until the end of her studies. Her current visa is valid until 22nd August 2014.
10. The judge said that if the claimant were to leave the UK it would have a significant impact upon his wife's ability to successfully complete her course. There would also be disruption to the children's education, one in secondary education, both settled in their schools and who are cared jointly by the claimant and his wife. Taking into account the comparatively short period involved, he found that the removal would be disproportionate.

11. That was a decision for him to make. The facts of Gulshan were entirely different. In Gulshan there were significant arguments in favour of removal, not least a cost to the public purse by the Appellant in that case remaining, and no significant factors to support a claim that removal would be disproportionate.
12. There is no error of law in the judge's decision.

Decision

13. The judge's decision shall stand.

Signed

Date

Upper Tribunal Judge Taylor