



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

Appeal Number: IA/44644/2013

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 21 August 2014

On 28 August 2014

Before

DESIGNATED JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS PAMELA UYO OKOCHU

Respondent

Representation:

For the Appellant: Ms Holmes, Home Office Presenting Officer

For the Respondent: No-one

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Secretary of State, however, for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of Nigeria born on 20 April 1984. She appealed against the decision of the respondent dated 10 October 2013 refusing her application to vary her leave to remain in the United Kingdom as a Tier 2 (General) Migrant and for a Biometric Residence Permit. Her appeal was heard by Designated Judge of the First-tier Tribunal Campbell and Judge of the First-tier Tribunal Suchak as a panel, on 30 April 2014. The appeal was dismissed in respect of the Immigration Rules but allowed on human rights grounds in a determination promulgated on 30 May 2014.

3. An application for permission to appeal was lodged and permission was granted by Designated Judge of the First-tier Tribunal McClure on 25 June 2014. The grounds of application assert that it was accepted that the appellant did not meet the requirements of the Rules and the sole basis for allowing the appeal was to enable her to await or learn the outcome of a Post Graduate Diploma qualification. The grounds state that the panel erred in allowing the appeal on Article 8 grounds as Article 8 is not engaged for educational purposes only (*Patel v SSHD* [2013] UKSC72). The permission states that the panel has not identified the circumstances warranting the consideration of this case outside the Rules. It goes on to state that the panel, whilst referring to the said case of *Patel* has not identified why, on the facts as presented, there was a need for the appellant to remain in the country to ascertain the outcome of her application for the required qualification. She did not have the required qualification at the time of the decision and the fact that she was awaiting a qualification before being able to apply in accordance with the Rules, is arguably not such as to warrant consideration under Article 8.

The Hearing

4. Neither the appellant nor her representative appeared for the hearing of this appeal.
5. The Presenting Officer submitted that she is relying on the grounds of application and asked me to find that there is material error of law in the determination.

Determination

6. It is clear that the application cannot meet the terms of the Immigration Rules.
7. The judge has not referred to a good reason for considering the application outside the Rules.
8. Article 8 is not engaged for educational purposes only and that is why this application was allowed.

DECISION

9. I find that there is a material error of law in the judge's determination.
10. The judge's decision relating to the Immigration Rules shall stand.
11. I set aside his decision relating to Article 8.
12. The appellant's appeal under the Immigration Rules and on Article 8 issues is dismissed.

Signed

Date

Designated Judge Murray
Judge of the Upper Tribunal