



**The Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal number: IA/13887/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On July 2, 2015**

**Decision and Reasons  
Promulgated  
On July 23, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**MR JOSEPH ISITEKHALE  
(NO ANONYMITY DIRECTION)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

Appellant	Not represented
Respondent	Miss Fijiwala (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Nigeria and is now thirty-nine years of age. He applied on September 14, 2009 for entry clearance as a student and entered the United Kingdom on September 27, 2009 with leave valid until November 30, 2010. At the time he applied for entry clearance he made no mention of the fact he had married in Nigeria on September 19, 2009. On September 5, 2013 he applied for a residence card as confirmation of his right to reside as a family member in the United Kingdom. The respondent refused this application on March 13, 2014 because she was not satisfied he was the family member of an EEA national or that the marriage was genuine and subsisting.

2. The appellant appealed that decision on March 20, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006.
3. The case was initially listed as a paper case before Judge of the First-tier Tribunal Place on May 6, 2014. The judge was unaware that a bundle of documents had been submitted on the appellant's behalf on April 8, 2014 and his decision to dismiss the appeal was ultimately set aside by Deputy Upper Tribunal Judge Lindley on July 16, 2014 who directed the matter be listed in the First-tier Tribunal for a hearing on November 4, 2014. On October 10, 2014 the appellant's solicitors wrote to the Tribunal and invited the Tribunal to deal with the appeal on the papers and the November 4, 2014 hearing date was vacated and the appeal was then listed before Judge of the First-tier Tribunal Colvin on December 10, 2014. He decided there should be an oral hearing and issued directions.
4. When the matter came before Judge of the First-tier Tribunal Colvin (hereinafter referred to as the "FtTJ") he noted the case history but proceeded to deal with the appeal on the papers applying Regulation 25(1) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. He dismissed the appellant's appeal in a determination promulgated on February 24, 2015.
5. The appellant applied for permission to appeal on March 3, 2015 submitting the FtTJ had erred because:
  - a. The respondent's decision breached his rights as a family member.
  - b. The First-tier Tribunal made an error in law.
  - c. It was in the interests of justice for the decision to be set aside.
6. Judge of the First-tier Tribunal Levin gave permission to appeal on April 25, 2015 stating that it was arguable by not holding an oral hearing there was a procedural irregularity. The matter came before me on the above date and the appellant was not present. His solicitors had sent a letter on June 30, 2015 inviting the Tribunal to deal with the appeal on the papers.
7. The First-tier Tribunal did not make an anonymity direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to make an order now.

### **ERROR OF LAW SUBMISSIONS**

8. Miss Fijiwala relied on the Rule 24 response dated May 11, 2015 and submitted there was no procedural irregularity. Whilst a Judge had directed the case be listed for an oral hearing neither the appellant nor his solicitors had raised the lack of such a hearing as an issue. In fact, it remained, even today, the appellant's position that he wished for his appeal to be dealt with on the papers. The FtTJ considered the appropriate Regulations and gave reasons why he felt able to deal with it on the papers and there was no error.

**FINDINGS ON ERROR IN LAW**

9. The appellant's grounds of appeal do not identify where the FtTJ erred because they are generalised. Judge of the First-tier Tribunal Levin made no findings on the grounds but found there may be an error because the FtTJ failed to hold an oral hearing. The FtTJ considered all of the evidence and found the respondent's concerns were properly made and the appellant had failed to address them. He also noted that there had been no request at any stage for an oral hearing and he was satisfied that he could deal with the appeal on the facts and papers before him.
10. The earlier decision of Judge of the First-tier Tribunal Colvin did not bind the FtTJ in circumstances where he considered the case history and gave reasons for why he dealt with the case in the manner he did. I am satisfied there was no material procedural error and there is nothing in the actual grounds of appeal that raises any other error.

**DECISION**

11. There was no material error. I dismiss the appeal

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis