



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

Appeal Number: IA/31857/2014

**THE IMMIGRATION ACTS**

**Heard at: Columbus House,  
Newport  
On: 19 October 2015**

**Decision and Reasons  
Promulgated  
On: 23 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

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

Appellant

**and**

**MARGARET UZERE**

(anonymity direction not made)

Respondent

**Representation**

For the Appellant: Mr N Diwnych, Home Office Presenting Officer

For the Respondent: Ms J Robinson, Counsel instructed by Calices Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge R Powell in which he allowed the appeal of Mrs Uzere, a citizen of Nigeria, against the Secretary of State's decision to refuse to vary leave to remain. I shall refer to Mrs Uzere as the Applicant, although she was the Appellant in the proceedings below.

2. The application under appeal was made on 6 June 2014 and was refused by reference to paragraph 276 ADE and Appendix FM of the Immigration Rules (HC395) and Articles 3 and 8 of the Human Rights Convention on 10 July 2014. The Applicant exercised her right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Powell on 10 April 2015 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Reid on 6 July 2015 in the following terms

“The grounds argue *inter alia*: the judge made a material misdirection in law by allowing the appeal under the Immigration Rules having made findings that the Appellant did not meet the rules.

It is arguable that the judge’s decision allowing the appeal under the Immigration Rules is perverse having found at [14-16] that the Appellant did not meet the requirements of the Rules.”

3. At the hearing before me Mr Diwnych appeared to represent the Secretary of State and Ms Robinson represented the Applicant. Ms Robinson submitted a written skeleton argument.

### **Background**

4. The history of this appeal is detailed above. The facts, not challenged, are that the Applicant was born in Nigeria on 3 March 1936. She came to the United Kingdom as a visitor on 7 February 2009 with leave valid until 25 May 2009. An in time application to extend that leave was refused on 23 June 2009. She is widowed and has been living with her daughter since she came to this country. The Applicant overstayed her leave to remain before making an application to remain on human rights grounds. It is the refusal of that application which was the subject of the appeal to the First-tier Tribunal.
5. At the appeal hearing on 10 April 2015 it was accepted that the requirements of the Immigration Rules were not met and indeed there was no suggestion to the contrary. Submissions were directed solely to the issue of whether the Respondent’s decision was in breach of Article 8 ECHR. The Judge found that the decision was in accordance with the law and the Immigration Rules (paragraphs 15 and 16) and went on to deal with and allow the appeal by virtue of Article 8 (paragraphs 67 and 68). The summary in the immediately following paragraph however reads “The appeal is allowed under the immigration rules”.

### **Submissions**

6. On behalf the Secretary of State Mr Diwnych said that there was no application to amend the grounds of appeal. He accepted that the body of the decision and reasons was a consideration under Article 8 ECHR and that it was clearly the intention of the Judge to allow the appeal on that basis.

7. I did not ask Ms Robinson to address me. I said that the Secretary of State's appeal would be dismissed it being abundantly clear that the effective concluding paragraphs of the decision were paragraphs 67 and 68.

### **Error of law**

8. In my judgement the decision of the First-tier Tribunal does not disclose a material error of law. The facts are simple and are not disputed and are set out clearly in the decision and reasons of the First-tier Tribunal. There is no challenge in the grounds of appeal to the Upper Tribunal to the Judge's assessment of the facts, to his consideration of those facts or to his clear decision to allow the appeal by reference to Article 8 ECHR. The ground rely solely on the fact that having said that the requirements of the Immigration Rules were not met the Judge went on at the conclusion of the decision and reasons to state that the appeal was allowed under the Immigration Rules.
9. It could not be more plain in my finding that this concluding sentence "The appeal is allowed under the immigration rules" was entered in error. The immediately preceding paragraphs following on from a fully reasoned decision quite clearly show that it was not only the intention of the Judge to allow the appeal under Article 8 ECHR but indeed that this is what he did (at paragraph 68). There is no material error of law, there is a slip or typographical error which has no effect upon the Judge's unchallenged decision to allow the appeal under Article 8 ECHR. The appeal of the Secretary of State is therefore dismissed.

### **Summary**

10. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the Secretary of State's appeal. The decision of the First-tier Tribunal at paragraph 68 of the decision and reasons to allow this appeal by virtue of Article 8 ECHR stands.

**Signed:**

**Date:**

**J F W Phillips**  
**Deputy Judge of the Upper Tribunal**