



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/12307/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 23 January 2018**

**Decision & Reasons  
Promulgated  
On 15 February 2018**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

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

Appellant

**and**

**RHONADI KALIMANDANDA**

Respondent

**Representation:**

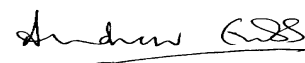
For the Appellant: Mr I Richards, Senior Home Office Presenting Officer  
For the Respondent: Ms C Grubb instructed by Londonium Solicitors

**DECISION AND REASONS**

1. The respondent (whom I will refer to as the “claimant”) is a citizen of Malawi who was born on 18 June 1977. He arrived in the United Kingdom on 23 December 2004 as a visitor and was subsequently granted leave to remain as a spouse valid until 30 September 2005. In 2006 he unsuccessfully applied for further leave to remain as a spouse. In 2012 he made an application, again unsuccessful, for leave to remain based on his human rights.
2. On 7 August 2015, he made a further application for leave to remain based upon his human rights, namely Art 8 of the ECHR. That application was refused on 18 November 2015.

3. The claimant appealed to the First-tier Tribunal. Judge Loughridge allowed the claimant's appeal under Art 8 of the ECHR and also on asylum grounds and under Arts 2 and 3 of the ECHR.
4. The Secretary of State sought permission to appeal on the basis that the judge had been wrong to allow the appeal on asylum grounds and under Arts 2 and 3 of the ECHR as these had not been relied upon before the judge. The Secretary of State did not seek to challenge the judge's decision to allow the appeal under Art 8.
5. On 30 August 2017, the First-tier Tribunal (Judge Kimnell) granted the Secretary of State permission to appeal.
6. Before me, it was common ground between the claimant's representative (Ms Grubb) and the Secretary of State's representative (Mr Richards) that the judge had been wrong in law to allow the claimant's appeal on asylum grounds and under Arts 2 and 3 which had not been relied upon. They invited me to set aside the judge's decision and to re-make that decision allowing the appeal on the basis of Art 8 alone.
7. The common position adopted before me is clearly correct. The judge was mistaken to allow the appeal on asylum grounds and under Arts 2 and 3 of the ECHR which were not relied upon before him. The appeal should only have been allowed, and as I have pointed out the judge's decision to do so is not challenged, under Art 8 of the ECHR.
8. Consequently, I conclude that the judge erred in law and I set aside his decision.
9. I re-make the decision allowing the claimant's appeal under Art 8 of the ECHR.
10. The fee award made by Judge Loughridge stands.

Signed



A Grubb  
Judge of the Upper Tribunal

13 February 2018