



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

Appeal Number: HU/17503/2016 (P)

THE IMMIGRATION ACTS

**Decided Under Rule 34 without a
Hearing
On 25 June 2020**

**Decision & Reasons Promulgated
On 09 July 2020**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**OMONIYI OLUFUNSO KOMOLAFE
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appealed against a decision of 11 July 2016 which refused an application for indefinite leave to remain. His appeal was dismissed by First-tier Tribunal Haria in a decision dated 23 August 2018.
2. The applicant challenged that decision but was refused permission to appeal by the First-tier Tribunal and the Upper Tribunal. He challenged the refusal of permission successfully in the Administrative Court and on 3 February 2020 the Upper Tribunal granted permission to appeal against the decision of the First-tier Tribunal.
3. In a decision dated 10 March 2020, a Presidential panel of the Upper Tribunal found an error of law in the decision of the First-tier Tribunal and

set it aside to be re-made. Directions were issued for the parties to clarify their positions, in particular where the question of the respondent potentially withdrawing the underlying decision had been canvassed at the error of law hearing.

4. The respondent indicated in a written submission dated 19 June 2020 that her position was now that removal pursuant to the decision under challenge would be unlawful as it would amount to a breach of Article 8 ECHR and therefore Section 6 of the Human Rights Act.
5. The respondent proposed that the Upper Tribunal re-make the appeal as allowed where it was conceded that removal would breach Article 8 ECHR.
6. Following further correspondence, the appellant's legal representatives indicated that allowing the appeal under Article 8 ECHR was an appropriate disposal.
7. After considering the history of the appeal, the written submissions and the correspondence of the parties, the Tribunal finds that it is appropriate to allow the appeal under Article 8 ECHR where removal would amount to a disproportionate breach of Article 8 ECHR.

DECISION

The appeal is allowed under Article 8 ECHR.

Signed: S Pitt

Date: 25 June 2020

Upper Tribunal Judge Pitt