



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

Appeal no: **IA 14651-13**

THE IMMIGRATION ACTS

At **Field House**
on **17.01.2014**

Decision signed:
17.01.2014
sent out: **20.01.2014**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Jean Eyo NISA

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Jonathan Martin* (counsel instructed by Akin Palmer)
For the respondent: Mr Nigel Bramble

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Vivian Horvath), sitting at Taylor House on 1 November 2013, to dismiss (apart from the removal directions, not lawful when made) a student/article 8 appeal by a citizen of Nigeria, born 25 March 1980.

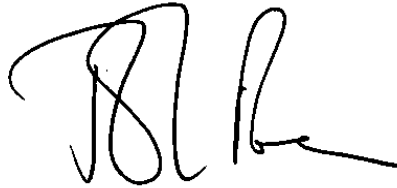
2. On 17 April 2013 the appellant had been refused leave to remain as a student, on the basis that the purposes for which she wished to stay were not covered by the Immigration Rules. Mr Martin conceded that there was no basis of any kind for her being allowed to stay, simply to take her degree in person: an enjoyable end to an academic career, but not a necessary one.
3. However, when it came to the other purpose, which was for the appellant to defend herself against a charge of plagiarism in her thesis, brought

against her by her university, Mr Martin submitted that this was an exceptional case, on which the judge could and should have allowed her appeal under article 8, even though by the date of the hearing the charge had been dropped, and she had been allowed to proceed to her degree. His case was that the Home Office should have taken into account in the first place, in considering the appellant's case outside the Rules, that she would not be able successfully to apply for further studies if she were in this country with nothing more than the s. 3C leave given by a pending appeal.

4. While the requirements of the Rules had of course to be lawfully considered as at the date of the decision under appeal, and nothing that happened afterwards could affect the question of whether or not that had been done, there is no issue in this case under the Rules themselves. It is equally clear that the judge had to consider the appellant's position under article 8 at the date of the hearing before her, which she did.
5. The judge dealt at some length at paragraphs 16 - 17 with the appellant's evidence about exactly what further courses she wanted to do, which she did not accept, for reasons she gave. While Mr Martin suggested that the judge had failed to understand the appellant's position on s. 3C leave, her reasons were not based just on the appellant's failure to get accepted on a further course, but even to find one. That is not something which the appellant's basis of stay prevented her from doing, and in my view the judge was entitled to rely on it.
6. That is one point on which the judge's article 8 decision has to be upheld, though she included it in the part of it dealing with the Rules. The other comes at her paragraph 26, where she gave full consideration to the appellant's position as a student who has not been able to stay here and finish all the studies she would have liked to: there is no suggestion that the appellant could have had any other claim to remain under article 8.
7. Here the judge, though *Patel & others* [2013] UKSC 72 had not come out by the date of her decision, took very much the line set out by Lord Carnwath at paragraph 57: "The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8." The judge cannot be faulted for this: while the appellant's situation at the date of the decision under appeal was certainly unfortunate for her, having to defend herself on a plagiarism charge which was later dropped, by the date of the hearing she had done that successfully.

8. The fact that this meant the appellant had lost an opportunity to apply to stay for further studies (rather than a course she was already on, as in *Patel & others*) did not involve any interference with her private life, against which she was entitled to the protection of article 8, whether or not the judge was entitled to reject her evidence about her study intentions.

Appeal dismissed

A handwritten signature in black ink, consisting of stylized, cursive letters that appear to be 'JBL' followed by a horizontal line.

(a judge of the Upper
Tribunal)