



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

Appeal number: IA/20062/2014

THE IMMIGRATION ACTS

**Heard at Field House
On November 6, 2015**

**Decision and Reasons
Promulgated
On November 11, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR RONALD MUKIBI
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant	Mr Hawkin, Counsel, instructed by Arlington Crown
Solicitors	
Respondent	Mr Kotas (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a national of Uganda and he applied for leave to remain as on the basis of his private and family life in the United Kingdom.
2. The respondent refused his application on April 23, 2014 and the appellant appealed against that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on May 1, 2014.

3. The matter was heard by Judge of the First-tier Tribunal Scott on May 12, 2015 and in a decision promulgated on June 2, 2015 the Tribunal refused his appeal under Immigration Rules and under ECHR.
4. The appellant applied for permission to appeal on June 16, 2015 submitting the Tribunal had erred by failing to find family life existed for the purposes of Article 8 ECHR and by failing to have full regard to Section 117B of the 2002 Act.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Cruthers on August 17, 2015 on the basis the grounds were arguable albeit he indicated the appellant should not take the granting of permission of permission as an indication the appeal would succeed.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

SUBMISSIONS

7. Mr Hawkin had represented the appellant at the earlier hearing and had drafted the grounds of appeal. He submitted that the Tribunal had erred by failing to find that family life existed between the appellant and his mother. It was clear from the evidence that the appellant provided the necessary support for his mother and in light of her medical condition he submitted that the ties between her and the appellant amounted to far more than the normal emotional ties that generally existed between a mother and an adult child. In considering proportionality the Tribunal also erred by failing to have full regard to the positive factors reflected in section 117B of the 2002 Act.
8. Mr Kotas relied on the Rule 24 statement dated August 28, 2015 and submitted that the Tribunal had addressed those issues between paragraphs [38] to [40], [50] to [51] and [56] to [57]. The Tribunal had, in particular, noted the appellant's mother was in full-time employment as well as having a part-time job. The findings made on family life were neither perverse nor irrational and Mr Hawkin's submissions amounted to a mere disagreement. As regards section 117B of the 2002 Act the Tribunal had reminded itself that immigration control was in the public interest and was entitled to find the appellant's private life had been created whilst his immigration status was precarious. The fact the appellant spoke English and apparently was capable of being supported by his mother did not mean it would be disproportionate to remove him. The decision taken by the Tribunal was fully open to it.

DISCUSSION AND FINDINGS

9. Permission to appeal had been granted to the appellant on the basis it was arguable that the Tribunal had erred by not factoring into its decision the provisions of part 5A of the 2002 Act or the interests of the appellant's mother.

10. The appellant entered the United Kingdom on September 9, 2013 as a family visitor and his leave was valid until February 28, 2014. He applied for leave to remain to care for his mother and in considering his appeal the Tribunal had regard to the oral evidence given by both the appellant and his mother as well as the 115-page bundle of evidence submitted on his behalf.
11. The Tribunal had noted that the appellant could not meet the requirements of the Immigration Rules but considered the appeal outside of the Immigration Rules.
12. Mr Hawkin had accepted that no application had been made for leave to remain under Appendix FM under the Immigration Rules and at the earlier hearing he had conceded it would be difficult to argue the appellant had no ties with Uganda given the period of time he had lived in Uganda compared to the time he had lived here.
13. The Tribunal had regard to the appellant's mother's health condition and the report provided by the doctor. Mr Hawking argued that the tribunal failed to have regard to the appellant's mother's medical condition and her specific needs but I am satisfied the tribunal balanced the oral and written evidence of her condition against the fact that she continued to work full time as a supervisor in a care home and had an additional part-time cleaning job.
14. The Tribunal had concluded that the appellant's mother had failed to demonstrate that she required any physical care other than for short periods of time and concluded, as it was entitled to, that not only did she hold down two different jobs but she had previously availed herself of NHS care in the United Kingdom and would be able to in the future.
15. The Tribunal acknowledged the appellant's mother would not wish to return to Uganda but in assessing the extent of any family life that existed the Tribunal took account of the level of contact that had previously taken place between the appellant and his mother and noted that for many years their relationship had been conducted at a great distance.
16. The Tribunal concluded at paragraph [53] there were no exceptional reasons to apply Article 8 outside the Rules but nevertheless went on to consider whether the appellant had either family or private life.
17. At paragraph [54] the Tribunal reminded itself that any dependence had to go beyond normal emotional ties and that each case was a fact sensitive case. The finding at paragraph [55] that the dependence did not go beyond normal emotional ties was a finding that was open to the appellant and the Tribunal provided various reasons for that conclusion and I am satisfied those findings were clearly open to it. Accordingly, the finding at paragraph 56 was finding fully open to it and there is no error of law by the tribunal in not considering family life within the terms of Article 8.
18. The Tribunal considered at paragraph [57] the issue of private life but noted that his private life had been established when he knew he had only been given permission to stay in the United Kingdom for a limited period.

The appellant had come for a visit and the fact he created friendships and worked as a volunteer merely demonstrated that the private life he had created was created at a time when his immigration status was precarious.

19. In any event, the Tribunal went on to consider proportionality between paragraphs [58] and [60] and concluded that any interference would be proportionate.
20. The appellant made his application in full knowledge that he did not meet the Immigration Rules.
21. Whilst the Tribunal did not specifically mention the factors set out in section 117B I find the fact favourable answers are given to sub-sections parts of section 117B did not alter the starting point that the maintenance of effective immigration control was in the public interest.
22. Although the appellant speaks English and his mother was able to financially support him the Tribunal and I have to have regard to the fact the Immigration Rules were not met and the fact there was no family life within the meaning of Article 8 and the appellant's private life had been established whilst his immigration status was precarious were significant matters the Tribunal was entitled to have regard to.
23. In the circumstances, I find the Tribunal's findings were open to it and there was no material error of law in either the approach to family life or the ultimate decision to refuse the appeal under Article 8.

DECISION

24. There was no material error.
25. I uphold the original decision and dismiss the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

I make no fee award as the appeal has been dismissed.

Signed:

Dated:

SPAL

Deputy Upper Tribunal Judge Alis