



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

Appeal Number IA/43182/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2 September 2014**

**Determination promulgated
On 15 January 2015**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Secretary of State for the Home Department

Appellant

and

Peter Muigai Kibue
(Anonymity direction not made)

Respondent

Representation

For the Appellant: Ms. A. Holmes, Home Office Presenting Officer.

For the Respondent: Mr. S. Osifeso of Lannex Immigration & Legal Advice Services.

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Newberry promulgated on 13 June 2014, allowing Mr Kibue's appeal against the Secretary of State's decision dated 13 September 2013 to remove him from the UK in consequence of having rejected his application for leave to remain.
2. Although in the proceedings before me the Secretary of State is the appellant, and Mr Kibue is the respondent, for the sake of consistency with

the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Kibue as the Appellant and the Secretary of State as the Respondent.

Background

3. The Appellant is a national of Kenya born on 11 September 1982. His immigration history is a matter of record and is summarised at section 2 of the cover sheet to the Respondent's bundle before the First-tier Tribunal. It is unnecessary to reproduce that history here. The salient features are that he was granted leave to enter the United Kingdom as a visitor on 24 April 2001, valid for six months. On 25 October 2001 the Appellant applied for further leave to remain as a dependent relative, but was refused. A further application culminated in an appeal which was dismissed on 19 August 2004. There then followed a series of further applications for indefinite leave to remain that were each rejected or refused with no right of appeal. Most recently, the Appellant applied for indefinite leave to remain on 11 February 2013. The Respondent refused the Appellant's application for reasons set out in a 'reasons for refusal letter' dated 13 September 2013, and a Notice of Immigration Decision of the same date was issued communicating the removal decision.
4. The Appellant appealed to the IAC.
5. The First-tier Tribunal Judge allowed the appeal for reasons set out in his determination.
6. The Respondent sought permission to appeal to the Upper Tribunal which was granted on 10 July 2014 by First-tier Tribunal Judge Cheales.

Consideration

7. The Respondent's challenge before me is brought with reference to paragraph 276ADE(vi) of the Immigration Rules.
8. In this context I note that at paragraph 8 of his determination the First-tier Tribunal Judge identified the issue in respect of this aspect of the appeal by reference to the RFRL in the following terms: "*Furthermore it was not accepted that [the Appellant] had no ties (including social cultural or family) with the country to which he would go if required to leave the UK*".
9. Relevant to this issue were the following aspects of the Appellant's evidence, as identified by the Judge: the Appellant "*has never known his father, and that his grandparents in Kenya have passed away. All his mother's relatives live either in America or the UK. He has no siblings or relatives in Kenya*" (paragraph 10); see similarly the supporting evidence of the Appellant's mother set out at paragraph 12, including "*She confirms that the Appellant's father died when the Appellant was two months old*"; the Appellant had been residing in the UK since April 2001.

10. The Judge stated his conclusion is in this regard at paragraph 21 in the following terms:

*"In my view the Appellant meets the requirements of paragraph 276ADE(vi). It is clear in my view that the Appellant has no "ties" in Kenya within a reasonable interpretation of that word. Mr Osifesu drew attention to **Ogundimu (Article 8 new rules) [2013] UKUT 60 (IAC)** which indicates that the word imports more than mere remote or abstract links. In this case the Appellant has no relatives in Kenya. His mother and extended family members are in the UK. His siblings are in America. His family and private life are clearly rooted in the UK. The welfare of the child [of the Appellant's girlfriend] and her relationship with the Appellant is a weighty material consideration. The removal of the Appellant would have a highly damaging effect on the child who has known only the Appellant as a father figure."*

11. I accept that there is scope for criticism of the Judge's approach to this issue – and more generally as to the confused manner in which the discrete requirements of different aspects of the Immigration Rules and of Article 8 of the ECHR appear to have been elided. In particular, the introduction of references to the welfare of the Appellant's girlfriend's child as being 'a weighty material consideration' is misplaced in circumstances of a consideration of the unrelated question of the Appellant's own ties to Kenya.
12. However, on the very particular facts of this case I am persuaded that a generous view should be taken of a decision which lacks the discipline of careful analysis of discreet aspects of the Rules and of Article 8, and thereby lacks clarity and rigour in its reasoning.
13. The First-tier Tribunal's decision must be seen in the context of the Respondent's decision that was the subject of the appeal. On the issue of 'ties' the RFRL says no more than this: "*[W]ilst you may have not lived in Kenya. For the past 12 years, it is considered that you have resided there for the majority of your life. It is not accepted that you will have severed all ties including social, cultural and family in Kenya*". It is not apparent that any further submission or argument beyond the fact that the Appellant had lived in Kenya up until a little over 12 years ago was advanced before the First-tier Tribunal Judge to counter the Appellant's assertion that he had lost any meaningful ties with Kenya.
14. Even now, in the context of the challenge to the decision of the First-tier Tribunal, the Respondent only raises the following potentially relevant matters: "*The Appellant has grown up within a family that has a prior Kenyan nexus: the Appellant's mother is a Kenya national and it is not unreasonable to suppose that she has taught her son cultural and social values that would assist his reintegration*" (Grounds in support of the application for permission to appeal at paragraph (e)); and "*The official language of Kenya is English. The Secretary of State submits that linguistics form a powerful social tie that will invariably assist with the*

forging of further social ties including securing housing, employment and making/developing friendships” (Grounds at (f)).

15. I pause to note that the recent changes to the Rules that now seek to emphasise obstacles to reintegration rather than ties, was not the version of the Rules that fell for consideration before the First-tier Tribunal.
16. The reference to the Appellant’s mother’s nationality and cultural background in reality adds nothing of substance to the fact of the Appellant’s own nationality and own exposure to life in Kenya before coming to the UK. Further, I do not accept that the Appellant speaking English in any way demonstrates a continuing connection to life in Kenya. The commonality of language does not in itself represent a tie to Kenya, any more than it does to, say, Canada.
17. In this latter context, I acknowledge that in **Ogundimu** language was identified as being potentially relevant to a consideration of the question of ‘ties’. However, it seems to me that it is generally only of any weight where an applicant does not speak the language of the country of proposed return – wherein it will likely denote weak or non-existent cultural ties. In a situation where a person does speak the language, this will not generally be demonstrative in itself of cultural ties.
18. Accordingly, there is little substance, in my judgement, in the Respondent’s invocation of paragraph 276ADE(vi) as defeating the Appellant’s case under the Immigration Rules. The First-tier Tribunal’s consideration of the issues must be seen in such a context.
19. I accept Mr Osiefesu’s submission that the First-tier Tribunal Judge effectively subsumed his consideration of social ties in his consideration of the absence of any continuing family connection with Kenya. It is plain that the Judge approached the Appellant’s circumstances on the basis that in the 13 years preceding the hearing before the First-tier Tribunal the Appellant had made a life for himself as an adult in the UK to the exclusion of any life he had hitherto experienced as a child in Kenya. Further, whilst his experience of life in Kenya as a child growing up would necessarily remain with him, it was not in itself evidence of a continuing cultural connection with life in Kenya.
20. In all such circumstances, and fully acknowledging the unclear and unhelpful manner in which the First-tier Tribunal Judge has set out his analysis of the case, and bearing in mind the provisions of section 12 (2) (a) of the Tribunal’s, Courts and Enforcement Act 2007 I do not set aside the decision of the First-tier Tribunal Judge.

Notice of Decision

21. The decision of the First-tier Tribunal Judge contained no material error of law and stands.

22. The Secretary of State's challenge is dismissed. Mr Kibue's appeal remains allowed.

Deputy Judge of the Upper Tribunal I. A. Lewis

14 January 2015