



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

Appeal Number: HU/10357/2015

THE IMMIGRATION ACTS

Heard at Field House

On 19th July 2017

**Decision & Reasons
Promulgated
On 20th July 2017**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR ABDIRIZAK OSMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Thirumaney (Shervins, Solicitors)

For the Respondent: Mr L Tarlow (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant against the Decision of First-tier Tribunal Judge Lucas. Following a hearing at Taylor House on 12th April 2017, in a Decision and Reasons promulgated on 20th April 2017 Judge Lucas dismissed this Human Rights appeal.

2. The Appellant, a citizen of Kenya, had applied to the Entry Clearance Officer in Pretoria for entry clearance to join his wife and children in the United Kingdom.
3. The Entry Clearance Officer refused the application on the basis that large amounts of required evidence were missing. Before the First-tier Tribunal it was accepted that the requisite evidence had not been placed before the Entry Clearance Officer or indeed the Entry Clearance Manager at the time of review. However, it was all provided to the First-tier Tribunal. However, the First-tier Tribunal dismissed the appeal on the basis that Article 8 could not assist the Appellant as a means to circumvent the Immigration Rules. If the Appellant can now meet the Rules he should make a fresh application.
4. Given that Article 8 was clearly engaged in this case it was incumbent on the Judge to consider proportionality and the matters contained in s.117 of the Immigration and Asylum Act 2002. The Judge did not do so and failed to give any consideration to the best interests of this couple's two children born in 2014 and 2016 who are UK citizens and nor did he consider section 55 as he is required to do. Mr Tarlow conceded that this was a material error of law. Both parties indicated that the appropriate way forward is for the matter to be remitted to the First-tier Tribunal for a full rehearing on all issues. I do not preserve the findings in relation to the Immigration Rules because the situation may not now be as it was in April 2017. I was not in a position to redecide the appeal as the Home Office file is missing.

Notice of Decision

The Appellant's appeal to the Upper Tribunal is allowed to the extent that the decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal at Taylor House for a full rehearing on all issues.

There was no application for an anonymity order and I see no reason to make one.

Signed

Date 20th July 2017

Upper Tribunal Judge Martin