



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/08493/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**Decision and Reasons**

**Promulgated**

**On 16 September 2015**

**On 17 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**PEDRO CANA MILTON VITA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Plowright, instructed by Perera & Co Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of Angola, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 2 October 2014 to refuse his application for Discretionary Leave in the UK. First-tier Tribunal Judge Geraint Jones QC dismissed the appeal and the appellant now appeals with permission to this Tribunal.
2. The background to this appeal is that the appellant claims that he and his brother, who is a year younger than him, were separated from their parents during the conflict in Angola when they were very young. He claims that they spent time in a refugee camp until the end of the war and

that they then went to a centre where they were mistreated. They lived on the streets for a time before living in another centre. They left Angola for the UK in May 2010 when the appellant was 13 years old and claimed asylum on 9 May 2010. The appellant claims that after he came to the UK he was reunited with his elder sister who had left the family home in Angola when he was very young. He claimed that he and his brother live with their sister and her three children. The respondent refused the appellant's application but because of his age he was granted Discretionary Leave until 22 July 2013 when he turned seventeen and a half. The appellant applied for an extension of Discretionary Leave and this application was refused on 2 October 2014. At the hearing in the First-tier Tribunal the appellant's representative conceded that the appeal was only on Article 8 grounds and not asylum. By the time of the hearing the appellant had obtained a DNA report which concluded that the woman they believe to be their sister was not in fact a blood relative. The First-tier Tribunal Judge considered the appeal under Article 8 and found that, although the appellant had developed a private and family life in the UK, his removal would be proportionate.

3. The appellant himself drafted the grounds of appeal to the Upper Tribunal. Permission was refused by First-tier Tribunal Judge Pirota. On renewal of the application to the Upper Tribunal permission to appeal was granted by Deputy Upper Tribunal Judge David Archer on the basis that it is arguable that the First-tier Tribunal Judge had erred in failing to refer to the best interests of the appellant given that he was a child when he applied for further leave to remain and in failing to refer to section 117B of the Nationality, Immigration and Asylum Act 2002 in the context of his finding that the appellant enjoys family life in the UK with his blood brother.
4. At the hearing before me Mr Plowright summarised the grounds as amounting to a submission that the appellant's Article 8 claim was not adequately assessed by the First-tier Tribunal Judge. In particular he submitted that the Judge failed to analyse the appellant's account of his background in Angola and failed to take this background into account when considering Article 8. He submitted that this background is of particular importance given the appellant's young age when he came to the UK. He submitted that the issue is whether there is any support for the appellant in Angola and the Judge failed to address this in the context of the appellant's history and his age. Mr Plowright submitted that it is arguable that the appellant may meet the requirements of paragraph 276ADE (1) (vi) of the Immigration Rules but accepted that this was not put to the Judge and accepted that if the Judge dealt with Article 8 properly including an assessment of material aspects of 276ADE (1) (vi) then any error may not be material. He submitted that the appellant's best interests should have been taken into account as part and parcel of the assessment. He accepted that as the appellant's brother does not have settled status this relationship may not be a strong factor to be considered. He accepted that the Judge's failure to consider section 117B is not material as there are no factors which have adverse effect.

5. Mr Clarke relied on the rule 24 response dated 23 July 2015. He accepted in the light of Dube (ss.117A-117D) [2015] UKUT 00090 (IAC) that the Judge erred but submitted that any error is not material. He relied on the decision in AM (S 117B) Malawi [2015] UKUT 0260 (IAC) and submitted that any error was not material as the factors were at best neutral in this case. The appellant is not financially independent and he can speak Portuguese, as evidenced by the fact that he gave evidence in the First-tier Tribunal through a Portuguese interpreter. He noted that the grounds are silent in relation to paragraph 276ADE (1) (vi) but submitted that the test is whether there are very significant obstacles to the appellant's integration in Angola. He accepted that paragraph 276ADE (1) (vi) is not expressly referred to but submitted that the findings made by the First-tier Tribunal Judge in paragraph 17 of the decision are sufficient to address this issue.

### Error of Law

6. In the Reasons for refusal letter the respondent considered the appellant's application in the context of the Rules, in particular paragraph 276ADE (1) (v) which applies to applicants aged between 18 and 24. It was concluded that the appellant did not meet the requirements of that part of paragraph 276ADE and Mr Plowright accepted that he cannot. It appears that it was not put to the Judge that the appellant could meet the requirements of paragraph 276ADE (1) (vi) being aged 18 at the time of the hearing. However looking at paragraph 276ADE it is clear that it applies to the date of application. In this case the appellant made the application on 8 July 2013 when he was 17 years old. At that time he was not yet 18 and paragraph 276ADE (1) (vi) did not therefore apply. Accordingly the Judge did not err in failing to consider this provision. In any event I am satisfied that the Judge did consider the prospects of the appellant's integration in Angola in his assessment under Article 8.
7. The Judge accepted that the appellant has established a private life in the UK and that he has a family life with his brother. Mr Plowright said that the appellant's brother, who is a year younger than him, has an application outstanding and does not have settled status in the UK. He made no submission that the Judge erred in relation to how he assessed this relationship. In any event there was little evidence before the Judge as to the nature and extent of the relationship between the appellant and his brother such as to enable him to make any further findings.
8. Mr Plowright submitted that in considering proportionality the Judge failed to consider the appellant's background in Angola and to assess whether there is any support for the appellant in Angola in the context of the appellant's history and his age. The Judge set out the evidence in relation to the appellant's background at paragraphs 4-11 of the determination. There was little evidence before the Judge of any attempts by the appellant to trace his parents in Angola. The appellant accepted in oral evidence that he had made no enquiries about the possibility of employment and accommodation in Angola [9]. It is clear

that the Judge had all of this evidence in mind when reaching the conclusions at paragraphs 16-17. At paragraph 17 the Judge referred to the fact that the appellant speaks Portuguese and returns to Angola with the benefit of the education he has gained in the UK.

9. Looking at the decision as a whole I am satisfied that the First-tier Tribunal Judge made a decision which was open to him on the evidence and that the made no material error of law in the determination of this appeal.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on point of law.

Signed

Date: 16 September 2015

A Grimes

**Deputy Judge of the Upper Tribunal**