



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/09234/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at City Centre Tower Birmingham Decision & Reasons
On 2nd October 2017 Promulgated
On 17th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**CLIVE TAKUDZWA KARINDA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: Mr T Nyawanza of Genesis Law Associates Ltd
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Zimbabwe born on 14th August 1997. He applied to the British High Commission Pretoria for entry clearance to the United Kingdom as the dependant of his mother, Nyarai Muchenje. That application was refused for the reasons given in a Notice of Decision dated 11th May 2015. The Appellant appealed, and his appeal was heard by

First-tier Tribunal Judge Butler (the Judge) sitting at Birmingham on 20th December 2016. He decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 30th January 2017. The Appellant sought leave to appeal that decision and such permission was granted on 16th August 2017.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal under the provisions of paragraph 297(e) and (f) of HC 395. Leave to appeal has not been granted in respect of that decision. Indeed, leave to appeal is limited to the Judge's decision that Article 8 ECHR did not apply. As the Judge stated at paragraph 36 of the Decision, this was "due to an almost complete lack of any evidence of family life between the Sponsor and the Appellant". At the hearing before me, Mr Nyawanza argued that the Judge had erred in law in reaching this conclusion. He had dealt with the Appellant's Article 8 ECHR rights in a single sentence. He had not gone on to consider the proportionality of the Respondent's decision.
4. In response, Mrs Aboni referred to her Rule 24 response and submitted that there was no such error of law. She argued that the Judge properly directed himself and gave adequate reasons for his decisions. Any error of law in respect of Article 8 ECHR was not material as the Appellant had failed to meet the requirements of the relevant Immigration Rule. The Judge had made a finding open to him concerning the lack of evidence of the Appellant's family life with his mother.
5. I find an error of law in the decision of the Judge which I therefore set aside. The Appellant's Article 8 ECHR rights outside of the Immigration Rules was an issue before the Judge as recorded at paragraph 28 of the Decision. The Judge dealt with that matter in the most cursory way on the basis that there was an almost complete lack of any evidence of family life between the Appellant and his mother. However there was clearly more evidence than that relating to this particular subject as recorded at paragraphs 12 to 21 inclusive of the Decision. The Judge's failure to deal with this evidence in the context of Article 8 ECHR rights and his failure to make findings thereon in my view amount to a material error of law.
6. I did not proceed to remake the decision in the appeal as far as it relates to the Appellant's Article 8 ECHR rights. This is in accordance with the provisions of paragraph 7.2(b) of the Practice Statements. There is a substantial amount of fact-finding still to be made.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law as far as it relates to the Appellant's Article 8 ECHR rights.

I set aside that decision.

The decision in the appeal as mentioned above will be remade in the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Date 13th October 2017

Deputy Upper Tribunal Judge Renton