



**Upper Tribunal  
(Immigration and Asylum Chamber)  
VA/03072/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 19<sup>th</sup> May 2017**

**Promulgated**

**On 31<sup>st</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**JOHN GEORGE MALEKELA**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**ENTRY CLEARANCE OFFICER - PRETORIA**

Respondent

**Representation:**

For the Appellant: Mrs Betty Komba Malekela, Sponsor

For the Respondent: Mr P Nath, Senior Presenting Officer

**DECISION AND REASONS**

1. In this matter the Sponsor appeared as a litigant in person. I therefore explained the procedure for the hearing to her and I then went through the recent history in terms of the First-tier Tribunal hearing and in respect of the grant of permission.
2. Mrs Malekela said to me that her son was just coming to visit, he was not coming to stay. She said: "So many people come to visit", so why was her son's application disallowed? She said: "I work here and I pay tax." She said: "I do not depend on the government." She said: "I sponsor them and

I do not ask them to get benefits.” She told me that she had sponsored her sister, “back in 2014”, and that her sister returned after three months.

3. In his submission Mr Nath said that the judge had been clear. The position in respect of Article 8 as to whether or not it had been elicited much in respect of the visit visa. There was nothing in any shape or form to meet the requirements of Article 8. The judge’s findings were clear and precise. Looking at the Appellant’s situation regarding his employment and savings, both the Entry Clearance Officer and the Entry Clearance Manager were required to go through those things. They had looked at the situation of the Appellant. The Rules were not met. Quite simply that was the case and in any aspect the case could not move forward.
4. I invited Mrs Malekela to respond and what I did first was to go through each of the documents with her including the Entry Clearance Officer’s initial refusal. I read out part of the judge’s decision and then I read out Judge Appleyard’s grant of permission as well.
5. Mrs Malekela said: “There are many people who work here”, that many of them are English and others. It includes cleaners who are allowed to visit her previous country of Tanzania. Tanzanians are here. She said:

“We pay a lot of money for the applications and it is not refundable. There is a hectic application. It is too much. We need to have to use computers and were just turned down. Where are the human rights? Dogs have more rights. Dogs have more rights than me.”
6. I then took time to explain to Mrs Malekela that what is required of me is to apply the Rules and the laws and to find if there is a material error of law. Mrs Malekela then said she had a letter and she looked through her bag and after a few moments she produced the notice of hearing, a Rule 24 reply and directions for today’s hearing. I asked her what point she was making and she said the point was that the first judge had not looked at human rights.
7. I read through part of the Entry Clearance Officer’s refusal letter again and she said that the evidence that her son would return to Tanzania was the return ticket and that her sister had gone back to Tanzania after a visit to the UK. Mrs Malekela said: “I need my human rights as they did not judge me fairly. I am not allowed a visitor, so where are the human rights?”
8. Before giving this extempore judgment I explained to Mrs Malekela that I was going to refuse the application and, as I explained during the discussion, even if I have sympathy for the situation which Mrs Malekela and her son find her in there are very clear Rules which have to apply. I can only overturn Judge Khan’s decision if there is a material error of law. In my judgment, it is very clear that there is no material error of law in Judge Khan’s decision.

9. It is worth going back to the refusal of entry clearance by the Entry Clearance Officer dated 15<sup>th</sup> April 2015, and that said the following:

- “• You propose to travel to the UK for a period of five months to visit your mother. I note that you propose to travel with your brother who will be travelling to settle in the UK.
- I note that this is your first visit to the UK and that you are single with no dependants.
- You state that you are unemployed and have declared no income. I note that you have provided copies of money transfer receipts, however, these stand in isolation.
- You have submitted a letter from your Sponsor that states she is writing to support your application to settle in the UK.
- I note that you own no land, savings or assets in your own right and you have no dependent relatives. Given this I am not satisfied that you are settled or established, or that you have shown sufficiently strong family, social or economic ties to Tanzania. Conversely, you state that you have a mother in the UK who is your financial Sponsor. Consequently, I am not satisfied, on the balance of probabilities that you intend to stay the period you have stated or given the circumstances outlined above will comply with conditions of visitor entry clearance.
- There is no indication of the amount of financial support you receive. There are no other documents submitted with your application to allow me to consider your own financial circumstances further.

...”

10. In the grounds of appeal the Sponsor said, amongst other things, the following:

“I am the Sponsor for two of my children. I came in this country September 1995 [maybe 1993] until this day of 09 October 2015, no-one from my children or any member of my family managed to come in this country. I pay tax, I am not on benefit of any kind, my first daughter struggled for visa in Tanzania, she was denied visa until she passed away on 24 June 2008. Again, I struggle to bring my husband, who was in need of my personal care, but all was in vain until he passed away on 08/10/2015. I am the only one bread winner for the whole family. I am also a taxpayer and all my children depend on my wages for their food and upkeep.”

11. First-tier Tribunal Judge Khan heard the appeal as a papers case on request at Hatton Cross in August 2016 and in a decision promulgated on 2<sup>nd</sup> September 2016 he noted at the end of paragraph 1: "The Appellant only has a limited right of appeal." He noted at paragraph 10: "The Appellant made an application as a family visitor in order to visit his mother in the United Kingdom for a period of five months." The judge noted the Entry Clearance Manager's review at paragraph 15 of his decision and then at paragraph 19 Judge Khan said: "The Sponsor was not in attendance and no further evidence has been provided in support of the Appellant's appeal. The Appellant or the Sponsor have not provided evidence to show in this case the Appellant has been discriminated against." And then after further findings at the end of paragraph 21 the judge said: "There is no breach of the Appellant's Article 8 rights."
12. The Appellant appealed against that decision, setting out what I have read already in terms of the grounds of appeal. Permission was granted by Resident Judge Appleyard dated 13<sup>th</sup> April 2017 and he said the following at paragraphs 3 and 4:
  - "3. The grounds seeking permission to appeal appear to be drafted by the Sponsor. They do not disclose an arguable error of law and are no more than a statement that she wishes the appeal to be considered further. As the Appellant is unrepresented I have considered the decision itself to ensure that it discloses no obvious errors of law.
  4. In so doing I have reminded myself that appeal rights in cases of this kind are restricted. The appeal can only proceed on residual grounds contained in Section 84(1)(b) and (c) of the 2002 Nationality, Immigration and Asylum Act. On 25 June 2013 Section 52 of the Crime and Courts Act was commenced. This restricted the appeal rights for visitors coming to visit family members in the United Kingdom. The restrictions apply to any applications made on or after 25 June 2013. This appeal should have been considered by the judge on human rights grounds as opposed to failure to meet the Immigration Rules. Thus there is an arguable error of law."
13. As I explained during the hearing Judge Khan did note at the end of paragraph 1 that there was a limited right of appeal. The judge said that specifically. The judge notes at paragraph 10 that this was a family visitor application and then at the end of paragraph 21 he said there was no breach of the Appellant's Article 8 rights, i.e. human rights.
14. Now, as I also explained at length to the Sponsor, I do not doubt for one moment that she is not the hardworking woman she says she is. Nor do I doubt for one moment that she has been paying tax for very many years. Indeed, I do not doubt that she deeply cares for her children and they for her but my task is not to assess whether or not she has been paying tax.

My task is not really either to assess how great an affection there is between the family. My task is to assess whether there is a material error of law in Judge Khan's decision. In my judgment, it is clear that the judge did not make a material error of law. There simply was not the evidence before him to enable him to have allowed the appeal.

15. Even if I am wrong and the judge did not consider human rights, in my judgment, because of the lack of evidence presented to the Judge, it was next to impossible for the Appellant to have overcome the Entry Clearance Officer's clear decision. In the circumstances it would be futile for me to find in some artificial way that there was a material error of law when there is not and for the case to be remitted to the First-tier Tribunal. As I explained to the Sponsor, all that would do is to cause even more anguish and concern for the Appellant and the Sponsor and would be of no benefit to her or to the Appellant.
16. Now, it is clearly a matter for the Sponsor and the Appellant as to what they do next but if they are to make an application for a visit in the future then they will need to consider the Rules very carefully to ensure there is compliance with them by also providing the necessary evidence. I know there are severe restrictions in funding for these sorts of cases, i.e. Legal Aid, but the Appellant and Sponsor may well wish to consider whether they want to take legal advice before they make a new application for entry clearance in the future.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date 19 May 2017

Deputy Upper Tribunal Judge Mahmood

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

Signed

Date 19 May 2017

Deputy Upper Tribunal Judge Mahmood