Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13326/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 January 2018	**On 30 January 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR EMMANUEL ABIODUN OSISANYA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – UKVS SHEFFIELD

Respondent

Representation:
For the Appellant: Mr M Al-Rashid, Counsel, instructed by David A Grand
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant born in January 2000, has permission to challenge the decision of Judge Bart-Stewart of the First-tier Tribunal (FtT) sent on 1 August 2017 dismissing his appeal against the refusal of the ECO dated 10 May 2016 to grant entry clearance to join his father in the UK.

2. The principal ground raised by the appellant is that the judge erred in failing, when assessing the appellant's Article 8 circumstances, to attach any weight to the fact that the appellant met the relevant requirements of

the Immigration Rules. In a Rule 24 response sent on 27 November 2017 the respondent stated that the respondent did not oppose the appellant's appeal. The response went on to invite the Upper Tribunal to determine the appeal by way of a further hearing but both representatives agreed that there was in fact no reason why I could not proceed to re-make the decision without further ado. I heard brief submissions from both parties. Mr Avery said he could not resist Mr Al-Rashid's submission that I should allow the appellant's appeal.

3. It is manifest that the FtT Judge materially erred in law. Having found that the appellant met the relevant requirements of the Immigration Rules, he should have recognised this factor as very significant in the conduct of the Article 8 proportionality assessment: see **Agyarko [2016] UKHL**. The judge's decision is set aside for material "error of law".

4. In light of the above the decision I re-make can be set out briefly. The judge accepted that the appellant met the requirements of paragraph 297(i)(d) and that the sponsor had established that he can maintain and accommodate the appellant without recourse to public funds. The judge also accepted that within the meaning of Article 8(1) there was family life between the appellant and his father. Given that the respondent now accepts that the appellant meets the requirements of the Immigration Rules governing children of persons settled in the UK, and that the appellant and his father have an existing family life, there is no longer any discernible public interest in refusing the appellant entry clearance to join his father. The outcome of the proportionality assessment is that the decision refusing entry clearance was a disproportionate interference with the appellant's right to respect for family life.

5. To conclude:

   The decision of the FtT Judge is set aside for material error of law.

   The decision I re-make is to allow the appellant's appeal against the refusal of the respondent to grant entry clearance.

No anonymity direction is made.

Signed: Date: 28 January 2018

H H Storey

Dr H H Storey
Judge of the Upper Tribunal