



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

Appeal Number: OA/11314/2012

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 June 2014**

**Determination  
Promulgated  
On 11 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MR FEISAL MOHAMMED AWEIS OMAR**

**and**

**ENTRY CLEARANCE OFFICER, NAIROBI**

Appellant

Respondent

**Representation:**

For the Appellant: Ms G Loughran, Counsel  
For the Respondent: Ms J Isherwood, HOPO

**DECISION ON ERROR OF LAW**

1. The appellant's appeal has been remitted to the Upper Tribunal by the Court of Appeal for a full determination of the appellant's appeal under Article 8 of the ECHR. The error of law agreed to by the Court of Appeal is set out in the concluding paragraph in the Statement of Reasons. It states

the parties were in agreement that the UT made a material error of law in failing to consider or determine the appellant's appeal on Article 8 grounds. This was in issue before the FtT but the FtTJ did not make any findings on it either because she allowed the appeal under the Immigration Rules. The UT substituted its decision for the FtT determination, but the UT determination did not demonstrate that any consideration was given to the Article 8 issues.

2. As the appellant's appeal under Article 8 was not determined by the First-tier Judge, it is appropriate to remit this appeal to the First-tier Tribunal for a full determination of the Article 8 issues. Counsel said she was not running the English language requirement as a separate issue but would incorporate it as part of the considerations under Article 8.
3. First-tier Tribunal Judge Thew found at paragraph 21 that there was no dispute that the sponsor was in a position to provide adequate accommodation. At paragraph 35 she was satisfied that the appellant and the sponsor would be able to maintain themselves and their son adequately without recourse to public funds. These findings shall stand.

Signed  
Upper Tribunal Judge Eshun

Date: 10 June 2014

## **DIRECTIONS**

**The appeal is to be reheard at Taylor House by a FtTJ other than FtTJ Thew**

**Date of Hearing - 14 October 2014**

**Time estimate - 2 hours**

**Sponsor is the only witness**

**No interpreter required.**