Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/18280/2013

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 19th August 2014	**On 26th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

ENTRY CLEARANCE OFFICER - ACCRA

Appellant

and

BOUTROS KWAME BOADI

Respondent

Representation:

For the ECO: Mr N Smart, Senior Home Office Presenting Officer
For the Mr Boadi: The Sponsor, Dennis Badu Bernieh

DETERMINATION AND REASONS

1. Boutros Kwame Boadi is a Ghanaian citizen born on 20th May 1995. On 19th August 2013 he applied for entry clearance to come to the United Kingdom for a period of three weeks as a visitor to stay with his uncle, the Sponsor named above. In the interest of continuity I will refer in this determination to Mr Boadi as the Appellant

and to the ECO as the Respondent, the titles by which they were known before the First-tier Tribunal.

2. The application was refused by the ECO on 11 September 2013. He noted that the Appellant was a student and said that there was no satisfactory evidence of the Appellant's parents' situation. The application was refused as it was not accepted that the Appellant intended a genuine visit following which he would return to Ghana. Maintenance and accommodation were also put in issue. The decision concluded by stating that the right of appeal was limited to the grounds referred to in Section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002. The Appellant appealed, lodging various further documents. The Entry Clearance Manager reviewed the matter and stated that the issue of maintenance was now accepted. I presume that also included accommodation. However the evidence as to the family's circumstances was not regarded as adequate and it was noted that the Appellant had finished school and it was not clear what he intended to do on completion of his studies. The decision would not breach the ECHR.

3. In the Notice of Appeal it was requested that the matter be decided without a hearing, on papers. The appeal came before First-tier Tribunal Judge Moore at the Newport Centre. In a determination promulgated on 22nd May 2014 he allowed the appeal under the Immigration Rules and made a whole fee award of £80 in favour of the Appellant.

4. The Respondent sought permission to appeal, asserting that the judge had misdirected himself in law. It was noted that the Appellant had made his application on 19th August 2013 and that on 25th June 2013 Section 52 of the Crime and Courts Act came into effect which restricted the appeal rights for visitors coming to visit family members in the UK and those restrictions applied to any application made on or after 25th June 2013. Section 88A of the Nationality, Immigration and Asylum Act 2002 had been amended to remove a right of appeal for persons visiting specified family members except on the residual grounds mentioned in Sections 84(1)(b) and (c), namely on human rights and race relations grounds. The judge had erred in purporting to allow the appeal under the Immigration Rules and had gone beyond his jurisdiction. It was also stated that as the Appellant was applying to visit his uncle he could not have benefited from a right of appeal under the Immigration Rules unless the application had been made prior to 9th July 2012, which it was not. It was clear from the refusal notice that the right of appeal was limited.

5. Permission to appeal was granted by Judge of the First-tier Tribunal Pooler on 12th June 2014.

6. At the hearing before me I went through the application in some detail with the Sponsor and explained the changes in the law which had occurred prior to the Appellant's application being made. It was clear to me that the judge had exceeded his jurisdiction in purporting to allow the appeal under the Immigration Rules when there was no right of appeal on that basis. I accordingly set aside his decision.

7. Mr Bernieh on behalf of the Appellant then addressed me in connection with the remaking of the decision. He claimed that there was family life as between himself and the Appellant. In Ghanaian society, he said, the family structure was extended and he regarded the Appellant as part of his family. He had always advised him. The Appellant was a bright student and the Sponsor wanted to support him. He submitted that the decision was in breach of Article 8 ECHR. He also said the decision was not in accordance with the law as sufficient evidence was before the ECO for the application to be granted, as was borne out by the fact that Judge Moore had allowed the appeal. He also submitted that there was an element of racial discrimination. All persons should be treated the same. He said it was apparent from the fact that the application had been refused that there had been discrimination. I pointed out that the Grounds of Appeal made only a passing reference to human rights and there was no reference to discrimination. Mr Bernieh responded that Article 14 was relevant. The Appellant had been a genuine visitor but a visa had not been granted. His human rights were undermined and it was a classic example.

8. In response Mr Smart pointed out that family life within the meaning of Article 8 was restricted. Discrimination had not been raised in the Grounds of Appeal which were before the judge.

9. I now remake the decision in the light of the evidence before me and the submissions made.

10. With regard to Article 8 I have to consider whether the Appellant has shown that family life exists between himself and the Sponsor. The Appellant lives in Ghana and the Sponsor in the United Kingdom. The Appellant is an adult. He lives with his parents in Ghana. There was no evidence that the Sponsor supports him in a financial manner (the Appellant's case was that he was well provided for by his parents) or that he is dependent upon the Sponsor (as distinct from his parents) for emotional support. As Mr Smart had pointed out the concept of family life for the terms of Article 8 is restricted.

11. Following established case law, in particular **Kugathas v SSHD [2003] EWA Civ 31** I find that although the Appellant and Sponsor are related there is no family life between them for the purposes of Article 8. The decision under appeal therefore cannot breach the Appellant's right to family life.

12. With regard to private life the Appellant's private life is evidently centred on Ghana where he will have friends and where he has been pursuing his education. He wished to come to see his uncle for a three week visit. Whilst that would have been a pleasant and instructive experience the loss of the opportunity to pursue it is far from qualifying as an interference with the Appellant's private life protected by Article 8. The restricted nature of Article 8 protection is illustrated in recent case law. At paragraph 57 of **Patel and Others v SSHD [2013] UKSC 72** Lord Carnwath stated:

> "It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the Rules, which may be unrelated to any protected human right."

He went on to comment that the opportunity for a promising student to complete his course in this country, however desirable in general terms, was not a right protected under Article 8. Given such expressions of the limited reach of Article 8 it is quite apparent that the spending of a short holiday in another country with an uncle cannot come within the terms of Article 8. As I find Article 8 not to be engaged the Appellant cannot succeed on human rights grounds. Article 14 cannot stand alone.

13. There was no claim of discrimination made in the Grounds of Appeal. In any case there was no evidence before me of any element of discrimination on a racial basis. All that the Sponsor could point to was the fact that the application had been refused when he thought that it should have been allowed. There is no arguable merit in this point.

14. The Sponsor also sought to argue that the decision was not in accordance with the law as on the evidence the application should have been granted. This ground of appeal is not one available under Section 84 of the 2002 Act.

15. The appeal therefore falls to be dismissed. As the appeal has been dismissed there can be no fee award.

Decisions

The original determination contained a material error on a point of law and I have set it aside.

I have remade the decision and for the reasons set out above the appeal is dismissed on all grounds.

As the appeal has been dismissed there can be no fee award made.

Signed Dated 22 August 2014

Deputy Upper Tribunal Judge French