



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

Appeal No. IA/02446/2014

THE IMMIGRATION ACTS

Heard at: Birmingham
On: 16 April 2015

Determination Promulgated
On: 17 April 2015

Before

Upper Tribunal Judge Pitt

Between

James Junior Nkhata

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Chaggar instructed by Thaliwal Bridge Solicitors

For the Respondent: Mr Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Malawi and was born on 25 July 1985.
2. This is an appeal by the appellant against the determination promulgated on 4 August 2014 of First-tier Tribunal Judge North which refused his Article 8 ECHR appeal.
3. The background to this matter is that the appellant came to the UK on 24

October 2006 as a student. His leave as a student was until 31 January 2010. His mother and four younger siblings came to the UK not long after the appellant. He was granted further leave to remain as a post-study worker until 8 December 2012. He visited Malawi for 6 months around 2011/2012, living for some of that time with his father. He applied for leave to remain on Article 8 ECHR grounds on 5 December 2012.

4. The first ground of challenge was that the First-tier Tribunal judge had made a material error of fact when finding that the appellant had no ties to Malawi and so did not meet the private life requirements contained in paragraph 276ADE(vi) of the Immigration Rules. The judge referred at [6], [7], [8] and [9] of the decision to appellant being in Malawi from 2010 to 2012 when it was his evidence that he had only gone there for 6 months. The respondent conceded the error of fact but maintained that it was not material where the appellant had spent most of his life in Malawi and visited the country relatively recently.
5. It was my judgement that the evidence before the First-tier Tribunal allowed only one conclusion as regards ties to Malawi, that being that the appellant retained real and substantive ties to the country. He lived in Malawi until he was 21, all of his childhood. He has been in the UK for only 9 years as an adult. He returned to Malawi for 6 months in 2011/2012. Even accepting that he is now estranged from his father, it was his evidence in his witness statement that for part of the period of his return in 2011/2012 he lived with a "girlfriend" there.
6. It is simply not arguable that he can be said to have lost all ties to Malawi. His ties are not "remote" or "abstract" where he spent by far the majority of his life there, all of his childhood, returned there in 2011/2012 and had links there at that time outside of his family, for example the "girlfriend". Where he could not establish that paragraph 276ADE (vi) was met, the First-tier Tribunal's error of fact as to how long he spent in Malawi in 2011/2012 cannot be material.
7. The grounds are misconceived in suggesting that the First-tier Tribunal did not conduct a second-stage Article 8 assessment or assess whether the appellant had a family life with his mother and siblings. It clearly did so at [8] to [10].
8. The grounds amount only to disagreement with the finding at [8] and [9] that the appellant had not shown that he had a family life for the purposes of Article 8 with his mother and siblings. Three of the siblings were already adults at the time of the First-tier Tribunal hearing. The judge took into account, in terms, at [9] the "close relationships" the appellant has with his family in the UK and that he has acted as a role model for his siblings. The reasons given at [8] and [9] for finding that family life had not been shown were entirely open to the Judge on the evidence before him. How much weight and the conclusions he drew from that evidence were a matter for him unless perverse or irrational. The challenge here was not

put in those terms. I would have found them to be without merit had they been so.

9. I should also point out that the grounds were significantly misconceived in relying at paragraph 5 on outdated Upper Tribunal case law.

DECISION

10. The decision of the First-tier Tribunal does not contain an error on a point of law and shall stand.

Signed: 

Date: 16 April 2015

Upper Tribunal Judge Pitt