



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

Appeal Number: IA/11924/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 February 2015**

**Determination Promulgated  
On 19 February 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR**

**Between**

**MR DAVID OKELLO WAMALWA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Jaisri of Counsel

For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a 29 year old citizen of Kenya, has appealed with permission against the decision of First-tier Tribunal Judge Carroll who, in a decision promulgated on 24 October 2014, dismissed his appeal against the respondent's refusal to grant him leave to remain in the United Kingdom by virtue of Article 8 of the ECHR. The grounds seeking permission did not seek to argue that the appellant fell within the requirements of paragraph 276ADE of the Immigration Rules but argued that his claim should have been allowed under Article 8 outside the Rules.

2. The background to this appeal is that the appellant entered the UK in January 2013 on a Tier 5 (Charity) Migrant visa which was valid for one year. The application for further leave under Article 8 was made shortly before the one year visa expired.
3. In granting permission to appeal on 11 December 2014 First-tier Tribunal Judge Cruthers noted that the grounds complained, inter alia, that the respondent had conceded that there was family life existing between the appellant and his family in the UK, that the judge had disregarded evidence that there was an element of dependency of the appellant's mother on the appellant. Essentially it was argued that the proportionality assessment should have been in favour of the appellant.
4. At the hearing before me written evidence was submitted from Counsel who had appeared in the First-tier Tribunal – appropriately it was not the same Counsel as was before me – confirming that the Presenting Officer in the First-tier Tribunal had conceded that there was family life. That evidence was not challenged by Ms Holmes.
5. In his submissions as to error of law Mr Jaisri relied on the grounds and acknowledged that the question of Article 8 outside the Rules was the only issue. He argued that the judge had failed to take into account adequately the evidence from the appellant's mother and from his half-brother particularly as to the degree of dependency between them.
6. Having reviewed the First-tier Tribunal decision in detail, I am satisfied that there was no error of law in that decision such that it should be set aside. It was argued that the judge found that there was no family life between the relevant parties but that was plainly not the case. At paragraph 8 of the decision he makes it clear that “the question which falls to be considered is that of proportionality”. In the same paragraph he correctly refers to the requirement to take into account the public interest considerations incorporated into the 2002 Act by virtue of Section 19 of the Immigration Act 2014.
7. At paragraph 9 of the decision the judge set out the appellant's background. He referred to the evidence that he had heard “at length” from the appellant's mother and from his half-brother and acknowledged the degree of affection between them. But he went on at paragraph 10 to give clear and adequate reasons for finding that the elements of dependency did not go beyond the normal emotional ties within a family. It was to that extent only that he found, perhaps slightly ambiguously, that “the appellant does not enjoy a family life for the purposes of Article 8 with his family members in the United Kingdom” [my underlining].
8. At paragraphs 11 and 12 of the decision the judge continued to deal with the question of private life and found that there were no exceptional or compelling circumstances which could give rise to a disproportionate breach of the appellant's Article 8 rights.

9. For these reasons I am satisfied that although the determination and reasons were brief and to the point, they disclose no error of law such that the decision should be set aside. Any minor ambiguity was of such a nature that they were not material to the decision and I am satisfied that any rehearing of the case would not result in any different outcome.

### **Notice of Decision**

**There was no error of law in the decision of the First-tier Tribunal and that decision shall stand.**

No anonymity direction was sought and none is made.

Deputy Upper Tribunal Judge David Taylor  
19 February 2015