



IAC-FH-AR-V1

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

Appeal Number: AA/09613/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> December 2015**

**Decision & Reasons Promulgated  
On 5<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

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

Appellant

**and**

**MAMADY CONDE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Miss R Head, Lawrence Lupin Solicitors

**DECISION AND REASONS  
EX TEMPORE JUDGMENT**

1. The Appellant in this case was the Respondent in the First-tier and I shall refer to the parties as they were known at the First-tier. The Secretary of State appeals with permission a decision of the First-tier Tribunal promulgated on 9<sup>th</sup> September 2015. The decision of the First-tier was to allow the Appellant's appeal on Article 8 private life grounds. The Secretary of State complains that in reaching that decision the judge first of all should not have embarked on a consideration of the Article 8 case

outside of the Rules and that the judge's reasoning for doing so is inadequate.

2. The grounds complain that the basis for a consideration outside of the Rules was weak and that ground 1 of the application asserts that the only basis that the judge has given for doing so is that the Appellant arrived in the United Kingdom as a minor and had gained less than seven years' residence prior to the making of this application.
3. The grounds fail to recognise that prior to the hearing before the judge at the First-tier Tribunal the matter had been considered by the Upper Tribunal in relation to a previous and in the event erroneous decision of another First-tier Tribunal Judge and that the basis of remittal was that the judge should have considered the Appellant's position outside of the Rules because, and it is succinctly articulated in the remittal decision of the Upper Tribunal, that the Appellant's age as at the date of his application determines which parts of paragraph 276ADE are applicable and because at the date of his application he was under the age of 18 his consideration under the Rules is confined to 276ADE(iv) and in that Rule residence of less than seven years operates as an absolute bar to any consideration of the character and quality of an Appellant's private life, and absent the applicability of any other Rule and that position has not been contested either before the Upper Tribunal or before the First-tier in the rehearing, no part of the Rules deals directly with the assessment of the character and quality of the private life of this Appellant or indeed of the proportionality of a decision of removal. For that reason the first ground of this appeal is entirely misconceived.
4. I find that the remaining ground is similarly misconceived. In this ground the Respondent complains that the judge has treated the Appellant's command of the English language and the strength of his financial position as determinative of the proportionality exercise, contrary to the decision in AM (Malawi). In doing so the grounds mischaracterise the findings of the judge. A full reading of the decision reveals that the judge was doing no more than what is statutorily required by Section 117 where the factors of financial independence and ability to speak English are required to be given consideration by the judge.
5. A full reading of the decision makes it abundantly clear that those were not the determinative factors and that the judge took account of all of the circumstances of the Appellant including his age, his length of residence and his integrating in the United Kingdom. In addition the judge took account of the historical difficulties that the Appellant had suffered in Guinea as indeed found to be uncontested by the Upper Tribunal including homelessness, brutality on the streets, abuse, death of close family members and also took into account the difficulties that he would find on return, including the lack of support other than from a remaining sibling who is in domestic servitude and unable to provide the Appellant with any meaningful or significant support in terms of reintegration.

6. The judge recognised that whilst it would not be impossible for the Appellant to relocate in Guinea, that nonetheless it was not proportionate to expect him to do so, weighing in the balance the quality of the private life that he enjoyed in the United Kingdom and the difficulties that he would face. This is not a case plainly where the Rules provided an adequate consideration for the Appellant's position. To the point that at worst the judge's conclusion is a generous consideration but there is nothing in the conclusion which reveals any perversity or any material error which would require me to set it aside and remake the decision.

**Notice of Decision**

7. Accordingly the decision of the First-tier Tribunal allowing the Appellant's appeal on Article 8 grounds stands.

No anonymity direction is made.

Signed

E. Davidge

Date 30 December 2015

Deputy Upper Tribunal Judge Davidge