Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/05425/2013

THE IMMIGRATION ACTS

Heard at Glasgow on 2 February 2016	**Decision & Reasons Promulgated on 10 February 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SAMUEL MATAMBANADZO

Appellant

and

ENTRY CLEARANCE OFFICER, ZIMBABWE

Respondent

Representation:
For the Appellant: No legal representation; sponsor present
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Zimbabwe, born on 9 December 1988. He has not asked for an anonymity direction. He sought entry clearance to the UK as an adult dependant relative of his mother, the sponsor, Emelda Jackfama. The respondent refused his application by decision dated 15 January 2013.

2. Following an order by the Upper Tribunal setting aside and directing the remaking of an earlier decision by the First-tier Tribunal, the case came before Designated First-tier Tribunal Judge J G Macdonald at Glasgow on 5 August 2015. He dismissed the appeal by decision promulgated on 11 August 2015.

3. The appellant's grounds of appeal to the Upper Tribunal (prepared by solicitors previously acting on his behalf) essentially contend that the

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judge erred (a) by not finding in terms of paragraph 319VB(i)(f) of the Immigration Rules that the appellant was "living alone outside the UK in the most exceptional compassionate circumstances", and (b) by finding in relation to Article 8 of the ECHR that there would be only slender interference with private and family life.

4. On 12 November 2015 Designated Judge Shaerf granted permission to appeal, observing that the judge was correct to note that the case fell to be decided as at the date of the Entry Clearance Officer's decision and not at any later date, but considering that the judge might arguably not have taken account of "jurisprudence which finds that in some circumstances it is possible to be living in a household and yet be living alone."

5. In a Rule 24 response dated 22 December 2015 the respondent submits that even if the appellant had been found to have been living "alone", it was clear that the judge had concluded that there were not "the most exceptional compassionate circumstances", as required by the Rules, the wording of which is "not mere surplusage."

6. By letter dated 28 January 2016 the appellant's solicitors advised the Tribunal that they had withdrawn from acting. The sponsor confirmed that she was aware of their withdrawal, and advised that no other representatives had been instructed. She was also aware of the terms of the grant of permission and of the Rule 24 response. She had nothing to add to the grounds of appeal.

7. The Presenting Officer relied on the Rule 24 response and added that even if it were an error to find that the appellant was not living alone (which was not conceded) there was no error in the conclusion that the very high hurdle of "the most exceptional compassionate circumstances" had not been met.

8. I reserved my determination.

9. The appellant's circumstances attract natural sympathy. It is readily understandable why his mother seeks to secure his entry to the UK. It is unfortunate that due to a seriously flawed first decision in the First-tier Tribunal his case has spent so long in the appeal process. However, the test imposed by Immigration Rules is indeed a very high one. The circumstances must not be merely compassionate, but far above that level. There is no legal error in the judge's conclusion under the Immigration Rules. Nor is there any legal error in the outcome under Article 8 of the ECHR. The grounds on that point are only disagreement.

10. The determination of the First-tier Tribunal shall stand.

Upper Tribunal Judge Macleman

5 February 2016