



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

Appeal Number: VA/17976/2013

THE IMMIGRATION ACTS

Heard at Field House

On 10 July 2014

Determination

Promulgated

On 14 July 2014

Before

**Deputy Upper Tribunal Judge Pickup
Between**

Entry Clearance Office - Nairobi

Appellant

and

**Ally Abdallah Mohammed
[No anonymity direction made]**

Claimant

Representation:

For the claimant: Not represented

For the respondent: Mr J Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The claimant, Ally Abdallah Mohammed, date of birth 24.12.76, is a citizen of Tanzania.
2. This is the appeal of the Entry Clearance Officer against the determination of First-tier Tribunal Judge Hillis, who allowed the claimant's appeal against the decision of the Entry Clearance Officer, dated 17.9.13, to refuse his application made on 27.8.13 entry clearance to the United Kingdom as a visitor pursuant to paragraph 41 of the Immigration Rules. The Judge dealt with the appeal on the papers on 7.4.14.
3. First-tier Tribunal Judge Vaudin d'Imecourt granted permission to appeal

on 21.5.14.

4. Thus the matter came before me on 10.7.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Hillis should be set aside.
6. The appellant had applied to visit the UK for a period of 10 days. The appellant stated that he had no friends or family in the UK and intended only to visit historical sites.
7. The application was refused because the Entry Clearance Officer considered that there was insufficient evidence of the appellant's financial circumstances so as to satisfy the Entry Clearance Officer that this was a genuine application for a short visit following which he intends to leave the UK.
8. The appellant appealed to the First-tier Tribunal on the grounds that the decision is wrong and additionally that it breaches the Race Relations Act in discriminating against him.
9. The right of appeal was limited to the grounds set out in section 84(1)(b) & (c) of the Nationality, Immigration and Asylum Act 2002, namely discrimination and human rights.
10. There was, therefore, no jurisdiction to, and no purpose in, the judge considering whether the appellant did or did not meet the requirements of paragraph 41 of the Immigration Rules; the appellant has no right of appeal against the decision of the Entry Clearance Officer that he did not, except on human rights grounds.
11. The judge found that the appellant had failed to establish that the decision was unlawful pursuant to the Race Relations Act 1976. He also found that the refusal did not engage the appellant's article 8 rights, given that he had no family in the UK.
12. However, the judge allowed the appeal under the Immigration Rules, despite having no jurisdiction to do so, finding that the appellant satisfied the requirements of paragraph 41(i) and (ii).
13. The grounds of application for permission to appeal point out that the judge had no jurisdiction to hear an appeal against refusal under the Immigration Rules.
14. In granting permission to appeal, the First-tier Tribunal Judge stated, "The grounds raise the judge's jurisdiction to hear or allow the appeal given the limited grounds. The grounds are arguable. Permission to appeal is granted on all grounds."
15. For the reasons set out above, I find that the judge was in error in allowing the appeal on immigration grounds. In the circumstances, there was an

error of law in the making of the decision such that it should be set aside and remade.

16. For the same reasons set out above, it is obvious that the appeal must fail.

Conclusions:

17. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision on immigration grounds should be set aside, preserving the decision on discrimination and human rights grounds.

I set aside the decision.

I re-make the decision in the appeal by dismissing it and finding that there is no valid appeal on immigration grounds that can be determined.



Signed:

Date: 10 July 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: There was no valid right of appeal.

A handwritten signature in black ink, appearing to read 'D. Pickup', written in a cursive style.

Signed:
Deputy Upper Tribunal Judge Pickup

Date: 10 July 2014