



IAC-AH-DN-V1

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

Appeal Number: VA/04524/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 February 2016**

**Decision & Reasons Promulgated  
On 3 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

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

Appellant

**and**

**MR SYLVESER AKYEA OPOKU  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Bramble, Home Office Presenting Officer

For the Respondent: No appearance

**DECISION AND REASONS**

1. The respondent in this matter is a citizen of Ghana. His application for leave to enter the UK as a visitor was refused by the Secretary of State for the Home Department (by an Entry Clearance Officer) on 24 July 2014. In refusing the application the respondent was not satisfied that the appellant had met the requirements under paragraph 41(i), (ii), (vi) and (vii). It was contended that the respondent had made three previous applications. His birth certificate which was dated as issued 32 years

after the birth was not a true reflection of his age and identity and the evidence in support of the personal cost of the visit stated as £500 was challenged.

2. The appeal was heard before the First-tier Tribunal (Judge Shiner) ("FtT") who in a decision and reasons promulgated on 21 August 2015 allowed the appeal with reference to the Immigration Rules and refused the appeal under Article 8 ECHR.

### **Grounds of Application for Permission to Appeal**

3. The Secretary of State applied for permission to appeal on the grounds that the FtT made a material misdirection of law. The Secretary of State cited the enactment of Section 52 of the Crimes and Courts Act on 25 June 2013 which restricted the appeal rights for visitors coming to the UK, and which applied to applications made on or after 25 June 2013. Section 88A of the Nationality, Immigration and Asylum Act 2002 removed the right of appeal for persons visiting specified family members. Their appeal rights were limited to grounds under Section 84(1)(b) and (c) of the 2002 Act namely on human rights and race relations grounds.
4. In considering the appeal the FtT failed to have regard to the restricted rights of appeal. It did not follow the guidelines set out in **Razgar** and/or reach any proportionality assessment and failed to have regard to public interest considerations under Section 117B of the 2002 Act (as amended).
5. By allowing the appeal under the Immigration Rules the FtT acted outside its jurisdiction which amounted to an error of law.
6. It was further submitted that Article 8 was not engaged in any event because there was no evidence of the necessary element of dependency between adult relations such as to constitute family life (see **Advic**, **Kugathas** and **Ghisling**).

### **Permission to Appeal**

7. First-tier Tribunal Judge Pooler granted permission on 29<sup>th</sup> December 2015 in terms that it was arguable that the FtT misdirected itself as to the availability of the ground that the decision was not in accordance with the Rules. It was arguable that the appeal could only be brought on limited statutory grounds.

### **Rule 24 Response**

8. There was no response submitted by the respondent in this matter.

### **Error of Law Hearing**

9. There was no attendance by or on behalf of the respondent at the error of law hearing. I was satisfied that the notice of hearing giving the date and time of the Tribunal hearing was sent to the respondent, his solicitors and to the sponsor. There was no communication by or on behalf of the appellant and there was no application for an adjournment and no explanation for the reasons for the absence of the parties at the hearing before me. Accordingly having satisfied myself that notice of the hearing was duly served I proceeded to hear the appeal having regard to Rule 38 Upper Tribunal Procedure Rules 2018.

10. Mr Bramble submitted that the FtT erred in law by deciding the appeal on the basis of the applicability of the Immigration Rules which was outside its jurisdiction having regard to the restricted rights of appeal for visit visa applications.
11. Mr Bramble further submitted that at [31] the FtT had itself considered Article 8 ECHR and concluded that family life under Article 8 between a parent and an adult child could only arise where there were conditions of particular dependency and/or emotional support between the parties following **Kugathas v SSHD [2003] EWCA Civ 31.**

### **Discussion and Decision**

12. I accepted the submissions made by Mr Bramble. I was satisfied that the grounds of appeal were made out in full. The FtT materially erred in law by reaching a decision that was outside of its jurisdiction. The FtT was restricted by statute to consider the appeal under human rights only.
13. Insofar as the FtT went on to consider Article 8 ECHR, I am satisfied that the decision reached was correct. The FtT found that there was no family life under Article 8 ECHR between a parent and an adult child where there was no evidence of dependency above and beyond the normal family ties.
14. Accordingly I find that there is a material error of law in the decision and reasons. I set aside the decision to allow the appeal under the Immigration Rules. I substitute a decision to dismiss the appeal under the Immigration Rules. The appeal is also dismissed under Article 8 ECHR.

No anonymity direction is made.

Signed

Date 26.2.2016

GA Black  
Deputy Upper Tribunal Judge G A Black

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 26.2.2106

GA Black  
Deputy Upper Tribunal Judge G A Black