



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/05033/2014**

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

Promulgated

**On 17 November
2015**

On 2 February 2016

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KELVIN MARK LWANGA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms E Savage, Senior Home Office Presenting Officer

For the Respondent: Mr T Thomas (step father)

DECISION AND REASONS

1. I see no need for and do not make any order restricting publication of the details of this appeal.
2. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge C M Phillips allowing the appeal of the respondent, hereinafter "the claimant" against a decision of the Secretary of State to refuse him entry clearance as a visitor. I say immediately that the Secretary of State's appeal succeeds.
3. The grounds of appeal raised by the Secretary of State are addressed solely to whether or not the Tribunal was empowered to allow the appeal. The Tribunal had allowed the appeal on human rights grounds but it was

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the Secretary of State's contention that the appeal could not succeed on human rights grounds because the relationship between the claimant and his family in the United Kingdom was not within the protection of Article 8 of the European Convention on Human Rights.

4. There was a suggestion in the grant of permission by First-tier Tribunal Judge Parkes that there might be room to criticise the First-tier Tribunal's decision to allow the appeal on its facts. That point was not in the grounds. It was not advanced before me and is not part of my deliberations. I make this clear because I had not read all of the vast amount of evidence produced before me because there is no need to because it is not in contention that the claimant has satisfied the requirements of the visitor Rules. What matters is whether the First-tier Tribunal was right to decide that the facts came within Article 8(1) of the European Convention on Human Rights.
5. I find it surprising that the First-tier Tribunal decided the case in the way that she did because she referred in some detail to the case of **Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC)** but she did not refer to the part of the decision where the Tribunal made it clear that it would only be in very unusual circumstances that the protection of Article 8 in an out of country case applied to cases that did not involve husband and wife or life partners and parents and minor children.
6. The Tribunal said at paragraph 24:

It is the very essence of Article 8 that it lays down fundamental values that have to be considered in all relevant cases. It would therefore be extremely foolish to attempt to be prescriptive, given the intensely factual and contextual sensitivity of every case. Thus we refrain from suggesting that, in this type of case, any particular kind of relationship would always attract the protection of Article 8(1) or that other kinds of relationship would never come within its scope. We are, however, prepared to say that it will only be in very unusual circumstances that a person other than a close relative will be able to show that the refusal of entry clearance comes within the scope of Article 8(1). In practical terms this is likely to be limited to cases where the relationship is that of husband and wife or other close life partners or a parent and minor child and even then it will not necessarily be extended to cases where, for example, the proposed visit is based on a whim or will not add significantly to the time that the people involved spend together. In the limited class of cases where Article 8 (1) ECHR is engaged the refusal of entry clearance must be in accordance with the law and proportionate. If a person's circumstances do satisfy the Immigration Rules and they have not acted in a way that undermines the system of immigration control, a refusal of entry clearance is liable to infringe Article 8.

7. This is not a case that comes within the scope of the Article. This is a case involving a young man 25 years old who is living independently and, according to the evidence, responsibly and industriously in his native Uganda.
8. It is not really clear why the First-tier Tribunal was persuaded that Article 8 was engaged at all.
9. The claimant was represented by his stepfather who was clearly very familiar with the papers and was articulate and courteous, but he could not

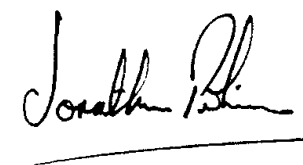
refer to anything that showed that the Respondent had accepted that this adult claimant's relationship with his family in the United Kingdom came within the protection of Article 8(1). There was merely a standard reference in the refusal of visitor appeals acknowledging the importance of family visits. It quite simply does not follow from that that there is any sort of concession that the person seeking entry clearance comes within the protection of Article 8(1).

10. There are many cases dealing with the scope of Article 8. This is because Article 8 is essentially a fluid right offering protection in a variety of circumstances, and as I have said on many occasions, it is not really helpful to think of it in terms of protecting "family life" or "private life" but to think of it in protecting "private and family life" together as a whole. This is something sometimes described as a person's physical and moral integrity. "Private and family life" is protected with a person's home and correspondence. It is about keeping the state out of a person's life without good and lawful reason. Colloquial use of the word "family" is likely to lead to trouble in understanding the proper application of Article 8 and that might have happened here.
11. The best explanation of the extent of family life in Article 8 is probably still to be found in the judgment of the Court of Appeal in **Kugathas v SSHD [2003] EWCA Civ 31** which is quoted extensively in the Secretary of State's grounds. In particular there is no presumption of family life between adults.
12. There is an abundance of evidence in this case that the claimant's mother and stepfather are genuinely concerned about his development and maturity. There are letters, some of which are quite tender in their content and there is evidence of visits. This is to be expected and is an example of normal emotional ties. It does not come near to being anything beyond those normal ties which is necessary before Article 8(1) can be said to be engaged.
13. I do not see any point in saying any more. The First-tier Tribunal Judge has not explained how she thought Article 8(1) was engaged and there is nothing before me to suggest she was entitled to reach that conclusion. In my judgement the evidence points in entirely the other direction.
14. It follows therefore that I must conclude that she was wrong to find that Article 8(1) was engaged and she was wrong to allow the appeal.

Notice of Decision

15. I set aside her decision and I substitute a decision dismissing the claimant's appeal against the Secretary of State's decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 29 January 2016