Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: VA/03280/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 4th August 2015	**On 14th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mr EMIOLA RICHARD FOLARANMI

Respondent

Representation:

For the Appellant: absent
For the Respondent: Mr I Jarvis, Senior Home Office presenting officer.

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge O'Malley, promulgated on 26 January 2015 which allowed the Appellant's appeal under the immigration rules.

3. The appellant is a citizen of Nigeria, born 10 January 1987. On 3 May 2014, the appellant applied for entry clearance to visit the UK. The respondent refused the appellant's application on 15 May 2014.

4. The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Malloy ("the judge") allowed the appeal against the respondent's decision under the Immigration Rules and did not consider Article 8 ECHR.

5. Grounds of appeal were lodged by the respondent and on 10 March 2015, Upper Tribunal Judge Martin (sitting as a judge of the First Tier Tribunal) granted leave to appeal, stating *inter alia*

"*The appellant has a limited right of appeal under Article 8 only in this case. The judge has considered the appeal under the Immigration Rules without any consideration of Article 8; the only issue before him".*

6. The appellant did not attend the appeal, nor was he represented at the appeal. I am satisfied that due notice of the appeal was served upon the appellant at the address that was given. I am satisfied that having been served notice of the hearing and not attended, it is in the interests of justice to proceed with the hearing in the appellant's absence, as I am entitled to do because of the operation of Paragraph 38 of Tribunal Procedure (Upper Tribunal) Rules 2008.

7. On behalf of the respondent, Mr Jarvis submitted that the judge's findings and notice of decision relate entirely to the Immigration Rules. No consideration has been given to Article 8 ECHR which is the only competent ground of appeal. He relied on the case of Adjei (visit visas – Article 8) [2015] UKUT 0261 (IAC) and submitted that the judge had no jurisdiction to consider the Immigration Rules. The decision is therefore tainted by a material error of law.

8. The appellant's application was submitted after 25th June 2013, consequently there is only a right of appeal under s. 84(1)(b) or (c) of the Nationality, Immigration and Asylum Act 2002 as s.52 of the Crime & Courts Act 2013 removed the right of appeal except on human rights or race relations grounds.

9. In Adjei (visit visas – Article 8) [2015] UKUT 0261 (IAC) it was held that (i) The first question to be addressed in an appeal against refusal to grant entry clearance as a visitor where only human rights grounds are available is whether article 8 of the ECHR is engaged at all. If it is not, which will not infrequently be the case, the Tribunal has no jurisdiction to embark upon an assessment of the decision of the ECO under the rules and should not do so. If article 8 is engaged, the Tribunal may need to look at the extent to which the claimant is said to have failed to meet the requirements of the rule because that may inform the proportionality balancing exercise that must follow. Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) is not authority for any contrary proposition; (ii) As compliance with para 41 of HC 395 is not a ground of appeal to be decided by the Tribunal, any findings concerning that will carry little

weight, especially if based upon arguments advanced only by the appellant. If the appellant were to make a fresh application for entry clearance the ECO will, if requested to do so, have regard to the assessment carried out by the judge but will not be bound by those findings to treat the appellant as a person who, at least at the date of the appeal hearing, met the requirements of paragraph 41.

9. Since 25 June 2013, a First Tier Tribunal Judge has not had jurisdiction to consider an appeal against refusal of a visit visa other than on human rights or race relations grounds. The decision therefore contains a material error of law. The only relevant considerations were the considerations that the judge did not take account of. I set the decision aside.

10. The appellant asks for this case to be determined on the documentary evidence. No request has been made for an oral hearing. I have the following documentation before me:

(a) The explanatory statement with its annexes; and
(b) The notice and grounds of appeal, with supporting documents.

11 (a)The appellant is a Nigerian national. He is single. He is not in paid employment but undertakes voluntary work. The appellant has graduated from college and was carrying out voluntary work before commencing his national youth service.

(b) The appellant visited the UK in 2008 and again in 2012. He was refused entry to the UK in May 2012 and accused of misrepresentation.

(c) The appellant applied to come to the UK as a general visitor. The appellant does not have relatives in the UK. The appellant previously had an uncle in the UK who, by the time the appellant submitted his application, had returned to Nigeria.

12 In his visa application form, the appellant declares that he has no family members in the UK. The appellant was interviewed by the respondent in December 2014. In the course of that interview, the appellant told the respondent that, in the past, one of his uncles had lived in the UK but that his uncle had since returned to Nigeria.

13 The appellant does not have any family members in the UK. The appellant does not enjoy family life within the meaning of Article 8 of the 1950 Convention in the UK.

14 The appellant is a Nigerian who has visited the UK for short periods of time on two previous occasions. He pursued tertiary education in Nigeria and, at the time of application, was awaiting deployment to the National Youth Service Corps. In his visa application form, the appellant stated that he wanted to come to the UK to indulge in some sightseeing.

15 Private life within the meaning of Article 8 of the 1950 Convention does not exist for the appellant in the UK. The appellant's home, his friends, his activities, his voluntary work, his interest and his possessions are all in Nigeria. Despite the fact that the appellant sprinkles reference to Article 8 ECHR between grounds of appeal 6 and 10, in reality, Article 8 of the 1950 Convention is not engaged.

18 The appellant does not argue that the Race Relations Act has been breached.

Decision

19 The decision of First Tier Tribunal Judge Malloy promulgated on 26 January 2015 contains a material error of law. I therefore set it aside.

20 I remake the decision.

21 The appellant's appeal is dismissed on Article 8 ECHR grounds.

Signed Date 7th August 2015

Deputy Upper Tribunal Judge Doyle