



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

Appeal Number: HU/19943/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 January 2018**

**Decision & Reasons Promulgated  
On 16 January 2018**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**Joel Wabwire  
[No anonymity direction made]**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: In person.

For the respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Ghandi promulgated 24.3.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 1.8.16, to refuse his application for ILR under the Immigration Rules as the child of a settled parent, pursuant to paragraph 298.
2. At the appellant's request, the First-tier Tribunal Judge dealt the appeal on the papers, on 3.11.16.
3. Deputy Upper Tribunal Judge Chapman granted permission to appeal on 18.10.17.

4. Thus the matter came before me on 9.1.18 as an appeal in the Upper Tribunal.
5. The appellant was not legally represented, but his father spoke on his behalf.

*Error of Law*

6. For the reasons summarised below, I found no error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.
7. The appellant was previously granted LTR as the dependant of his mother, granted LTR in 2015 as the spouse of a person present and settled in the UK, the leave of each limited to 1.4.18. Thus, at the time of the application the appellant had, and still has, LTR in the UK, co-terminate with that of his mother.
8. On 1.8.16 the appellant made an application for ILR as the child of a settled parent, pursuant to paragraph 298 of the Immigration Rules. He could not succeed under those provisions because only his father had settled status and his father and mother shared responsibility for the appellant.
9. Permission was granted on the basis that the First-tier Tribunal Judge failed to consider paragraph 301 of the Immigration Rules, which caters for the situation of one parent with settled status and the other with limited LTR with a view to settlement. However, this relates to an application for limited leave to remain.
10. It is suggested in the grant of permission that qualification under paragraph 301 was a *Robinson*-obvious point. I do not agree. First, he only right of appeal to the First-tier Tribunal is on human rights grounds. Whilst the appeal could not be allowed on immigration grounds, the extent to which the appellant meets the requirements of the Rules was certainly relevant to the proportionality balancing exercise outside the Rules under article 8 ECHR. However, I do not agree with the judge granting permission that the fact that the judge found that the appellant did not meet the Rules impacted on the assessment of the proportionality of the appellant's removal, so that it was arguably flawed. The appellant's application was not made under paragraph 301 for limited LTR, but for indefinite leave to remain (ILR). There was no need for him to make a limited LTR application, as he had and continues to have leave to remain. There was no basis on which the First-tier Tribunal should have considered paragraph 301, a provision on which the appellant did not rely on.
11. The judge went on to make a perfectly adequate article 8 assessment outside the Rules, balancing the appellant's family life rights against the public interest in immigration control and making an assessment of the appellant's best interests. The judge pointed out that for most of his life the appellant has not lived with his father and that it was open for his mother to return to Uganda with him. At the date of the appeal hearing, he was an adult and could not meet either Appendix FM or paragraph

287ADE. Section 117B of the 2002 Act should also have been considered, to the effect that little weight was to be given to any private life developed in the UK whilst the appellant's status was precarious. There is no removal decision, and it is open to the appellant to make a further application for LTR.

*Conclusion & Decision*

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

*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 13(1) of the Tribunal Procedure Rules 2014.

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 pursuant to 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: The appeal has been dismissed.

A handwritten signature in black ink, appearing to be 'J. M. Pickup', written in a cursive style.

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**