



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

Appeal Number: IA/04888/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2014**

**Determination Promulgated
On 21 November 2014**

Before

DESIGNATED JUDGE MURRAY

Between

**MR EVANS KWASI AMOAKO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Warburton, (LIR), Walthamstow Immigration Advice

For the Respondent: Tony Melvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Ghana born on 24 February 1985. He appealed against the decision of the respondent dated 14 January 2014 refusing to grant him leave to remain in the United Kingdom under paragraph 322(1) of the Immigration Rules. The refusal was issued because a variation of leave to remain was being sought for a purpose not covered by the Rules. His appeal was heard by First-tier Tribunal Judge Handley on 24 April 2014. The appeal was dismissed in a determination promulgated on 6 May 2014.

2. An application for permission to appeal was lodged and permission was refused by First-tier Tribunal Judge Molloy on 15 July 2014. However, permission was granted by Upper Tribunal Judge Gleeson on 23 September 2014. The grounds of application state that there must be a Home Office policy on the position of carers such as the present appellant, that extra limited leave to enable the appellant to care for his brother in the United Kingdom is not against the Rules or recent Home Office practice; and that evidence concerning the appellant's brother and medical evidence had been overlooked in the First-tier Tribunal determination. Upper Tribunal Judge Gleeson found that the determination contains no specific consideration of a relevant letter from Dr Mervin Tyrer, an Associate Specialist in the Department of HIV Medicine at the Royal Free London Hospital, concerning the appellant's brother's health. She found that the grounds of appeal are arguable.
3. There is a Rule 24 response from the respondent on file. This states that the First-tier Tribunal Judge directed himself appropriately and considered all the evidence before him. It points out that the hearing was determined on the papers at the behest of the appellant who chose not to take advantage of the appellate system and thus further his opportunity to argue his appeal before the Tribunal, which in this case was particularly important because of the scant evidence before the Tribunal as identified by the judge. The response states that the grounds have no merit and merely disagree with the adverse outcome of the appeal.
4. The appellant's representative submitted that on the internet there is now clear guidance relating to carers but at the date of the First-tier hearing he had been unable to find this guidance. He referred to the IDI, a copy of which is now on file. The Presenting Officer submitted that this IDI is dated 4 December 2013. The representative submitted that no one has considered whether the appellant's brother, for whom he is caring, is receiving care from social services as if he is not and is only being cared for by the appellant, this has to be taken into account and there should have been a concession made relating to the appellant's application. He asked for an adjournment on this basis.
5. The Presenting Officer submitted that this is an error of law hearing and it is clear from the determination that the letter from Dr Tyrer was considered by the First-tier Judge at paragraph 11 of the determination. He submitted that the appellant had been granted exceptional leave outside the Rules. the reason for this was that he had donated a kidney to his brother for whom he is caring and the exceptional leave was granted to enable him to have check ups on his own health. The appeal is now being raised on the basis of the appellant being a carer. He submitted that this has been addressed by the judge. He objected to the adjournment request.

6. I explained to the representative that this is an error of law hearing and the points raised in the permission can be dealt with based on what I had before me. I did not grant an adjournment.
7. The appellant's representative made his submission referring to Judge Gleeson's permission. He submitted that she found that the doctor's letter had not been properly assessed.
8. He referred to the determination by Judge of the First-tier Tribunal Clapham promulgated on 4 April 2014. He made directions that both parties should lodge supplementary submissions within 14 days, dealing with the applicability of the Immigration Rules and the position under Article 8 of ECHR. He submitted that the respondent had not complied with this direction although he had on behalf of the Appellant and because of this the hearing before Judge Handley is flawed. He also submitted that the relevant IDI was not available. He submitted that IDIs form a body of law and because he was unable to find the relevant one, the appellant's case was weakened. He submitted that the carer's position was not clear and because of this it would be unjust to accept the judge's decision of 6 May 2014.
9. The Presenting Officer submitted that the appellant had chosen not to attend the First-tier hearing. He submitted that the position of a carer is in the public domain and should have been able to be found by the appellant's representative. He submitted that in any case the application was not made on this basis. Leave was previously granted to the appellant so that he could get his own health checked since donating his kidney to his brother.
10. He submitted that because of this the IDI is not relevant and Judge Handley made his determination based on all the relevant issues. He submitted that Judge Gleeson's permission has an error as in paragraph 11 of Judge Handley's determination, he specifically refers to Dr Tyrer's letters, finding that the life expectancy of the appellant's brother will not be reduced if the appellant is required to leave the United Kingdom and finding that the medical letters state that the appellant's brother is making progress. The PO then suggested that the appellant's brother will be able to receive support from the NHS and social services if he requires this.
11. He submitted that there is no error of law in the judge's decision.
12. The appellant's representative submitted that the appellant's claim was prejudiced because the Home Office did not comply with the directions made by Judge Clapham. He submitted that an extra 12 months' leave based on the IDIs on file should be granted to enable the appellant to care for his brother. He submitted that he has been told that the Appellant's brother receives no support from social services so because of the terms of the IDI it would be unjust to leave the decision as it stands.

13. I have carefully considered the determination and the Upper Tier's grant of permission.
14. Paragraph 11 of the determination makes it clear that the judge has considered all the evidence before him including the letters from Dr Tyrer.
15. With regard to the Home Office policy it is in the public domain and having considered the documents on file, I find that the appellant was granted leave to remain outside the Rules in connection with his own health because of donating a kidney to his brother. The application was not made on the basis that the appellant is his brother's carer and so the IDI referred to by the Appellant's representative is not relevant.
16. Judge Handley has considered all the evidence which was before him and was entitled to come to the decision he did.

DECISION

17. There is no material error of law in the judge's determination.

Signed

Date **21 November 2014**

Designated Judge Murray
Judge of the Upper Tribunal