**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA085182015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 24th May 2016** | **On 26th May 2016** |

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

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

Appellant

**and**

**MR HENRI JONATHAN KOUSSO DOUA**
**(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr A Gilbert, Counsel, instructed by Hammond Lloyd Legal

**DECISION AND DIRECTIONS**

*Introduction*

1. The claimant is a citizen of the Ivory Coast born on 5th December 1988. He arrived in the UK with his mother to join his father in October 2001 when he was 12 years old. Starting in 2003 he made a number of applications for indefinite leave to remain which were all refused, and had an appeal to the First-tier Tribunal which was dismissed on 3rd January 2007. He made a human rights application on 16th

© CROWN COPYRIGHT 2016

May 2012 which was refused on 12th February 2015. His appeal against the decision to refuse his human rights application was allowed by First-tier Tribunal Judge Greasley after a hearing on 23rd July 2015.

2. The Secretary of State was granted permission to appeal by Judge of the First-tier Tribunal Pooler on 25th November 2015 as it was arguable the First-tier Tribunal had erred in law. The matter came before me and I decided that the First-tier Tribunal had erred in law for the reasons set out in my decision which is appended as Annex A to this decision.

*Evidence – Re-making*

3. The claimant's evidence is, in summary, as follows.

4. He is a citizen of Ivory Coast born on 5th December 1988. He came to the UK in October 2001 when he was 12 years old with his mother, Mrs Guelapehin Helene Kousso Ouya, to join his father, Reverend Doua Petemahin Jean Kousso, who was already resident here. His father is a minister of religion in the UK. His two sisters (Doua Kepin ReineVictoire Kousso born on 29th August 1986 and Massea Perside Grace Kousso Doua born on 1st May 1984) arrived a year later in 2002. The claimant made applications to be treated as his father's dependent but these were refused.

5. The claimant says he has not left the UK since his arrival in October 2001. His mother returned to Ivory Coast and applied for entry clearance in 2008 and stated on her application for entry clearance that her children were in France. His father also stated at an appeal that he was in France in 2009. These statements, he says, were not correct. He definitely was not in France between July 2008 and May 2010. There are no documents for him demonstrating his presence in the UK during this time as he had been unable to progress his studies or a football career due to his lack of immigration status. He simply lived with his father in the UK. His siblings were also in the UK living with their spouses. He believed that his church had written that he had been attending with them during this time however.

6. The claimant had not applied for leave until 2011, despite becoming an adult in 2006, because things had been very difficult for him after he had discovered he could not go to university in 2008, and when his mother had been forced to return to the Ivory Coast, and the family had financial problems. He had simply lived with his parents at their address during this time, and gradually taken on the voluntary work he has since dedicated his time too.

7. Today the claimant's father, mother and his sister Grace are British citizens. His sister Victoire is an Ivorian citizen who has a residence permit as an EEA spouse of a French national who is exercising Treaty rights in the UK. His siblings have both married so the claimant also has in-laws and three nieces and nephews in the UK.

8. The claimant has lived with his parents and sisters for his whole period of residence in the UK at their various addresses in south London and Croydon. He recently lived with his sister Victoire, who is married to a French national and who has a French national daughter, for a period of time but has now returned to live with his parents.

9. The claimant says he should be allowed to remain in the UK as he has been in the UK for over 14 years, and has completed his secondary schooling in this country. He was a talented footballer as a secondary student and played for the Academy of Fulham FC and obtained professional contracts with Weymouth FC and Basingstoke FC but was unable to take them up due to his immigration status. He is also active within his community, with his local church and with charitable organisations. He spends most of his time volunteering and playing keyboards and leading/ training choirs with churches and working with young people in community organisations. He believes this work as a community worker keeps young people away from a life of crime. He also spends time looking after his sisters' children and thus helping with their child care. He therefore has very significant ties with the UK and has spent more than half of his life here. If allowed to remain he would do university level further studies in music or sports science, and would do part-time work in retail or something similar to support himself financially.

10. The claimant says he should not have to return to Ivory Coast as he cannot remember much about that country which was devastated by civil war at the time he left. His life would be shattered as he has close family life with his parents and siblings in the UK and has no one in the Ivory Coast as all his grandparents have passed away. His family members do not travel back to Ivory Coast, with the exception of his father who has travelled back on a couple of occasions to preach and stayed in a hotel. The place where the family used to live in the eastern quarters of Abidjan has been bulldozed so he could not return there. There are still problems of violence and fears for personal safety in that country. He thinks his parents would struggle to send money to support him there. He would not be able to obtain work there as he does not have a diploma level qualification.

11. He also says he should be allowed to remain as he is engaged to be married to a British citizen, Ms Andree Momhatche Karell Guei. He has known her since he came to the UK and they have been dating for the past two years. She was aware of his lack of immigration status when their relationship commenced. They were engaged in June 2015. They do not cohabit, as she lives in Wolverhampton, but they speak on the telephone every day and he visits her once a fortnight. They plan to marry and live together in September 2016. Ms Guei does not wish to live in the Ivory Coast which she regards as too dangerous, and she does not want to leave her family in the UK or her work as a hairdresser in this country. She has lived in the UK since she was four years old. Ms Guei and the claimant have agreed that their relationship would end if he were to be forced to return permanently to the Ivory Coast despite their very strong feelings for each other.

12. Evidence supportive of the facts of the claimant's case as set out above is also provided in statements given by his father, mother, his sister Grace, his sister Victoire, Victoire's husband Mr Roland Die, and the claimant's fiancée Ms Karell Guei. In addition the following witnesses gave the following additional oral evidence.

13. Mrs Ouya gave evidence that her brother had been killed in 2011, and her two sisters were in exile in Benin or Ghana. She explained that she had untruthfully said on her application form for entry clearance that her children, (including the claimant) were in France because she had said this when she was detained when she reported to the Immigration Service in 2008. She was afraid for her children so made this up to protect them. She was sorry she had lied but felt it was natural for a mother to protect her children in this way. She felt she had to continue the lie on her application form as she still felt she needed to continue to protect her children. She was protecting her children as Ivory Coast was not a safe place for her children to be at that time, and she believes this continues to be the case today.

14. Mrs Ouya maintained that whilst she was abroad applying for entry clearance she lived all of her time in Ghana bar one month spent with a French friend's family in Abidjan, Ivory Coast. She had had to write on the entry clearance form that she had an address in Abidjan and say she lived there as she was not a Ghanaian citizen so could not say she lived in Ghana. She could not support the claimant in Ivory Coast because she was not working, and because he was of an age when he should be working and supporting her. She had high blood pressure and was not fit to work, and her husband was also unwell. He is provided with food by her and her husband, but he is only given money and clothes by friends of his own age from within the church. The claimant would face return to an unstable country where he would not be able to work without doing further studies as he has no UK diploma which would enable him to access work.

15. The Reverend Kousso gave evidence that when Mrs Ouya returned to Ivory Coast she was based in that country for her period of absence, although she travelled to Ghana a number of times to make her visa application and deal with the appeal. He said she was based with various acquaintances of the family in the Yopougon district of Abidjan whom were known to them as he had been a pastor in that area before he travelled to the UK. His wife had made the arrangements on her arrival in Ivory Coast. The address on the form was his postal box address from the time when he lived in Ivory Coast. He had spoken on the phone to his wife every day whilst she had been there. He confirmed that his wife had lied about his children being in France on her visa application form because she had told this lie to the Immigration Service when she was detained and felt she had to continue with it. Likewise he had felt he had to continue with it at the appeal hearing. It had not been deliberate as his wife had been in a scary situation and said what she had to protect her children. He and she were both sorry for having told this untruth however.

16. The Reverend Kousso gave evidence that he provides small amounts of financial help, for instance bus fares, to the claimant but that others in the church pay for more expensive things such as the claimant's trips to Wolverhampton to see his fiancée. He and his wife are reliant on income support, and have just £114 per week to support themselves and so cannot really support the claimant financially very much. He is on medication for high blood pressure and cannot do paid work outside his church role.

17. Ms Guei gave evidence that she was not prepared to live in Ivory Coast as she wishes to remain with her mother in Wolverhampton who provides her with emotional and financial support. She would also have problems working as she does not speak good enough French, and is scared of the conflict in that country. The relationship with the claimant would have to end if he was sent to Ivory Coast permanently. She was however happy to support an entry clearance application. She did not believe the claimant had ever lived in France. She was not sure why she had not given a statement in support of the claimant for the hearing before the First-tier Tribunal in July 2015 when she was engaged to the claimant at that time, but she may not have been able to attend the hearing due to her work. From August 2016 she will be paid £14,972 a year gross for her work (40 hours a week work on the minimum wage) as a hairdresser.

18. The evidence also includes a letter from Pasteur Djatchi from Kingdom Heirs Community Church who confirms the claimant has been a member of the church since 2007, and has become a youth leader and voluntary worker. He confirms he is a gifted singer and pianist, and role model for other youth. 35 church members have signed a petition supporting the claimant staying in the UK.

19. There is also a letter from the Family Restoration Centre which confirms that the claimant works in their youth department in the young people's activities team; and another from the Eglise Methodiste Francophone about his work for them as a musician and trainer for other young musicians. There is a further letter from Rhema Word which confirms the claimant works for them helping with a youth choir and with sound engineering.

20. The claimant has provided school certificates and qualifications and documents relating to work experience, football and medical matters showing his residence for the years 2002, 2003, 2004, 2005 2006, 2007, 2008, 2010, 2012, and 2014. An old tenancy agreement from 2005 shows the claimant as a tenant with his parents and siblings. There are other documents showing the rental agreement and accommodation address for Victoire Kousso and her husband Roland Die and some bank statements for the claimant's parents.

21. Background materials relating to the Ivory Coast set out details of the civil war in 2002 and on-going problems in 2011, 2013 and 2016 when there were Al Qaida attacks on hotels in Ivory Coast.

*Submissions – Re-making*

22. Mr Wilding relied upon the refusal letter and oral submissions.

23. Mr Wilding submitted that the claimant and his parents were not credible witnesses. There was a discrepancy between what Mrs Ouya and Reverend Kousso had said about where Mrs Ouya had lived whilst she was obtaining entry clearance. There was also a question as to whether the claimant had in fact been in France in the period July 2008 to May 2010, as Mrs Ouya had said he was on the application form for entry clearance in 2008 and Reverend Kousso likewise at the appeal hearing in 2009, given the lack of documentary evidence to place him in the UK at that time. Ms Guei's credibility had to be considered given she had not given evidence before the First-tier Tribunal despite being the claimant's fiancée at that time.

24. In summary Mr Wilding argues that the claimant would not have very significant obstacles to integration in Ivory Coast because he had lived in Ivory Coast until he came to the UK at the age of 12 years and therefore had knowledge and day to day experience of the country's society, culture and traditions at that time. He has continued to have contact with these traditions and culture through his church and Ivorian community activities in London. He would have no communication barrier as he clearly speaks French. He could rely upon friends in that country for help integrating, and continue to receive financial support from his father and brother-in-law in the UK. It was clear that the family still had acquaintances who had assisted his mother when she was in the Ivory Coast, and that the claimant's father still continues to occasionally travel to that country for his work. The claimant may also have lived in France as an adult showing an ability to change country. There is no background country of origin evidence which shows that the claimant could not work without a diploma in Ivory Coast.

25. The Secretary of State argues that an appeal outside of the Rules should not succeed as the claimant had built his private life ties with the UK whilst he had no permission to remain and in circumstances where he had no reason to believe he would be allowed to stay in this country, and so little weight should be given to these ties. The claimant would be able to use his experience in the Ivorian community in London to integrate in the Ivory Coast and can speak French to communicate there. He will have financial support from his father and brother-in-law, and has not shown he would not be able to obtain employment using his UK qualifications. He could continue to be able to have involvement with church, community and musical organisations in Ivory Coast. He could keep in touch with UK friends and family via modern methods of communication. It is doubtful that the claimant and his fiancée have a family life relationship given that they do not cohabit at the current time. The claimant's contribution to the UK through his charitable work in the UK and his period of six years residence as a child are of insufficient weight to mean that he is entitled to succeed in his appeal, particularly given the delay in the claimant trying to resolve his status after becoming an adult in 2006.

26. Mr Gilbert submitted in summary as follows. It is accepted that the claimant cannot succeed under the Immigration Rules relating to family life (following a discussion with myself and Mr Wilding). He argues however that the claimant could demonstrate having very significant obstacles integrating if removed to Ivory Coast due to his period of residence in the UK starting as a child and during which his family has severed their ties with Ivory Coast. He has no family or friends to turn to in that country, or home to go to. He has no experience of that country as an adult. He had no experience of paid work in any country or of living alone away from his family. He would be at a disadvantage in the labour market without a diploma level qualification.

27. It is also argued by Mr Gilbert that the claimant's appeal ought to be consider under the wider law relating to Article 8 ECHR and allowed on the basis that his removal would be disproportionate to his Article 8 ECHR rights. His period of six years residence as a child should be given weight as he had put down significant ties to the UK during that time. He may have delayed in trying to resolve his status until 2011 but he has remained integrated in his original family and so this is understandable. If the claimant were to return to apply for entry clearance to join his spouse that application would be refused as his fiancée/ wife will not be earning the £18,600 required by the Immigration Rules.

*Conclusions – Re-making*

28. The first issue to consider is the weight to be given to the evidence of the witnesses before me. Reverend Kousso and Mrs Ouya both have admitted telling untruths to the authorities previously. Reverend Kousso says he gave wrong evidence to the First-tier Tribunal about the whereabouts of his children at his wife's entry clearance appeal in 2009. Mrs Ouya says she lied to Immigration Officers at Electric House in 2008 and also on her entry clearance form in 2008 about her children's whereabouts, and on the same form about her place of residence.

29. I find I can give no weight to Mrs Ouya's evidence as she says that she lied previously to protect her children from being found and returned to the Ivory Coast. She clearly still feels that it is not in the claimant's best interests to go back to the Ivory Coast, and it is therefore clearly possible that she would feel justified in giving evidence again that she believed would support his case to remain even if it were not correct. Her evidence was also at variance with her husband with respect to her whereabouts whilst she was not in the UK and applying for entry clearance between 2008 and 2010; the address on the application form; and whether they provided the claimant with any financial support.

30. I am however satisfied that Reverend Kousso gave credible evidence to the Tribunal before me. Whilst showing understandable loyalty to his wife and to her wish to protect their children, he freely gave balanced evidence that the family did have access to a network of acquaintances in Abidjan, as a result of his previous work in the church there, who had supported his wife by providing

accommodation whilst she applied for entry clearance and has accepted he has travelled to the Ivory Coast in his role as a pastor on a couple of occasions. He also gave a coherent explanation of the address on his wife's visa application form being his old postal box address. His evidence was measured: for instance he accepted that he did give small amounts of money to the claimant but explained, with coherent reasoning, that given his reliance on income support and his ill-health that he and his wife were not in a position to provide any greater sums.

31. I find the claimant and his fiancée Ms Guei to be credible witnesses. Their evidence was consistent with that of Reverend Kousso and each other, and was consistent with their written statements. They also gave their evidence in a careful, reasoned and measured manner to the Tribunal.

32. It is next necessary for me to decide whether the claimant has been continuously resident in the UK since 2001 or whether he spent a period between July 2008 and May 2010 in France. The Secretary of State has pointed correctly that there is no documentary evidence placing the claimant in the UK during this period. It is however the evidence of all three credible witnesses that he was present in the UK during this period. Reverend Kousso has given a coherent account as to why the falsehoods about the claimant being in France were put forward. The claimant has explained that as he was living at home with little money and unable to lawfully study or work he became depressed and hence has no documents to show for his presence during this time. On the balance of probabilities I am satisfied that the claimant remained in the UK during this period and did not live in France at any point.

33. I must now proceed to consider firstly whether the claimant can succeed under the Immigration Rules at paragraph 276ADE (1)(vi): to do so he would have to show that there would be very significant obstacles to his integration in Ivory Coast if he were made to return there.

34. If returned to Ivory Coast the claimant could turn to the same community of people whom his mother relied upon when she was forced to go back to the Ivory Coast for 18 months in 2008. This community assisted his mother with accommodation because of his father's historic work with them as a pastor, and there has been no evidence as to why they would not be willing to do the same for the claimant in the short and medium term. He could also receive financial help, in the short term, via remittances from the congregations in London whom he has assisted with his voluntary work in London, and who are currently able to assist him financially here. He would also be able to forge new friendships with a church community in Ivory Coast who could provide him with spiritual and emotional support. He is evidently integrated in the Ivorian Christian community in London and thus despite leaving Ivory Coast as a young child has maintained contact with the traditions, customs and values of that community.

35. There has been no evidence before me to explain why in the medium term the claimant would not be able to obtain work to support himself. I accept that he

would not be able to obtain well paid work as he does not have a diploma or a degree but there is no evidence before me that a clearly sensible, hardworking and reliable bilingual young man with skills in sports and music could not hope to obtain some work in the Ivory Coast. Indeed there has been no evidence that he could not do as he intends to do in the UK: obtain some relatively menial part-time work and at the same time study for a diploma which might lead to better paid work in the future.

36. There is no evidence before me that despite the terrible recent history of civil war in the Ivory Coast that at the current time the country is dangerous or unstable so as to mean the claimant would suffer very significant obstacles to integration. The evidence put to me about the current situation in Ivory Coast is simply one Guardian newspaper article from April 2016 about a terrorist attack on a seaside town called Grand-Bassam 40km from Abidjan in which at least 16 people died at the hands of Al Qaida's North African branch. There is reference in that newspaper article to the Foreign Office Travel Advice to Ivory Coast which advises against all travel to the western part of the country but not to the part of the country in which Abidjan is situated. The Foreign Office advice does say that there is a high threat of terrorism; there could be indiscriminate attacks; and that violent crime could take place at any time. However there are no reasons given by the claimant as to why he would be at particular risk from such attacks.

37. Taking all the above conclusions into consideration I find on the balance of probabilities that the claimant has not shown he would have very significant obstacles to integration on return to Ivory Coast. Whilst I realise he does not wish to go there and his family want him to remain with them in London in the UK these matters, and his long period of integration in his community in London, are not matters which have been shown to be in any way relevant to whether he would face problems with re-integrating in the Ivory Coast.

38. I find that there are compelling matters, not considered under the Immigration Rules, particular the claimant's long residence in the UK from his arrival as a twelve year old child and his extensive private life connections with this country and charitable contributions to this country which mean that it is appropriate to consider the appeal under the general law relating to Article 8 ECHR. Clearly the claimant has very extensive private life in the UK, which includes all of his family relationships, and his removal would interfere with those relationships and his UK based private life. This interference would, however, be in accordance with the law as the claimant cannot meet the Immigration Rules.

39. In considering the proportionality of the claimant's removal outside of the Immigration Rules I have regard to s.117B of the Nationality, Immigration and Asylum Act 2002 when considering the proportionality of his removal from the UK. In accordance with s.117B(2) and (3) of the Nationality, Immigration and Asylum Act 2002 I note that the claimant speaks fluent English and I am confident that he would be financially independent if allowed to remain in the UK given his existing qualifications; his aptitude for hard-work; and extensive voluntary work

experience. I must regard these however as neutral factors in accordance with Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC).

40. I note that weight must be given to the maintenance of immigration control in accordance with s.117B(1) of the Nationality, Immigration and Asylum Act 2002, and thus the fact that the claimant cannot meet the Immigration Rules, is therefore a weighty factor against him.

41. I note that in accordance with s.117B(4) and (5) of the Nationality, Immigration and Asylum Act 2002 little weight should be given to his private life ties to the UK and to his relationship with Ms Guei, even if she can be said to be a qualifying partner, as all of this has been formed whilst the claimant has been precariously and unlawfully present in the UK. Miah (section 117B NIAA 2002 – children) [2016] UKUT 00131(IAC) makes plain that the fact that the claimant established private life whilst precariously and unlawfully present as a child for the first six years of his stay in the UK makes no difference: it still should be accorded little weight as this is what parliament has said should happen. However Miah then goes on to note that this does not mean that in particular cases that an examination of the individual facts might not lead to a finding that removal was not proportionate when all factors are weighed in the balance, and paragraph 26 of that decision draws a distinction between private life which can be replicated in the country of origin and private life that cannot; and also a distinction in relation to family ties and issues of special vulnerability.

42. Given the period of residence of the claimant in the UK is now more than 14 years, and given the first six years of this were as a child during his important teenage years where he matured to an adult I find it is relevant to look very closely at the individual facts of this case. I find the claimant was brought to the UK at the age of twelve years at a time when the Ivory Coast was in a sudden and violent civil war which included street fighting in Abidjan where the claimant lived. The background materials, for instance the Observer Special Report dated 15th December 2002 are corroborative of this fact. It was entirely understandable that his parents would have tried to bring him to join his father, who was lawfully resident in the UK, and would have also taken steps to bring all other family members to London. It is regrettable that they were so unsuccessful in making an application which met the Immigration Rules thereafter. It is however notable that whilst the family, and after his majority the claimant himself, may have been dilatory and possibly incompetent in making applications, and at one point his mother and father told an untruth about his whereabouts, there is no evidence or submission that the claimant went to ground or hid from the authorities. I find he has been living openly with his family at their address for his entire stay in the UK.

43. In the UK the claimant has completed his entire secondary education, and obtain BTEC qualifications in sport and performing arts. He also has passed GCSEs in French and Spanish. He was intensively involved in football and played for the Academy of Fulham FC and thereafter obtained professional contracts with

Weymouth FC and Basingstoke FC, but was unable to take them up due to his immigration status. After leaving school he has put together an impressive portfolio of voluntary work with church music and Christian youth groups, and is now working in this way six days a week. Those he has worked with have found him to be trustworthy, honest and hardworking. He has lived continually with his family, mostly his parents but with significant time spent with his sisters and their families. His parents and siblings are now all lawfully resident: his parents both being British citizens, as is one of his sisters and the other sister is present as an EU family member with a residence card. He now has a fiancée who is a British citizen, with whom he does not yet cohabit but whom I find he plans to marry in September 2016 and from that time to share her flat in Wolverhampton.

44. Whilst I find the claimant could replicate the private life charitable work relationships, friendships and church bonds he has established in the UK in the Ivory Coast he clearly could not do the same with his close bonds with his parents and siblings whose residence, citizenship and work ties them to this country. These I find to be "private" life relationship, and not Article 8 ECHR "family" relationships. This is because it has not been argued that there are more than normal emotional ties between this 27 year old claimant and his blood family relations. This is not in any way to diminish the relationships: they are very close and committed but as the claimant and his family do not have any particular vulnerabilities they lack sufficient dependency to be given this legal definition. It is clear that the claimant would in fact also lose his future relationship with his fiancée if removed from the UK as she is quite reasonably not prepared to live in the Ivory Coast due to the distance from her family; difficulties for her working there; and the security risks in that country. That said it is not the case that I find there would be insurmountable obstacles to family life between the claimant and Ms Guei taking place in the Ivory Coast. Ultimately it would be possible for them to make sacrifices relating to contact with parents and siblings, Ms Guei's work and a lesser degree personal security and lead a family life in that country. The degree of hardship involved has not been shown before me to be of sufficient level to meet the exacting insurmountable obstacles test of very serious hardship.

45. The issue of proportionality is therefore extremely finely balanced in this case. I take into account the need for there to be compelling circumstances not sufficiently recognised by the Immigration Rules to allow the appeal outside of the Immigration Rules on Article 8 ECHR grounds, in accordance with the decision in SS (Congo) v SSHD [2015] EWCA Civ 387 at paragraph 40.

46. This is a case which like Miah involves a significant period of time in the UK when private life was established as a child, and during which the unlawfulness of the claimant's presence was not of his choice and which had understandable initial protection motivations. Miah was not successful in his appeal but in his case it was found he was able to use what he had gained through his UK residence to rebuild a private life in his country of nationality in very similar form to that he had achieved in the UK. I find that this is not the case for this claimant:

if returned to the Ivory Coast very significant parts of his private life, relating to all of his family members and fiancée, cannot be reconstructed there.

47. I have found it relevant also to consider Jeunesse v Netherlands (2015) 60 EHRR 17. Whilst Jeunesse v Netherlands is an Article 8 ECHR family life case it clearly looks at when special and individual circumstances require discretion to be exercised to grant a residence permit to someone who has been unlawfully present on Article 8 ECHR grounds. Like the applicant in Jeunesse v Netherlands this claimant's presence has been tolerated by the state authorities for a similarly long period of time whilst he repeatedly made unsuccessful applications to remain and during which he established strong family, social and cultural ties in this country. Like the applicant in Jeunesse v Netherlands his family members are all citizens of this country (or those with Community law rights to remain) who could not without considerable hardship relocate to the Ivory Coast.

48. Whilst having regard to s.117B (1), (4) and (5) of the Nationality, Immigration and Asylum Act 2002 on consideration of all the circumstances of this case, as set out above, I find that the claimant's removal would not be a proportionate interference with his right to respect to private life.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal with no findings preserved.

3. I remake the appeal allowing it on human rights grounds.

Signed: Fiona Lindsley Date: 25th May 2016

**Annex A**

## DECISION AND DIRECTIONS

*Introduction*

1. The claimant is a citizen of Ivory Coast born on 5th December 1988. He says he arrived in the UK with his mother in October 2001 when he was 12 years old. Starting in 2003 he made a number of applications for indefinite leave to remain which were all refused, and had an appeal to the First-tier Tribunal which was dismissed on 3rd January 2007. He made a human rights application on 16th May 2012 which was refused on 12th February 2015. His appeal against the decision to was allowed by First-tier Tribunal Judge Greasley after a hearing on 23rd July 2015.

2. The Secretary of State was granted permission to appeal by Judge of the First-tier Tribunal Pooler on 25th November 2015 as it was arguable the First-tier Tribunal had erred in law as it was arguable that there had been a failure to consider whether the claimant could meet the Immigration Rules; and because irrelevant facts were arguably taken into consideration such as the claimant's inability to play professional football due to his lack of immigration status and relevant factors were not given weigh such as the funding of his education via public funds and his lack of any immigration status.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law

*Submissions – Error of Law*

4. Mr Melvin relied upon the application for permission to appeal. In summary it is submitted in these grounds that firstly the First-tier Tribunal erred in law for failing to start the examination of Article 8 ECHR with consideration of the claimant's case under the Immigration Rules, which was the correct approach as identified by many cases of the Court of Appeal. In relation to the consideration outside of the Immigration Rules it is said that the First-tier Tribunal erred in a number of ways. The First-tier Tribunal had failed to show that the relationships of the claimant to his family were family life ones in accordance with Article 8 ECHR by showing that there was sufficient emotional, and other, dependency between him and his parents. It was wrong to rely simply upon financial dependency when he was unable to work. It was also irrational to consider that the failure of the claimant to be able to develop a career as a professional sport's person due to his lack of status enhanced his private life. In addition it had not been considered that family here could support the claimant on return to Ivory Coast. It was also argued that it was not material that the claimant had been involved in charitable and community work in the UK; and that the Tribunal had erred as there was no reference to the claimant being unlawfully residence

and having accessed public funds to which he was not entitled. Finally there was no proper consideration of the public interest, and there was a failure to look at the reality of the claimant's ability to be financially independent.

5. Mr Gilbert submitted that as no appeal had been made under the Immigration Rules, and as there was no need to apply an intermediate test before proceeding to an analysis of Article 8 ECHR outside of the Rules that the First-tier Tribunal had not erred in law in their approach.

6. I informed the parties that I found that the First-tier Tribunal had erred in law. I set out my reasons in full below. I also informed the parties that I would set aside the decision of the First-tier Tribunal. Both parties wanted me to retain the remaking hearing, which I agree was appropriate. Mr Melvin provided some evidence to the Tribunal and the claimant regarding the claimant's mother's entry clearance application in 2008 and the appeal relating to this heard in 2009. There was insufficient Tribunal time to re-make the decision so the hearing was adjourned.

*Conclusions – Error of Law*

7. The First-tier Tribunal clearly erred in law by failing to consider the Article 8 ECHR appeal of the claimant under the Immigration Rules in the conclusions section of the decision which starts at paragraph 21 of the decision. It is clear that the claimant's grounds of appeal make reference to paragraph 276ADE of the Immigration Rules at paragraph 2 and also to the decision being unlawful under Article 8 ECHR. The Court of Appeal have held in decisions from MF (Nigeria) v SSHD [2013] EWCA Civ 1192 onwards that in relation to a non-deportation Article 8 ECHR appeal first a Tribunal must consider whether an claimant can succeed under the Immigration Rules, and only after if there are compelling circumstances not covered by the Rules (see SS Congo & Ors v SSHD [2015] EWCA Civ 387) will an analysis outside of those Rules be needed. It may have been that the First-tier Tribunal was confused by the fact that the application in this case was made in May 2012, and thus prior to the new Article 8 ECHR Immigration Rules coming into force on 9th July 2012, however Singh v SSHD [2015] EWCA Civ 74 makes it clear that for decisions made after 6th September 2012 the new Rules are to be considered first by any Tribunal.

8. I find that this legal error is material as the decision of the First-tier Tribunal contains no analysis of whether there would be very significant obstacles to the claimant's integration in Ivory Coast, and thus whether he could succeed under paragraph 276ADE (1)(vi) of the Immigration Rules. This also affects the analysis and decision of the First-tier Tribunal outside of the Immigration Rules as the consideration of the public interest in maintaining effective immigration control in accordance with s.117B(1) of the Nationality, Immigration and Asylum Act 2002 was incomplete as this required an analysis as to whether the claimant could meet those Rules which are the basis of immigration control.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal with no findings preserved.

3. I adjourn the remaking hearing.

Directions:

1. Any further evidence to be submitted by either party should be served on the other party and filed with the Tribunal 7 days prior to the hearing date for the remaking hearing.

Signed: Fiona Lindsley Date: 19th January 2016