



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

Appeal No: AA/01335/2013
AA/01337/2013
AA/01339/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 10 September 2014**

**Notification issued:
on 16 September 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

H W SIBAKWE + 2

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K McGuire, Advocate, instructed by Drummond Miller,
Solicitors

For the Respondent: Mrs M O'Brien, Senior Presenting Officer

NOTIFICATION OF WITHDRAWAL

1. This is an appeal against a determination by First-tier Tribunal Judge Balloch dated 2 April 2013, dismissing appeals pursued under the Refugee Convention and the ECHR.
2. The background is that the First-tier Tribunal and then the Upper Tribunal initially refused permission to appeal. The appellants sought judicial review. The Lord Ordinary, Lord Glennie, reduced the UT's refusal of permission. We have not been provided with a copy of the interlocutor, and there was no written judgement. The appellant's solicitors were able at short notice to provide us with a copy note and transcript of what the Lord Ordinary said at the hearing. The decisive point appears to have

been that there was an issue which had not been recognised as raising a point of law and not of fact, namely whether the judge erred in her approach to the medical evidence and engaged in speculation. It would be for the UT to consider whether the point justified permission to appeal.

3. On 4 February 2014 UT Judge Gill granted permission to appeal. This was on the view that Judge Balloch might have erred in her consideration of the best interests of the second and third appellants, who are the minor children of the first, by failing to deal with the evidence of Dr McTaggart in a supplementary report dated 7 December 2012 that if the condition of the first appellant deteriorated there would be an extremely high risk of the appellant harming or killing her children. Permission was refused on the other grounds.
4. In response to directions, the appellants filed a skeleton argument (prepared by Mr A Caskie, Advocate) which says at the outset that although permission has been granted only on grounds 1 and 2 the appellants seek to argue the other grounds, except 4 and 18. (The numbering in the skeleton argument is taken from the petition to the Court of Session; grounds are on file from various stages of procedure, leading to some confusion in numbering and identification.)
5. At the outset we sought to define the scope of the hearing and the issues, which resulted in a useful discussion and an agreed outcome. Mr McGuire confirmed that he relied upon the skeleton argument and sought to argue all grounds. Mrs O'Brien took the initial position that we should not allow the grounds to be opened wider. However, we thought that there would be little difference between Mr Maguire addressing us, as he was entitled to do, on whether the grounds should be amended and expanded and on the substance of the further grounds.
6. We observed that the credibility issues fell into three categories: those related to events prior to departure from Malawi in 2004; those related to abuse of the first appellant in the UK; and those related to her mental health condition, and the extent to which she might have invented or exaggerated her problems. Mr Maguire said that the third category, and the impact of those problems on the three appellants if returned, was the main issue he wished to pursue (which is in substance the issue on which permission was granted.)
7. Without closing off further submissions at that stage, we indicated that we were provisionally of the view that there might be substance in the grounds going to treatment of the medical evidence, which the respondent substantially accepted but which the Judge substantially rejected. We were concerned that her reasons for doing so might have been less than adequate. (We also mention that although the judge said she gave that evidence limited weight, in our view she ought to have gone on nevertheless to analyse the consequences of return under reference to Y

[2009] EWCA Civ 362, as did the refusal letter, or to say explicitly why she thought such issues did not arise.)

8. The appellants tendered an updated report by Dr McTaggart and evidence of the birth of a third child, for consideration if error of law were to be found. Mrs O'Brien said that in light of our observations she thought the case might best be reconsidered by the respondent as to the medical evidence and the best interests of the children, including risks of self-harm and harm to the children if returned. However, if the determination were to be set aside in that respect, she would wish its findings in the first two categories mentioned above to stand.
9. Mr Maguire advised us that as to the first two categories he had nothing to add to the terms of the grounds and the skeleton argument. We indicated that we would not have sustained those grounds.
10. Mrs O'Brien **undertook** (a) that the respondent would reach a fresh decision in light of all that we have narrated above, and of the up to date circumstances (b) that if the decision was adverse to the appellants, it would not be certified so as to restrict their rights of appeal. Having considered how that agreed practical outcome could most conveniently be reached in these proceedings, Mr Maguire moved to withdraw the appeals.
11. In terms of the Tribunal Procedure (Upper Tribunal) Rules 2008, Rule 17, the appeals are recorded as having been **withdrawn** orally at the hearing, with the consent of the Upper Tribunal.



Judge of the Upper Tribunal
11 September 2014