



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/08545/2014

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 28 May 2015

Determination Promulgated  
On 9 June 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

**Bornwell Chiyoko**  
[No anonymity direction made]

Appellant

and

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: Mr B Akinbade, instructed by Moorhouse Solicitors  
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Bornwell Chiyokoko, date of birth 24.9.75, is a citizen of Zimbabwe.
2. This is his appeal against the decision of First-tier Tribunal Judge Handley promulgated 27.1.15, dismissing his appeal against the decision of the respondent, dated 30.9.14, to refuse his asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 27.11.14.

3. First-tier Tribunal Judge Denson granted permission to appeal on 24.2.15, in respect of the article 8 claim only.
4. Thus the matter came before me on 28.5.15 as an appeal in the Upper Tribunal.

### **Error of Law**

5. For the reasons set out herein, I find that there was no error of law in the making of the decision of the First-tier Tribunal such as to required the decision of Judge Handley to be set aside.
6. In granting permission to appeal, Judge Denson stated, in rather strident terms, that there was an arguable error of law in the decision of the First-tier Tribunal, stating, "The judge in his decision in dismissing the appellant's appeal under article 8 of the ECHR wholly failed to consider the appellant's claim under article 8 and the findings, reasons and decision by the judge is totally and utterly inadequate in relation to the appellant's claim and under the circumstances I find that there is most certainly an arguable error of law in relation to the judge's findings in connection with the appellant's article 8 claim and permission to appeal is therefore granted in relation to the appellant's article 8 claim only."
7. In his submissions, supported by his skeleton argument, Mr Akinbade repeatedly asserted that Judge Handley had made factual errors which were material to the article 8 assessment. However, when I asked him to specify these errors he was unable to point me to anything other than what amounted to a disagreement with the findings. For example, reliance was placed on §38 of the decision where the judge doubted the nature of the appellant's claimed relationship with a partner. The judge stated that it was clear from the evidence that the appellant meets her only occasionally and only on two occasions in 2014. Mr Akinbade submitted that this was inconsistent with §27 of the appellant's witness statement, where he alleged that he visited his girlfriend frequently and was in regular contact with her, and provided an explanation for the reduced visiting in 2014. This does not disclose an error of law. Certainly, the oral evidence of the appellant was inconsistent with his witness statement and he has given an explanation of sorts as to why he only visited her twice in 2014. However, the record of the appellant's evidence to the Tribunal is not challenged and it was open to the judge to conclude that they met only occasionally.
8. Similar considerations arise in respect of the other claimed factual errors in the decision but it is not necessary to address them individually. In essence, Mr Akinbade could not demonstrate one single factual error in the statements of the judge in the decision made, but rather pointed to other evidence, which was taken into account by the judge in reaching the findings made and conclusions drawn, but which Mr Akinbade suggested should be accepted in its entirety, to the exclusion of other evidence to the contrary. Differences in a witness statement or explanations for conduct do not render the judge's findings errors of fact. Mr Akinbade appeared to be unable to understand that such matters are not factual errors but disagreements with the findings and conclusions of the First-tier Tribunal Judge.

9. In reality, there was no partner relationship in this case. The appellant and his girlfriend are in no more than a boyfriend/girlfriend relationship. They do not live together. They may correspond frequently by telephone, but the fact remains that they barely saw each other in the whole of 2014. He had never visited her at university. The judge noted at §38 that the girlfriend did not even attend the appeal hearing to give evidence of the so-called relationship and all the judge had was an unsigned statement purported to have been drafted by her, but with no supporting evidence that it was indeed her statement. The explanation for her absence, which was entirely unsatisfactory and not credible, is that her mother was in town and she decided to spend time with her mother. As the judge stated at §41, if there is a relationship is it not a strong one, given the lack of contact between the couple and her absence from the appeal hearing. Such relationship as there may be does not amount to a family life with a partner in a relationship akin to marriage. The appellant does not meet any single aspect of the requirements of Appendix FM for leave to remain on grounds of family life. Not in any way is this girlfriend the appellant's partner. At Q181 of the interview the appellant was challenged on the fact that in the statement of additional grounds submitted by his representatives, raising article 8, they completely failed to mention the appellant's girlfriend. The only evidence he could produce at the time of a relationship with her was her contact number in his phone and some text messages about football. The judge, correctly in my view, concluded that article 8 is not engaged on these facts. At §41 the judge went on to consider that even if there is a relationship such as to engage article 8, there was nothing to suggest that she could not return to Zimbabwe with him.
10. I find no error of law in the judge's assessment of article 8 and the conclusion that article 8 was not engaged, in that there was no family life within the meaning of the protection afforded by article 8, and the decision of the Secretary of State did not occasion such grave interference with family or private life so as engage article 8. His relationship with his girlfriend might well be part of the private life developed in the UK. However, as the judge stated at §41, that private life was developed at a time when his immigration status "was of a temporary nature, uncertain and precarious. I give limited weight to that private life." Clearly the judge was alluding to section 117B of the 2002 Act, in respect of which the recent decision of AM (s117B) Malawi [2015] UKUT 0260 (IAC) held that a person's immigration status is precarious if their continued presence in the UK will be dependent upon their obtaining a further grant of leave. In fact, he had no legal basis to remain in the UK and thus little weight should be accorded to such private life as he may have developed. An application for leave to remain submitted in January 2013 was refused but he was encountered in July 2013 and found to be an overstayer. He subsequently applied for leave to remain, but this application was also rejected. He then applied for asylum on 5.2.14, which has been refused and his appeal dismissed. It is evident that the appellant is intent on remaining in the UK and the claimed relationship is such a weak claim to remain on grounds of family or private life outside the Rules that it was inevitable that it would fail.
11. In the circumstances, there is no material error of law in the decision of the First-tier Tribunal. The dismissal of the appeal under article 8 ECHR was inevitable on the

facts of this case and for which the judge has in any event provided cogent reasons, which were open on that evidence. The decision is neither irrational nor perverse. It follows that there was no basis for Judge Denson to describe the judge's treatment of article 8 as "totally and utterly inadequate."

**Conclusions:**

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**

**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 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**