



IAC-FH-CK-V1

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

Appeal Numbers: HU/20242/2016
HU/20245/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 26th July 2018
Typed, corrected, signed and sent to Promulgations
On 2nd August 2018.

Determination Promulgated
On 15th August 2018

Before

Upper Tribunal Judge Chalkley

Between

ENTRY CLEARANCE OFFICER - PRETORIA

Appellant

and

SHUPIKAI R CHIPURIRO
MARGARET CHIPURIRO
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant:

Mr Tan, Home Office Presenting Officer

For the Respondents:

Mrs Zviedzo Chipuriro, sponsor

DETERMINATION AND REASONS

ANONYMITY

In his determination, First-tier Tribunal Judge Ince made an anonymity direction pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

because his determination makes reference to the appellants' grandchildren, who are "minors and orphans". I see no need for the anonymity order to continue and I discharge the anonymity direction.

1. In this appeal, The Entry Clearance Officer, Pretoria is the appellant.
2. The first-named respondent was born on 27th July 1942, and is a citizen of Zimbabwe. The second-named respondent is the wife of the first-named respondent and she was born on 17th April 1954 and is also a Zimbabwean citizen. The respondent's daughter, Zviedzo Chipuriro, ("the Sponsor") came to the United Kingdom some sixteen years ago and has lived in the United Kingdom since. She has settled status in the United Kingdom. The respondents, not unnaturally, wished to come and see their daughter, particularly since she is about to marry. They also wanted to see her children, being the respondents' grandchildren, and to be at a housewarming party in respect of their daughter's new home in the United Kingdom.
3. The respondents made application to the Entry Clearance Officer in Pretoria for a visit visa but on 20th July 2016, the Entry Clearance Officer refused their application for leave under Appendix V of the Immigration Rules for visitors and in particular under paragraph V4.2. Since there is no appeal against the Entry Clearance Officer's decision the respondents sought to challenge the decision by way of a human rights appeal and the appeal was heard by First-tier Tribunal Judge Ince on 29th November 2017.
4. The judge heard evidence from the respondent's daughter, who explained that the reason for the respondents wanting to come to the United Kingdom was for them to be at her registry office wedding; to see where she lives because she has a new home; and to attend a planned housewarming party. Additionally, of course, they wanted to see their three grandchildren, the youngest of whom they have not seen.
5. The judge found the sponsor to be a credible witness and he then considered the respondents' application, concluding correctly that the respondents could not satisfy the requirements of the Immigration Rules, in respect of which there was no appeal. He went on to consider and purported to apply "*Razgar test*" (see paragraph 17 of *Razgar, R (on the Application of) v. Secretary of State for the Home Department* [2004] UKHL 27) [2004] UKHL 27. At paragraph 26 of his determination he concluded that family life did exist between the respondents and their daughter and/or in the alternative with their grandchildren and that its development would be enhanced by the respondents attending an important event of family life, namely the wedding of one of their daughters.
6. Having found that family life exists, he said that he could not find any matter that weighs in the balance against the respondents. On the contrary, he claimed at paragraph 27:

“... They have the right to enter the UK under Appendix V of the Immigration Rules as bona fide visitors who would return to Zimbabwe at the end of their visit. Given that and the importance of the event that they wish to attend (the sponsor having confirmed that her register

office wedding had been postponed) I consider that it would be disproportionate to refuse them entry to the UK for that purpose.”

7. Before me today Mr Tan told me he relied on the decision of the Court of Appeal in *Onuorah v Secretary of State for the Home Department* [2017] EWCA Civ 1757. He drew my attention to paragraphs 6, 7, 8 and 9 of the determination and pointed out that nowhere in this determination is it claimed or does the judge find that there are any elements of dependency between the respondents and their daughter or between her and them or between the respondents and their grandchildren or between the grandchildren and the respondents. As a result, he submitted, there was no family life and the answer to the first question posed by Lord Bingham in *Razgar* at paragraph 17 should have been, No. The appeal should have been dismissed by the judge and in the circumstances his determination contains a material error of law. I am required to set aside the judge’s decision and remake the appeal myself.
8. I explained the situation to the respondent’s daughter and explained that there is no appeal at all from the decision of an Entry Clearance Officer in a visit appeal. Before the respondents could be successful in an Article 8 claim they would have to establish that there is some form of dependency such as to engage Article 8 to establish that there is a family or private life between her and them or between them and their grandchildren. In this case, there is no dependency and there is simply no family life in existence. I appreciate that the respondents will be disappointed by this news but I very much regret that I must find that the making of the determination by First-tier Tribunal Judge Ince does contain a material error of law such that I must set his decision aside.
9. I set aside the determination of First Tier Tribunal Judge Ince and I remake the decision myself. The respondent’s appeals are dismissed. Their claims do not reveal a family life such as to engage the operation of Article 8.

Notice of Decision

The appeal is dismissed.

Richard Chalkley

Upper Tribunal Judge Chalkley

2nd August 2018

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley

2nd August 2018