



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

PA/01124/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
On 19 October 2018**

**Decision & Reasons
Promulgated
On 29 October 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

V R

Respondent

For the Appellant: Mr S Martin, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. This decision is to be read with:
 - (i) The SSHD's decision dated 27 December 2017, declining to grant leave on the basis of the appellant's further submissions.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.

- (iii) The decision of FtT Judge Kempton, promulgated on 3 April 2018, allowing the appeal.
- (iv) The SSHD's grounds of appeal to the UT, stated in the application for permission to appeal filed on 12 April 2018.
- (v) The grant of permission by FtT Judge Lambert, dated 23 April 2018.

3. Mr Govan submitted thus:

- (i) The case the appellant advanced to the FtT was in substance based not on article 8 but on a protection need, or on very significant obstacles to her return. The FtT rightly rejected both.
- (ii) Bonds between a grandparent and grandchildren may constitute family life for article 8 purposes, but do not do so in the ordinary case.
- (iii) The judge allowed the appeal based on the bonds between the appellant and her grandchildren. Such an outcome had to be based on more than the normal emotional ties.
- (iv) *Kaur* (visit appeals; article 8) [2015] UKUT 487 (IAC) at paragraphs 38 - 39 illustrated what might be needed. In that case there was found to be family life, based on a grandmother having played a central role in bringing up two grandchildren. Here, there was no equivalent finding.
- (v) The evidence from and about the grandchildren showed healthy and normal bonds, but nothing to justify the judge's conclusion.
- (vi) The judge was bound to consider part 5A of the 2002 Act, "Article 8 of the ECHR: Public Interest Considerations", but did not even mention it. In terms of section 117B, the appellant's private life in the UK was to be given little weight. Absent a finding of family life, or a basis for any such finding, there was nothing by which the judge's conclusion on proportionality could be upheld.
- (vii) The decision should be reversed.

4. Mr Martin submitted thus:

- (i) The judge might have been more explicit, but decisions were to be taken as written for the informed reader.
- (ii) The judge at paragraph 32 noted and rightly gave weight to the respondent's delay of over 4 years in dealing with the fresh claim. It was natural in the appellant's situation that over such a period not only private but family life links strengthened considerably. By the time of the FtT hearing she had been living with her family in the UK for 11 years.

- (iii) It was accepted that for an appellant who was not a member of the core family unit (of adult partners and minor children) more than the normal ties had to be shown. The judge's findings on the significance of the ties between the appellant and her grandchildren were sufficient for that purpose.
 - (iv) It was also accepted that given the terms of s.117B, the appeal could not have succeeded on grounds only of private life.
 - (v) The judge focused on the best interests of the children and on delay by the respondent but also had regard to length of residence, degree of integration, family life in broad terms, and ability to speak English. It also appeared that the appellant made no claims on public funds, and was supported by her family, who were put in a position to do so partly by her domestic assistance.
 - (vi) The outcome might be thought by some to be on the generous side, although no concession was made, but it fell within the range of law and reason, and should not be set aside only for want of form.
5. I reserved my decision.
 6. The decision of the FtT is not as explicit on the law, or in expressing its findings, as it might have been.
 7. The judge should have considered part 5A of the 2002 Act, noting that the case was bound to fail in terms of private life, and could succeed only by finding that family life for article 8 purposes was constituted between the appellant and her grandchildren. Without that, it could not be found that removal "would in the circumstances be disproportionate" (paragraph 37).
 8. The appellant has two adult children in Zimbabwe, and no grandchildren. She has two adult children in the UK and, at the time of the FtT hearing, 7 grandchildren; she now has 8. She lives with her son, his partner and 2 grandchildren in Scotland. Her son's other 3 children, from an earlier marriage, live nearby and are regularly in the household. She regularly visits and sees her daughter and her 3 grandchildren who live in England. (Her family members are all in the UK lawfully.)
 9. Under the rather vague heading of "credibility findings and reasons" the judge says at paragraph 23 that the appellant "has significant family life with her grandchildren". Mr Martin did not found on that, and it is expressed as part of summarising her case, rather than as the judge's conclusion.
 10. At paragraphs 32 - 33, the judge says that delay by the respondent of over 4 years "is a very important issue in relation to family life", and that during that period the grandchildren "have had the benefit of the society of their grandmother". At paragraph 34, she says that "there is a significant depth of feeling about the appellant as a very important person in the lives of the grandchildren ... more pronounced for the younger

children.” At paragraph 35 the judge finds “ample evidence of the significant role which the appellant has built up with her children and grandchildren in the UK ... something ... irreplaceable for the grandchildren in particular”. At paragraph 37 she says it would be upsetting for the grandchildren to suffer deprivation of “that strong and constant relationship”.

11. The thrust of the evidence was that the appellant’s overwhelming purpose in life is her family. The decision, as a whole, makes it sufficiently clear that the judge’s view was that this comprised family life not only in the informal and extended sense, but within the legal requirements of article 8. The failure to make the finding as explicit as it should have been is not an error on a point of law, such as to require the decision to be set aside.
12. The decision of the First-tier Tribunal shall stand.
13. The FtT made an anonymity direction, which is maintained herein.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

22 October 2018
Upper Tribunal Judge Macleman