



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

Appeal Number: HU/00798/2019

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Decision & Reasons  
Promulgated**

**On: 14 November 2019**

**On: 19 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MJ**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms S Jones, Senior Home Office Presenting Officer

For the Respondent: Mr S Muquit, instructed by Mondair Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing MJ's appeal against the respondent's decision to refuse his human rights claim.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and MJ as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

## **Immigration History**

3. The appellant is a citizen of Zimbabwe born on 1 February 1992. He first entered the United Kingdom on 15 May 2009 as a family visitor and was refused leave to remain as the dependent of his mother. He was subsequently granted various periods of leave to remain outside the immigration rules between 2 January 2013 and 16 March 2018, but was then refused further leave following an application made on 15 March 2018.

4. The appellant's application of 15 March 2018 was made on the basis of his family life with his children and his private life. The application was refused on 20 December 2018 on suitability and eligibility grounds. The respondent considered that the appellant was a persistent offender whose offending had caused serious harm and that, whilst the Tribunal had previously found that his offending did not outweigh his family life with his children, he had subsequently been convicted for further offences since being granted leave to remain on 16 September 2015 which meant that his application fell for refusal under S-LTR.1.5 and S-LTR.1.6 of the immigration rules. The respondent considered further that the appellant did not meet the eligibility requirements of the immigration rules as a parent because he did not have sole responsibility for his children, who resided with their mothers, and had not provided evidence of direct access to his children. He could not, therefore, meet the requirements of Appendix FM. The respondent considered that there were no very significant obstacles to integration in Zimbabwe for the purposes of paragraph 276ADE(1) and no compelling or exceptional circumstances outside the immigration rules. The respondent took account of the appellant's injuries and mental health issues following a serious accident in November 2017 in which he lost part of his leg. The respondent also considered that the appellant was the father of two British children who resided in the UK, but noted the lack of documentary evidence to show that he played an active role in their lives and their upbringing. The respondent considered that the decision did not breach the appellant's Article 3 or 8 human rights.

5. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 5 June 2019 by Judge Young-Harry. The judge noted that the appellant did not dispute the number of convictions over a number of years and found that the appellant failed to meet the suitability requirements in Appendix FM. The judge also noted that the appellant did not dispute that he had failed to show that he had sole responsibility for his children, that his children resided with him or that he had a contact order in place and accordingly found that the appellant failed to meet the eligibility requirements in Appendix FM. The judge considered that the appellant had failed to show that there were very significant obstacles to his integration in Zimbabwe and that he was not able to meet the requirements of the immigration rules. However the judge found that the appellant's criminality did not outweigh the

weight attached to his family life with his daughter M, as it would not be reasonable to expect M to leave the UK as per section 117B(6) of the Nationality, Immigration and Asylum Act 2002. The judge accepted that the appellant had resumed contact with M a few months previously and had weekend visits with her and accepted that he had a genuine and subsisting parental relationship with her, although he had no contact with his other daughter. The judge concluded that the respondent's decision disproportionately interfered with the appellant's Article 8 rights on that basis and she accordingly allowed the appeal.

6. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge had failed to give clear reasons why the appellant's relationship with one of his daughters outweighed the public interest, given the inconsistent evidence of the claimed contact between them. The grounds asserted that the judge had erred by failing to give preference to a social worker's report which confirmed that the appellant had not seen his daughter for over a year and accepting instead the evidence of the appellant's sister about contact commencing in April 2019.

7. Permission to appeal was granted in the First-tier Tribunal on 3 October 2019. The matter then came before me for a hearing.

8. At the hearing, and following my enquiry, Mr Muquit confirmed that there had not been a social worker's report as such before the First-tier Tribunal, but what the judge was referring to at [21] was a document at page 112 to 118 of the appellant's appeal bundle which was a Child and Family Progress Plan. That document, which must have been prepared before May 2019, given the dates provided for further reviews, referred to contact between the appellant and M. The judge had photographs of the appellant together with M and provided reasons for concluding that there was contact between the appellant and his daughter and that there was a genuine and subsisting parental relationship.

9. Ms Jones acknowledged that the respondent's grounds relying on the social worker's report therefore fell away and had nothing to add.

## **Discussion**

10. In light of Ms Jones' position, and given the evidence of contact between the appellant and his daughter which was before the Tribunal, the judge was fully and properly entitled to conclude that there was a genuine and subsisting parental relationship between father and daughter. There is no merit in the respondent's grounds challenging the judge's findings and conclusions in that regard. Likewise the respondent's further challenge in the grounds at [7] has no merit and Ms Jones quite properly did not pursue it. There was no requirement for the judge to balance the appellant's family life with his daughter against his criminality and the public interest. Having found that the appellant had a genuine and subsisting relationship with a qualifying child and that it was unreasonable for that child to leave the UK, section 117B(6) of the 2002 Act removed any public interest capable of justifying interference with

the appellant's Article 8 rights. Accordingly the judge's decision to allow the appellant's appeal on Article 8 grounds was fully and properly open to her on the evidence before her.

11. Accordingly, I do not consider there to be any material error of law in the judge's decision and the Secretary of State's appeal is dismissed.

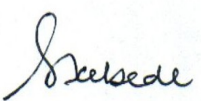
## **DECISION**

12. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. The decision of the First-tier Tribunal to allow the appellant's appeal therefore stands.

### **Anonymity Direction**

The appellant has requested an anonymity direction given that his case involves a child. The following direction is made, in the circumstances.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed:   
Upper Tribunal Judge Kebede  
2019

Dated: 14 November