



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

Appeal Number: HU/08431/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 1st May 2019**

**Decision & Reasons Promulgated
On 10th May 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

CHUSA [S]

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Ms S Salfolani, Oaks solicitors

DETERMINATION AND REASONS

1. Mr [S]'s appeal against the refusal of his human rights claim was allowed by First-tier Tribunal Judge Beach for reasons set out in her decision promulgated on 29th January 2019. She found that the appellant, who had been sentenced to 21 months' imprisonment for conspiracy to commit theft, had:
 - (a) Lived lawfully in the UK for most of his life;
 - (b) That he is socially and culturally integrated into the UK; and

- (c) That he would face very significant obstacles in reintegrating into Zambia.
2. She did not accept that it would be unduly harsh for him to be separated from his partner and child and nor would it be unduly harsh for the partner and child to leave the UK to be with him in Zambia.
 3. The SSHD sought and was granted permission to appeal on the grounds that the First-tier Tribunal Judge's assessment of whether there were "very significant obstacles" was legally flawed. In his Rule 24 response, Mr [S] defended the decision of the First-tier Tribunal judge but, if an error of law were found such that the decision as set aside to be remade, sought to appeal the decision by the First-tier Tribunal Judge that the separation of Mr [S] and his partner and child was not unduly harsh.
 4. In reaching her decision the First-tier Tribunal judge took into account the following factors:
 - Mr [S] is a Zambian citizen, born February 1976. He first entered the UK aged 5, left aged 8, returned in 1988, 1990, 1991 and remained in the UK thereafter. He was granted indefinite leave to remain in February 1995, just before his 20th birthday.
 - There was some indication (although not specified) that he had used a false ILR document in 2008 but it was not disputed that he had been granted ILR when he was; this was not relied upon by the SSHD.
 - He has Zambian heritage;
 - He speaks English;
 - He has been educated and in employment in the UK;
 - He is financially independent;
 - Since his last arrival in the UK in 1991, aged 15, he has not returned to Zambia;
 - He was at the date of hearing 42 years old; 41 on the date of the offence;
 - His father is dead; although he has siblings and a mother, he has had no contact with them for 20 years;
 - His mother and a sister live in Zambia, but he only heard his sister had married through a friend who had seen this on social media;
 - He has no real connection with Zambia;
 - His emotional connection with Zambia is negative following the breakdown of the family unit and unhappy childhood;
 - He has no knowledge of Zambian Society;
 - He has never lived in Zambia as an adult;
 - He has no friends in Zambia;
 - He has no cultural connection with Zambia (his partner is not of Zambian heritage and so could not assist);
 - He has no health issues;
 - There is no financial assistance available to him from his partner;

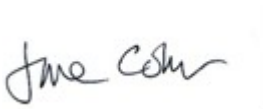
- He has no support structure in Zambia which could assist; he would be returning there with no accommodation, no employment and at very real risk of being destitute.
5. The SSHD in his grounds seeking permission states that his partner may be able to send some sums of money for assistance – that is not the finding made by the First-tier Tribunal Judge on the basis of the evidence before her. her finding was a finding that was open to her on the evidence and is neither irrational, inadequately reasoned or perverse. The SSHD did not submit the First-tier Tribunal findings fell into any such category.
 6. The SSHD in the grounds and in submissions referred to the very high threshold required to meet the test of “very significant obstacles” and sets out the case law relied upon that establishes that test. There is no dispute but that the test is a high one. The First-tier Tribunal judge identifies the test (albeit not relying on the same caselaw) and directs her assessment to the evidence as a whole. In submissions Mr Walker accepted that the challenge was in essence a “reasons challenge”.
 7. The First-tier Tribunal judge set out the evidence before her and made findings that were plainly open to her on that evidence. Whilst some judges may have found against the appellant, the evidence was such that the decision reached was within the reasonable decision-making parameters open to the judge. She directed herself appropriately.
 8. There is no error of law by the First-tier Tribunal judge such that the decision is set aside to be remade.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal stands.

Date 8th May 2019



Upper Tribunal Judge Coker