



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/09329/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 5 June 2014

Determination Promulgated
On 15 July 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

FARAI GIJIMA HOVE

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: Miss S Khan instructed by Ison Harrison, Solicitors
For the Respondent: Miss Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Farai Gijima Hove, was born on 30 October 1996 and is a male citizen of Zimbabwe. The appellant appealed against the decision of the Entry Clearance Officer, Pretoria, dated 26 March 2013 to refuse him entry clearance to the United Kingdom as the child of a relative (his father, Christopher Hove - hereafter referred

to as the sponsor) present and settled in the United Kingdom. The First-tier Tribunal (Judge Crawford) in a determination promulgated on 18 December 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant was required to satisfy the requirements of paragraph 297 of HC 395 (as amended). Judge Crawford found [17] that the United Kingdom sponsor had not had sole responsibility for the appellant. As a consequence, the appellant could only succeed by satisfying the requirement of paragraph 297(i)(f). The judge's finding as regards sole responsibility has not been challenged by the appellant.
3. The appellant's mother, with whom he lives, has been suffering from cancer. The judge noted that the appellant's mother has chronic pain and that it was contended that the appellant "does not live the life of a normal teenage son" on account of the difficulties of living with his mother [7]. The judge heard the oral evidence of the United Kingdom sponsor and records in detail the submissions made by both representatives. He indicated that he had "considered all the material supplied to me in the case file" and provides particulars of those materials at [4].
4. The appellant now asserts that the judge at [18] singled out the positive aspects of the appellant's life in Zimbabwe but ignored the difficulties he faces there living with his mother. I note, however, that the judge recorded that "the sponsor maintains that the life that the appellant is living is not suitable for a teenage boy because he has heavy responsibility for his mother's care and she is 'terminally ill'". The judge found that

the medical evidence that has been produced does not show that [the mother] is terminally ill. I accept that she has chronic illness and a colostomy. I accept the evidence of Dr Mthombeni that she needs care and the support of relatives.

The judge went on to reiterate in the same paragraph he did not accept "on the evidence before me" that the appellant's mother was dying from cancer.

5. The judge noted that the United Kingdom sponsor works and sends funds to Zimbabwe for the support of the appellant's mother and the appellant.
6. In her renewed grounds to the Upper Tribunal, Miss Khan, for the appellant, refers to a letter in the appellant's bundle of documents written by the appellant himself detailing his life in Zimbabwe with his mother. At [9], the grounds refer to the "vivid picture the appellant painted of his life with mother" which, it is asserted, the judge failed to take into account. The appellant is of an age when his views should be considered by the Tribunal. The grounds assert that "this evidence clearly points towards unmet emotional needs of the appellant that his father is meeting." (The appellant, in his letter states that, "[my father] is always there for me it's as though he is right here to help me emotionally"). The appellant asserts that although he refers to it in the determination the judge failed to have proper regard for the Tribunal's decision in *Mundebe* (Section 55 and paragraph 297(i)(f) [2013] UKUT 88 (IAC). The headnote of *Mundebe* provides:

- (i) *The exercise of the duty by the Entry Clearance Officer to assess an application under the Immigration Rules as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's welfare and best interests require.*
- ii) *Where an immigration decision engages Article 8 rights, due regard must be had to the UN Convention on the Rights of the Child. An entry clearance decision for the admission of a child under 18 is "an action concerning children...undertaken by...administrative authorities" and so by Article 3 "the best interests of the child shall be a primary consideration".*
- iii) *Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State's IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55.*
- iv) *Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come in to play where there are other aspects of a child's life that are serious and compelling for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the light of his or her age, social backgrounds and developmental history and will involve inquiry as to whether:-*
 - a there is evidence of neglect or abuse;*
 - b. there are unmet needs that should be catered for;*
 - c. there are stable arrangements for the child's physical care;*

The assessment involves consideration as to whether the combination of circumstances are sufficiently serious and compelling to require admission.
- v) *As a starting point the best interests of a child are usually best served by being with both or at least one of their parents. Continuity of residence is another factor; change in the place of residence where a child has grown up for a number of years when socially aware is important: see also SG (child of a polygamous marriage) Nepal [2012] UKUT 265 (IAC) [2012] Imm AR 939.*

7. I find that the judge did not err in law as asserted in the grounds or at all. As regards the application of *Mundeba*, I find that the judge has made it clear in his determination that he has considered this case; he has not simply referred to it without applying its principle. I say that because at [20], the judge wrote this,

I have considered the appellant's family situation and his welfare, including his emotional needs. He has been brought up by his mother. There is no evidence that he has ever been neglected or abused. There are no unmet needs that should be catered for. There are stable arrangements for his care. He lives in comfortable circumstances. I do not accept there are serious or compelling family or other considerations which make the appellant's exclusion from the UK undesirable.

8. The language used in that paragraph (for example "no unmet needs that should be catered for...") is taken directly from *Mundeba* and indicates to me that the judge has

sought to apply the principles of law contained in that decision to the present appellant's circumstances. The judge did not refer in terms to the "circumstances of the child in the light of his or her age, social background and developmental history" but he was well aware that the appellant is a teenager on the verge of adulthood and that his development does not appear to have been hindered by living with his mother, notwithstanding her medical difficulties. The judge directly addressed the "arrangements for the child's physical care" and clearly found that these were not lacking. The appellant's own evidence in his letter indicated that his emotional needs were being catered for by his father (see above) albeit that he is physically separated from him. The question of neglect and abuse was also directly addressed by the judge. In making his assessment as to whether "the combination of circumstances are sufficiently serious and compelling to require admission" I find that the judge has had regard to all the relevant evidence. This is not a case where the judge has reeled off a list of cases only to ignore the legal principles which they contain. On the contrary, I find that the judge has carefully applied the relevant law to the case before him. Accordingly, I find that the appellant has failed to establish that the judge has erred in law.

DECISION

9. This appeal is dismissed.

Signed

Date 30 June 2014

Upper Tribunal Judge Clive Lane