



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

Appeal Number: OA/17402/2012

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 19<sup>th</sup> June 2014**

**Determination  
Promulgated**

**On 9<sup>th</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**ENTRY CLEARANCE OFFICER - PRETORIA**

Appellant

**and**

**BERNARD KUDZAI CHIDZIVA  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer  
For the Respondent: Miss A Faryl, Counsel instructed by Broudie Jackson Canter Solicitors

**DETERMINATION AND REASONS**

1. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal. I will refer to him as the Claimant.

2. The Claimant appealed to the First-tier Tribunal against the Respondent's decision dated 25<sup>th</sup> May 2012 to refuse him entry clearance to the United Kingdom as the child of a refugee. The application was refused with reference to paragraph 352D(iv) of the Immigration Rules, the Entry Clearance Officer (ECO) not accepting that the claimant was part of the Sponsor's family unit at the time that the Sponsor left Zimbabwe to seek asylum.
3. The appeal was heard by Judge of the First-tier Tribunal M Davies on 13<sup>th</sup> November 2013 and allowed on the basis that the judge was satisfied that the Claimant and Sponsor were living in a family unit until the Sponsor departed from Zimbabwe in 2002.
4. The ECO applied for permission to appeal contending that the FTT had given inadequate reasons for allowing the appeal.
5. Permission to appeal was granted, and the Tribunal issued directions that there should be a hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.
6. At the hearing before me, Mr McVeety conceded that the determination of the FTT did not disclose a material error of law. There was therefore no need to hear from Miss Faryl.
7. In my view the concession by Mr McVeety was rightly made. The Sponsor, the Appellant's mother had given evidence before the FTT and confirmed in that evidence that the Claimant had been a member of her family unit before she left Zimbabwe to claim asylum. That evidence had not been challenged by the Presenting Officer before the FTT.
8. The FTT therefore had unchallenged evidence, that the Claimant and Sponsor had been in the same family unit before the Sponsor left Zimbabwe, and the FTT was entitled to find that the Sponsor had given credible evidence. Therefore the issue raised by the ECO had been satisfactorily addressed, and the burden of proof had been discharged by the Claimant, and the appeal was allowed.
9. The grounds do not disclose a material error of law, and the FTT gave adequate reasons for accepting unchallenged evidence.

## **Decision**

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 appeal of the ECO is dismissed, and the decision of the FTT allowing the Claimant's appeal stands.

**Anonymity**

No order for anonymity was made by the First-tier Tribunal. The Claimant is now an adult. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 30<sup>th</sup> June 2014

Deputy Upper Tribunal Judge M A Hall

**Fee Award**

No fee award was made by the First-tier Tribunal and that decision stands.

Signed

Date 30<sup>th</sup> June 2014

Deputy Upper Tribunal Judge M A Hall