



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

Appeal Number: AA/04712/2015

THE IMMIGRATION ACTS

Heard at Field House

On 10 December 2015

**Decision & Reasons
Promulgated**

On 12 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**JOYCE MANYANDURE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Sreeraman, Home Office Presenting Officer

For the Respondent: Mr. P. Tapfumaneyi, PT Law & Associates

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Ferguson who allowed Ms Manyandure's appeal against the decision of the Secretary of State to refuse asylum. The appeal was allowed under Article 8 ECHR.
2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to Miss Manyandure as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. At the hearing I heard submissions from both representatives. I reserved my decision which I set out below with my reasons.

Submissions

4. Ms Sreeraman submitted that the assessment of proportionality under a freestanding Article 8 assessment was erroneous. Undue weight had been given to irrelevant and immaterial factors. She referred to paragraph [25] where the judge states that little weight should be given to the Appellant's private life, and points to negative factors in the Appellant's case. However in paragraphs [28] and [29] the judge sets out two factors which shift the balance.
5. In relation to historical deprivation of entitlement to citizenship, it was submitted that the judge was fully aware that the Appellant's husband had died in 1996, fifteen years prior to this application, and she had never taken the opportunity to claim citizenship. There was no evidence before the judge that she would have been entitled to apply for entry clearance as the widow of a British national.
6. In relation to family life, the judge had failed to provide adequate reasons why the ties between the Appellant and her children exhibited anything more than the normal emotional ties to be found between adult relatives. I was referred to paragraph [13] of the decision where the judge found that the Appellant had adult children in both countries and grandchildren in both countries. In conclusion she submitted that undue weight had been given to immaterial factors and the balance weighed in favour of her removal. The errors of law were material.
7. In response Mr. Tapfumaneyi referred to the case of Dube (ss.117A-117D) [2015] UKUT 90. He submitted that there was no a la carte menu, and the factors set out in section 117 were not exhaustive. The judge was entitled to consider factors which were relevant to the Appellant's case including her previous marriage to a British citizen. Her children had made applications to come to the United Kingdom and they had all qualified. Regarding the finding of family life between the Appellant and her children, he submitted that the judge was aware of it and had made mention of it. I was referred to paragraphs [14] and [15] of the decision where the judge refers to SS (Congo) [2015] EWCA Civ 387. The children had come to the United Kingdom lawfully and they had also suffered harassment.
8. He submitted that the evidence of the Appellant and her children had been accepted. She was living with her children. Paragraphs [20] and [30] contained the findings. At paragraph [28] the judge established that she had family life as she lived with her children who were entitled to remain.
9. In relation to the finding of future harassment, I was referred to paragraphs [20] onwards, in particular paragraphs [25] and [28]. At paragraph [18] of the reasons for refusal letter the Respondent had accepted that the Appellant had been targeted and it was submitted that there was no basis to infer that such targeting would not continue, even if the judge had not specifically stated it. The circumstances which led the

Respondent to accept that she had been harassed continued as she was still the widow of a white British man.

10. In response Ms Sreeraman submitted that, even if it was accepted that there was a finding of family life, the decision was materially flawed as the judge had failed to engage with any evidence which showed anything other than normal emotional ties between the Appellant and her adult children, which ties she had maintained previously from Zimbabwe. I was referred to the case of Kugathas [2003] EWCA Civ 31. There was no question of her being deprived of the way in which she had maintained contact with her children by returning her to Zimbabwe.

Error of law decision

11. The judge's findings in relation to Article 8 are set out from paragraph [23] onwards. The judge refers to family life in paragraph [23] in the context of stating that the Appellant does not meet the requirements of Appendix FM. Paragraph [25] states:

"Little weight should be given to her private life in the United Kingdom because it was established entirely at a time when it was precarious, and for most of the time when it was unlawful."

The judge then goes on to consider in paragraphs [26] to [30] the proportionality assessment.

12. Paragraph [28] states:

"There is a significant breach of family life in the fact that her adult children are entitled to settle in the United Kingdom because of their father but she is denied the ability to reside here with them as his widow."

However there has been no finding prior to this that the Appellant has a family life in the United Kingdom sufficient to engage the operation of Article 8, which finding must be made prior to consideration of whether there is interference in this family life, and if so, whether it is proportionate. There is no analysis of the relationship between the Appellant and her adult children to lead to a finding that the ties between them go above and beyond the normal emotional ties to be found between parents and adult children. The judge finds that there is a breach of family life without giving reasons for why he found that Article 8 was engaged. Mr. Tapfumaneyi pointed to paragraph [28] for the finding that the Appellant had established family life, but this only contains a finding that she lives with her adult children. Mr. Tapfumaneyi accepted at the hearing that the fact that she lived with her children did not equate to a finding of family life for the purposes of Article 8. I find that the decision does not contain a finding that the Appellant has a family life with her children.

13. It was also submitted that the evidence of the grandchildren in the United Kingdom pointed to the fact that she had a family life with them. However, although the judge had considered the evidence from the

Appellant and her family, the decision contains no finding that the Appellant has a relationship with the grandchildren sufficient to amount to a family life for the purposes of Article 8, as a result of consideration of this evidence.

14. I find that there has been a failure to make a finding as to family life, and a failure to consider the nature of the relationship between the Appellant and her adult children.
15. Despite having made no finding of family life, the judge proceeds to a proportionality assessment, and finds that there has been a breach of family life. In doing so, the judge gives weight to the fact that the Appellant is the widow of a British national. However, there was no evidence before the judge that the Appellant had tried to apply for entry to the United Kingdom on the basis of her husband's nationality. In paragraph [20] the judge finds that her husband died in 1996, but she made no application to come to the United Kingdom until she came as a visitor to see her children. There was no evidence before the judge that she ever chose to apply for entry clearance to the United Kingdom on the basis of her marriage to a British citizen. The judge considers this in paragraph [28] and finds that the Appellant "would have been eligible to apply to enter" but also states that this would be "subject to meeting the details of the requirements of the immigration rules". There was no evidence before him that she would have met these details. At the end of paragraph [28] it states that the Appellant has been "denied the ability to reside here" with her children as her husband's widow, but there is no evidence that she had ever tried to apply to come to live here.
16. I have found that the judge did not make a reasoned finding that there was family life between the Appellant and her children. I find that even so, he proceeded to a proportionality assessment. I find that in carrying this out, undue weight was given to the fact that the Appellant may have been able to apply to come to the United Kingdom in the past. I find that these errors are material.
17. In relation to the finding of future harassment, the reasons for refusal letter accepts that the Appellant has suffered harassment in the past based on the Country of Origin Information Report. Given this, and given that the Appellant's status as the widow of a British citizen has not changed, I find that it was open to the judge to come to this finding [30].

Notice of Decision

20. The decision involved the making of a material error of law. I set aside the findings and decision in relation to Article 8. The appeal is remitted to the First-tier Tribunal to be remade on Article 8.
21. No anonymity direction is made.

Signed

Date

8 January 2016

Deputy Upper Tribunal Judge Chamberlain