



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/19288/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at City Centre Tower,
Birmingham
On 2nd November 2017**

**Decision & Reasons
Promulgated
On 24th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**RUDO MAKURUMIDZA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Mutebuka of Mutebuka & Co Immigration Lawyers
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Zimbabwe born on 19th June 1992. The Appellant first arrived in the UK on 14th April 2012 when she was given leave to enter as a visitor until 13th September 2012. After two unsuccessful applications for leave to remain, on 21st June 2016 the Appellant applied again as the spouse of Michael Sutton, a British citizen, whom the Appellant had married on 25th June 2016. That application was refused on 22nd July 2016 for the reasons given in the Respondent's Decision of that date. The Appellant appealed, and her appeal was heard

by Judge of the First-tier Tribunal J Pacey (the Judge) sitting at Birmingham on 2nd August 2017. She decided to allow the appeal on human rights grounds for the reasons given in her Decision dated 6th August 2017. The Respondent sought leave to appeal that decision, and on 4th September 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge allowed the appeal because she found the Respondent's decision to be disproportionate. The Judge was satisfied that the Appellant and her husband were married and had a genuine and subsisting relationship, and that it would not be proportionate to expect the Appellant's husband to settle with her in Zimbabwe. The Appellant had a child L born on 3rd December 2016 of whom the Appellant's husband was not the father. The Judge was satisfied that it would be in the best interests of L to remain living with the Appellant and the child's stepfather in the UK.
4. At the hearing before me, Mrs Aboni argued that the Judge had erred in law in coming to this conclusion. The evidence of the Appellant and her three witnesses was contested at the hearing and cross-examination had produced a number of discrepancies. These had not been dealt with by the Judge when making a favourable credibility assessment. Further, the Judge had failed to attach sufficient weight to the public interest and had given scant consideration to the provisions of Section 117B Nationality, Immigration and Asylum Act 2002. Finally, the Judge had not identified any insurmountable obstacles to the Appellant and her husband settling in Zimbabwe particularly as the evidence was that the Appellant's husband had previously lived in Zimbabwe for a period of sixteen years.
5. In response, Mr Mutebuka referred to the Rule 24 response and submitted there were no such errors of law. The grounds relied upon by the Respondent amounted to no more than a disagreement with the decision of the Judge. The Judge made findings open to her on the evidence before her, and it was a matter for the Judge to assess the weight to be attached to any particular piece of evidence. Cohabitation by the Appellant and her husband was clearly established, and any discrepancies in the evidence were not material. The Judge dealt with the issues of the weight to be attached to the public interest and whether there were any insurmountable obstacles to the Appellant and her husband settling in Zimbabwe at paragraphs 22 to 25 inclusive of the Decision.
6. I find an error of law in the decision of the Judge which I therefore set aside. I do not think that the Judge erred in law in her credibility finding. As she said at paragraph 14 of the Decision, she carefully considered all the evidence before her and the oral submissions. No doubt these would have included references to any discrepancies revealed by cross-examination. The Judge satisfactorily explained her credibility finding at

paragraphs 23 and 24 of the Decision. The Judge had the benefit of hearing oral evidence from the Appellant's husband and it was open to the Judge to find him a sincere and credible witness. I also find no error of law in the Judge's consideration of whether the Appellant and her husband could settle in Zimbabwe. The Judge found this to be not a reasonable prospect and explained sufficiently why at paragraph 25 of the Decision. However, I do find an error of law in the Judge's assessment of proportionality. She failed to demonstrate that she had carried out the balancing exercise necessary for any such assessment, and in particular she made no reference to the weight to be attached to the public interest. There was no reference to the factors set out at Section 117B of the 2002 Act, the only reference to that provision being at paragraph 29 of the Decision where the Judge decided that L was not a qualifying child. For this reason I find a material error of law in the decision of the Judge which I set aside.

7. I did not proceed to remake the decision in the appeal. The appeal will be remitted to the First-tier Tribunal for that purpose. This is in accordance with paragraph 7.2(b) of the Practice Statements as further fact-finding of a substantial nature is required with regard to the human rights of the Appellant and her family.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be remade in the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Dated 23rd November 2017

Deputy Upper Tribunal Judge Renton