



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/23753/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at City Centre Tower
Birmingham
On 8th May 2017**

**Decision & Reasons
Promulgated
On 20th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**MILDRED MAKORE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khurram of Khurram & Co Solicitors
For the Respondent: Mrs Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Zimbabwe born on 9th June 1958. She first arrived in the United Kingdom on 24th July 2002 when she was granted leave to enter as a visitor for a period of six months. Thereafter the Appellant overstayed and on 2nd April 2015 she applied for leave to remain as a partner. In the meantime the Appellant had married J K, also a citizen of Zimbabwe who had been granted indefinite leave to remain in the UK as a refugee because he had worked as a teacher in Zimbabwe. The

Appellant's application was refused on 12th June 2015 for the reasons given in a Reasons for Refusal letter of that date. The Appellant appealed, and her appeal was heard by First-tier Tribunal Judge Parkes (the Judge) sitting at Birmingham on 6th July 2016. He dismissed the appeal for the reasons given in his Decision dated 16th August 2016. The Appellant sought leave to appeal that decision, and on 12th January 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 dismissed the appeal under the provisions of paragraph 276ADE of HC 369. That decision is not in issue in this appeal. The Judge also dismissed the appeal under the provisions of Appendix FM of HC 369, and in particular found that the requirements of paragraph EX.1. were not satisfied because although the Appellant had a genuine and subsisting relationship with a partner with refugee leave, there were no insurmountable obstacles to their family life continuing outside the UK as defined in paragraph EX.2.
4. At the hearing, Mr Khurram first applied for leave to introduce new evidence relating to the Appellant's deteriorating health. I refused that application as the new evidence was not relevant to the issue of a possible error of law in the decision of the Judge. As this aspect of the appeal hearing is not relevant to the eventual outcome of the appeal, I will not give my reasons further.
5. Mr Khurram then argued that the Judge had erred in law in coming to his conclusion. He referred to the Grounds of Application and submitted that there were insurmountable obstacles to the Appellant and her husband continuing their family life in Zimbabwe as the Appellant's husband was at risk there as a former head teacher of a secondary school and a member of the MDC. The Appellant and her husband had no right to live elsewhere. The Appellant's husband was still at risk in Zimbabwe according to the current Country Guidance given in **CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC)**.
6. In response, Mrs Aboni argued that there was no such error of law in the decision of the Judge. She referred to her Rule 24 response and said that the Judge had considered the situation of the Appellant's husband in Zimbabwe when he had referred to the Determination of First-tier Tribunal Judge Lowe at paragraph 10 of the Decision. First-tier Tribunal Judge Lowe had decided in January 2004 that the Appellant's husband was not at risk on return.
7. I do find an error of law in the decision of the Judge which I therefore set aside. When considering whether there were insurmountable obstacles to the Appellant and her husband continuing their family life in Zimbabwe for the purposes of paragraph EX.1., the Judge did take account of the circumstances of the Appellant's husband and the possible risk to him of

return to Zimbabwe at paragraphs 9 to 11 inclusive of the Decision. However, he dealt with that aspect of the matter by relying on the findings made in a Determination decided in January 2004. He failed to consider the risk to the Appellant's husband at the date of the hearing before the Judge in July 2016. It was not in dispute that the Appellant's husband had been a head teacher and an MDC member in Zimbabwe, and the Judge failed to consider the risk on return according to current Country Guidance. This amounts to an error of law.

8. I did not proceed to remake the decision in the appeal. This was because there were new circumstances relating to the health of the Appellant which required further evidence. Those circumstances would be relevant to the issue of insurmountable obstacles and a consideration of the Appellant's Article 8 ECHR rights outside of the Immigration Rules if applicable.

Notice of 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 in accordance with the provisions of paragraph 7.2(b) of the Practice Statements.

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

Date 19th June 2017

Deputy Upper Tribunal Judge Renton