



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

Appeal Numbers: HU/01352/2017
HU/01360/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd November 2018**

**Decision & Reasons Promulgated
On 28th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[N J M]

[N N M]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellants

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellants: Mr G Dolan (Counsel)

For the Respondent: Mr S Whitwell (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Courtney, promulgated on 4th January 2018, following a hearing at Hatton Cross on 11th December 2017. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are two sibling sisters. They were born on 4th February 2008 and 7th May 2010 respectively. Both are citizens of Zimbabwe. Both applied as dependants of their paternal aunt, a Miss [NM], their Sponsor, a British citizen, in the United Kingdom. Their applications were refused on 21st December 2016.

The Appellants' Claim

3. The essence of the Appellants' claim is that the Appellants initially lived with their maternal grandmother, [DC], for approximately four months, before moving to live with their aunt, [LC], but she is no longer able to look after these two girls under 10 years of age, because she is a single mother, has her own child, and has employment concerns of her own. This is not to mention the fact that she had never agreed to look after these two children on a long-term basis in perpetuity. The basis of the claim is that there are serious and compelling circumstances that made their exclusion undesirable from the UK pursuant to paragraph 297(i)(a) to (e).

The Judge's Findings

4. The judge, in looking at paragraph 297(i)(f), which deals specifically with "serious and compelling family or other considerations which make exclusion of the children undesirable, had regard to the well-known decision in **Mundeba (Section 55 at paragraph 297(i)(f)) [2013] UKUT 00088**, and concluded that,

"There must be an enquiry into whether there is evidence of neglect or abuse and whether there are unmet needs that should be catered for. The assessment involves consideration as to whether the combination of circumstances are sufficiently serious and compelling to require admission to the UK" (see paragraph 18).

5. The judge went on to observe that the analysis is one of degree in kind and it "sets a high threshold that excludes cases where, without more, it is simply the wish of the parties to be together however natural their ambition may be" (paragraph 18). The judge had regard to an independent social worker's report, who had made home visits to Harare on 16th January 2017 and 20th March 2017, and she had seen the Sponsor present there on her visit to the Appellants, and had concluded that there was no doubt that "there is great affection and love between them" (paragraph 19). The judge took account of the claim that [LC] was unwilling and unable to take care of the girls "on a long-term basis", but went on to say that, "However, there is no letter from her stating that she no longer wishes to care for the girls" (paragraph 23). The judge also concluded that, although the Appellant is intending to look for jobs in Namibia and South Africa, the fact was that, "At present [LC]'s plans for employment abroad are at a very early stage, and may never come to fruition. No reason has been advanced as to why she could not take the

girls with her if she relocated” (paragraph 27). Finally, the judge went on to say that, “There has been no suggestion that the Appellants’ current accommodation is in any way substandard. They have been looked after by their maternal aunt who is meeting their basic needs ...” (paragraph 29). Accordingly, there was no evidence of serious and compelling family or other considerations that made exclusion of the children undesirable (paragraph 30).

6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the independent social worker’s report, had set out detailed evidence of enquiries made by the social worker, and insufficient analysis of the factors set up had been taken into account by the judge, especially given the obligation under Section 55 of the BCIA 2009, before the judge came to the conclusion to dismiss the appeals. Moreover, [LC]’s own view was that the arrangements to look after children were of “a temporary nature” and she could not carry on doing so on a long-term basis. The judge did not make a finding on whether or not she accepts the evidence of the social worker regarding Miss [LC]’s disallowing of any responsibility to take care of her nieces in the long term. Importantly, the judge also stated that the judge failed to make a finding as to “whether there is stability in the Appellants’ care and the impact that Miss [LC]’s departure from Zimbabwe will have” (Ground 4).
8. On 2nd October 2018 permission to appeal was granted on the basis that the judge has attached arguably insufficient weight to the evidence relating to “stability of care” and the availability of emotional support”.

Submissions

9. At the hearing before me on 22nd November 2018, Mr Dolan, made clear and well measured submissions before me, and stated that, not only was it the case that the judge had failed to attach proper weight to an independent social worker’s report as an expert in this case, but that the judge had failed to heed the strictures in **Mundeba** comprehensively. What **Mundeba** had done was to identify three particular areas of concern which an enquiry should focus on before it could be concluded that there was, or there was not, serious and compelling circumstances making exclusion desirable, and these were “evidence of neglect or abuse, unmet needs, and stability. The judge had only focused (at paragraph 18) on the evidence of neglect or abuse and the unmet needs of the Appellants. There was no mention at all in any of the determination that there had been consideration of the “stability of arrangements” for the Appellants’ care particularly, given the avowed statement of [LC] that she could not look after the children on a long-term basis forever.

10. For his part, Mr Whitwell submitted that the judge did take proper account of the social worker's report (which appears at pages 1 to 20 of the bundle) and she focused upon paragraph 11 in particular, which is set out in terms in the determination itself (at paragraph 23) where it is even recognised that she claimed that "she never signed up to be a full-time carer for these children", particularly as she was now "enquiring for opportunities for employment in neighbouring countries like Namibia and South Africa" (paragraph 23). The judge not only sets this out verbatim, but gives a proper consideration (at paragraph 27) where the judge observes that, "At present [LC]'s plans for employment abroad are at a very early stage, and may never come to fruition". This finding was particularly important, given that the sponsoring aunt's own evidence in the UK before the judge was that [LC] did have a partner who stayed with her, and if this was so, then any plans of moving to Namibia or South Africa, would have to involve a consideration by [LC] of the moves impact upon her partner. Finally, although "stability" was not expressly mentioned, it was clear that overall it was taken into account in that the judge makes it clear (at paragraph 29) that "there has been no suggestion that the Appellants' current accommodation is in any way substandard" and that there was no question of any unmet need.
11. In reply Mr Dolan submitted that the fact remained that the judge had not considered "stability" as a specific criterion in his own light, which had been expressly set out "in **Mundeba**", as a matter to be looked into.

No Error of Law

12. I am satisfied that the making of the decision of the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
13. Whereas I recognise entirely the argument made by Mr Dolan, that the judge does not in terms refer to "stability" of the Appellant's arrangement in their living with their aunt, [LC], the determination has to be read as a whole. The judge sets out the legal position in **Mundeba** at considerable length (at paragraph 18), recognising that there is "a high threshold" that has to be met. The judge then goes on to consider the social worker's report immediately thereafter (at paragraphs 19 to 20). It is then stated that there is no letter from [LC] "stating that she no longer wishes to care for the girls" (paragraph 23). Whereas regard is had to the written statement that [LC] is not in a position to look after the children on a long-term basis because "she never signed up to being a full-time carer", the judge is of the view that, any designs that [LC] may have of relocating to Namibia or South Africa, "are at a very early stage, and may never come to fruition" (paragraph 27). In any event, given that the children have always been looked after by [LC] in the recent past, and not looked after by the sponsoring aunt in the UK, the judge properly came to the conclusion that, "No reason has been advanced as to why she could not take the girls with her if she relocated" (paragraph 27).

14. These conclusions eventually are all sustained by a final conclusion (at paragraph 29), where the judge refers to there being no evidence of any substandard accommodation being provided for the children, or any failing in meeting their basic needs, in circumstances where “there is still regular remittances from the Sponsor”, and “have a grandmother and an uncle residing in Zimbabwe”, together with an absence of any evidence to show that their basic needs are unmet or that they are at any risk of harm.
15. Accordingly, taken in its entirety, the decision does not demonstrate that the judge failed to take into account the stability of the Appellants’ living arrangements and there is no material error of law.

Notice of Decision

16. The decision does not warrant an error of law such that it falls to be set aside. The decision shall stand.
17. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

18th December 2018