



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16340/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4 July 2018

Decision & Reasons Promulgated
On 10 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MISS TANYARADZWA MUTSVAIRO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Oboro, Solicitor, Gromyko Amedu Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Andonian promulgated on 8 January 2018. The procedural history of this matter is somewhat convoluted but for the purposes of this appeal I do not need to recite any of the detail.
2. The appellant is a citizen of Zimbabwe. She was born on 27 June 1982 and a decision to refuse her leave to remain was made by the Secretary of State on 15 February 2016. The judge, in the course of a careful and detailed decision, deals with the appeal under the Immigration Rules, paragraph 276ADE in particular. The judge concludes that the Immigration Rules were not satisfied and Mr Oboro, who represents the appellant, has confirmed to me that there is no appeal in relation to the judge's determination of the issue under the Immigration Rules.

3. The reasons for allowing permission to appeal are not entirely clear from grant of First-tier Tribunal Judge Hollingworth, dated 4 May 2018. In those circumstances I afforded the opportunity to Mr Oboro this morning to advance the appeal in whatever way he saw fit. He made no express reference to a Chronology and Skeleton Argument which was produced on the morning, but I have read and considered its contents.
4. Mr Oboro puts the appellant's case in this way. First, he says that there were exceptional circumstances pursuant to which the judge ought to have considered this case under Article 8 outside the Immigration Rules and secondly, that in making a determination under Article 8 outside the Rules, the proportionality balance should have come down in favour of the appellant.
5. Dealing first with the question of exceptional circumstances, Mr Oboro relies on two factors. The first is that for a period of eleven years from 2002, when the appellant entered the United Kingdom as a visitor, until 2013, when the country guidance changed so as to lessen the impact on those returning to Zimbabwe, the appellant exercised her private and family life within the United Kingdom. Further, Mr Oboro relies on the fact that the appellant has a child who, he tells me, is now aged 4, born after the change in the country guidance.
6. It seems to me that those factors, whether taken individually or cumulatively, do not and cannot amount to exceptional circumstances for considering this matter outside the Rules. The judge's assessment of the merits of the case under the Rules ought was therefore dispositive of the appeal.
7. But if I am wrong about that, the question then remains, whether the judge's alternative proportionality assessment was properly conducted? I have already remarked on the clarity and carefulness of this decision. In particular I note the following:
 - "33. No convincing reasons were given as to why the appellant's [adult] brother could not go to visit the child in Zimbabwe. He is a British citizen and can travel. No convincing reasons were given as to why the appellant's brother could not continue funding and supporting financially the child and his sister in Zimbabwe. These are all possibilities.
 34. The appellant said that she had lived in this country for thirteen years and had a child. The child is neither a British citizen nor has any status in this country whatsoever. The child has no residency. The child has not reached the age of 7. The child is some 3 years old. The child lives with the mother.
 35. It was said that the father of this child, Mr S, a Tanzanian national, has a pending application for leave to remain in this country. The appellant said that she was not in a relationship with the child's father."

7. I interpose to remark that Mr Tufan for the Secretary of State has made enquiries as to any pending application on Mr S's behalf and has found no record of anyone of his or a similar name.

8. The assessment continues at paragraph 39:

“39. Although Mr Vincent, the appellant's brother, did not give evidence I have read his statement. There is nothing further that this witness says in his statement that I have not actually dealt with in this determination. He said that the appellant's father has contact with his son. There was no evidence of this except for one of the documents about the father taking the child to a doctor and a letter from the nursery to the fact that they were aware of both parents' details. There was no evidence that the appellant's former partner is involved in the upkeep of the child. He has his own family in Newcastle. This is where he lives. No evidence was given as to how often the appellant's father sees the child. He is not British. He is not permanent residence. He has a pending application. His matter has not yet therefore been considered by the Home Office.”

9. There are then further considerations at paragraph 46 which I need not recite, leading to paragraphs 50 and 51.

“50. There was no material on the civil balance of probabilities before me to the fact that returning the appellant and her son to Zimbabwe would be inappropriate because of political motivated violence against family members. Furthermore, I have taken into account the emotional support that the appellant's brother can give to her and his nephew and this can be done by diverse means and also financial support and other support can be provided in Zimbabwe by the brother in the United Kingdom. He can indeed go to Zimbabwe as a British citizen and see his nephew and sister.

51. The appellant's former partner's visits to his son were totally vague. No evidence was given as to how these visits take place, where they take place, how often, on which days, whether it is once a week, once a month, where the appellant's former partner travels from to visit his son, where he takes him out if he takes him out, whether he spends visits at the home of the former partner, how often he takes the child to school, what he does for the benefit of the child, whether he puts the child to bed, whether he reads stories to the child, whether he takes the child out, none of these matters were before me and most importantly no proper reason was given as to why he had not attended. I do not therefore believe that there will be a breach of Article 8 in the removal of this appellant and the child from the United Kingdom. The removal would not amount to a breach of Article 8. I have considered the Strasbourg jurisprudence and the case of **Razgar**. I note that the decision made was lawful and there is an Article 8 issue to consider, that the decision is in accordance with the law and necessary in a democratic

society and it is proportionate, made in the interest of maintaining proper immigration control.”

10. To my mind, even though there may be one or two infelicities in the manner in which that narrative and proportionality analysis articulated, it was properly and transparently conducted, based upon findings of fact which were open to the judge. I do not consider that a fuller exploration by the judge of the Secretary of State’s non-removal policy in the case of Zimbabwe would, or could, have resulted in a different outcome of the appeal in the First-tier Tribunal.
11. There is reference in the Skeleton Argument to **EM and others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC)**, and it was alluded to in the submissions which I heard. I do not consider there to be much, of anything, in that decision which is relevant to – still less dispositive of – the matters raised in the current appeal. Specifically, at paragraph 308(v) it is clear that the relevant children in that case has reaches a stage in life when they were well integrated in the United Kingdom education system. Here, the child is only four years of age.
11. In substance, the basis of this appeal lies in a disagreement with the judge’s findings of fact. I can find nothing to impugn them. There is no error of law in the judge’s assessment of proportionality. This appeal must be dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed *Mark Hill*

Date 9 July 2018

Deputy Upper Tribunal Judge Hill QC