



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

Appeal Number: HU/04709/2017

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre

**Decision & Reasons
Promulgated**

**On 15th January 2019
Typed, corrected and sent to
Promulgation
On 31st January 2019**

On 6 February 2019

Before

Upper Tribunal Judge Chalkley

Between

**ALBAN [C]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

*For the Appellant: Mr M Brookes of Counsel instructed by J M Wilson
Solicitors*

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

RESONS FOR FINDING AN ERROR OF LAW

1. The appellant is a national of Zimbabwe, who was born on 24th August 2000 and who is now, therefore, 18 years of age. He made application on 26th November 2016 for leave to enter the United Kingdom to join his

mother [AK], the sponsor, a British citizen and her husband [NC], a national of Zimbabwe with limited leave to remain in the United Kingdom. The application was refused on 13th February 2017, reviewed on 7th November 2017 and the decision to refuse was maintained.

2. The appellant appealed to the First-tier Tribunal and his appeal was heard at Birmingham on 6th December, 2017 by First-tier Tribunal Judge Row. It is apparent from the determination that the judge heard oral evidence from both the sponsor and her husband. Whilst the judge sets out parts of the evidence he heard, it is clear to me having examined the Record of Proceedings that he has not set out the whole of it. Instead, it has been discussed by the judge in the determination in parts, but no clear findings of fact have been made on all of it.
3. The judge concluded that there were no compelling family or other reasons that would make it undesirable to exclude the appellant and that the appellant did not meet the requirements of paragraph 297(f) of Statement of Changes in Immigration Rules HC 395 as amended. He went on to consider Article 8, but found that there was no Article 8 family life between the sponsor, her husband and the appellant and that the appellant's family life has been spent in Zimbabwe, with those who cared for him since he was a baby. That must be wrong because, there is always family life between a child and parent even if they do not live together.
4. The appellant has challenged the determination on the basis that there are no clear findings on the evidence heard by the judge. In addressing me Mr Brookes was very careful not to give evidence himself, but it is clear to me having looked at the Record of Proceedings that there were aspects of the appellant's day-to-day life dealt with in the evidence, but not referred to anywhere in the determination. Mrs Aboni accepted that she had not seen the Record of Proceedings, but felt that the determination was satisfactory. I have concluded that the effect of failing to make clear findings on the evidence means that the appellant has been denied a fair hearing.
5. When oral evidence is given at least a brief summary of it should always be recorded in the determination. It is insufficient to simply say that it is recorded in the record of proceedings, because unless they appeal, the parties will not know what is in the record of proceedings. It is not possible, when reviewing a determination, to know whether full or adequate findings have been made without knowing what oral evidence a judge has heard, and without a judge recording the evidence clearly and then going on to make clear findings, one cannot tell whether those findings are properly reasoned.
6. I set aside the determination of First-tier Tribunal Judge Row and remit the appeal for hearing afresh by a judge other than Judge Row.

Richard Chalkley
An Upper Tribunal Judge

5 February 2019