



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

Appeal Number: HU/17314/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20th November 2019**

**Decision & Reasons Promulgated
On 25th November 2019**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**MARY [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Puar, Counsel instructed by N C Brothers & Co Solicitors

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Zimbabwe. She arrived in the UK in February 1999 with a visitor visa valid until 21 August 1999. She subsequently applied for a student visa in January 2000 and was granted leave to remain until 30 January 2002. After a period of inactivity, in August 2008 the appellant applied for leave to remain on human rights grounds. The appellant was granted leave to remain until 17th January 2013 outside the

immigration rules. In December 2013 she applied for further leave to remain and was granted discretionary leave until 26 September 2016. On 8 September 2016 the appellant applied for indefinite leave to remain in the UK relying upon her family and private life.

2. On 22 October 2015 the appellant was arrested by police on suspicion of fraud. She was convicted on 9 February 2018 and on 15 February 2018, she was sentenced at Reading Crown Court to 15-months imprisonment. Following that conviction, on 5 March 2018 the appellant was informed that the respondent deems the appellant's deportation to be conducive to the public good under s3(5)(a) Immigration Act 1971 and s32(5) UK Borders Act 2007. The appellant was invited to set out any reason that she has for wishing to remain in the UK. The appellant's representatives made representations relying upon Articles 3 and 8 ECHR. On 9 August 2018, a deportation order was made against the appellant and her human rights claim was refused for the reasons set out in a decision dated 14 August 2018.
3. The appellant's appeal against that decision was dismissed for the reasons set out in the decision of First-tier Tribunal Judge Young-Harry promulgated on 12 July 2019. It is that decision, that is the subject of the appeal before me.
4. Permission to appeal was granted by First-tier Tribunal Judge Bulpitt on 12 August 2019. In granting permission, the judge observed:

"It is apparent from the record of proceedings that it was argued before the judge that the appellant's relationship with her adult children in the United Kingdom amounted to family life. The judge does not make any finding on this issue and refers only to the appellant's private life. It is arguable that a finding that the appellant enjoyed family life with her adult children could have had a material effect on the proportionality assessment. Likewise, the judge refers to the medical evidence only in the context of Article 3 and it is arguable that consideration of this evidence in the context of the Article 8 claim could have had a material effect on the proportionality assessment."

5. I do not need to make any express reference to the findings and conclusions of the FtT Judge. The respondent has filed a response under rule 24 and does not oppose the appeal. The respondent accepts the judge failed to make any findings on the appellant's level of dependency on her adult children, both physical and emotional, particularly in view of the medical evidence, and failed to make any findings as to whether the nature of that relationship discloses more than the normal emotional ties between a parent and adult children. The respondent also accepts that the judge failed to consider the circumstances that the appellant would face upon return to Zimbabwe.
6. As to disposal, the parties agree that the Tribunal will need to hear further evidence regarding the appellant's relationship with her adult children, and the support they provide to her. The appellant has filed further evidence that she seeks to rely upon in support of her appeal. I was also informed that on 15 November 2019, a confiscation hearing took place before Folkestone Magistrates Court and the court has sentenced the appellant to an 8-month sentence of imprisonment. The appellant has subsequently been transferred to HMP Bronzefield. Because of these recent developments and the time constraints, it has not been possible to make the necessary arrangements for the appellant to attend before the Tribunal to give evidence.
7. Mr Puar submits the appropriate course is that I should remit the appeal for rehearing before the First-tier Tribunal. The assessment of a human rights claim such as this is always a highly fact sensitive task. In all the circumstances, I have decided that it is appropriate to remit this appeal back to the FtT for hearing afresh, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. The nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

8. The appeal is allowed. The decision of FtT Judge Young Harry promulgated on 12 July 2019 is set aside, and I remit the matter for re-hearing de novo in the First-tier Tribunal.

Signed
2019

Date 20th November

Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

9. I make no fee award as I have remitted the matter to the FtT for hearing afresh.

Signed
November 2019

Date 20th

Upper Tribunal Judge Mandalia