



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

Appeal Number: PA/10162/2017

THE IMMIGRATION ACTS

Heard at Birmingham

**Determination & Reasons
Promulgated
On 29 April 2019**

On 1 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR TAFADZWA MUSIIWA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No legal representation

For the Respondent: Mrs H Aboni (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Andonian, promulgated on 31 January 2018, following a hearing on 12 January 2018. In the determination, the judge dismissed the appeal of the appellant, whereupon the appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Zimbabwe, and was born on 8th March 1983. He appealed against the decision of the Secretary of State dated 27th September 2017, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant came to this country on 4th April 2001. He did not claim asylum for the following eleven years. When he did, he feared return to Zimbabwe because of alleged MDC affiliations. A feature of this appeal is his relationship with a Ms [SP], from whom there were several letters before Judge Andonian, but importantly, with respect to which, the Secretary of State had already granted the Appellant leave to remain in the United Kingdom on 4th October 2017. That being so, there was no issue in relation to the Appellant's Article 8 rights to be determined in the appeal before the judge.

The Judge's Findings

4. The judge went on to consider, however, not only the Appellant's protection claim, but also his Article 8 claim. With respect to both claims, the judge repeatedly drew attention to the fact that the parties were not present, in what was a "paper" hearing before him (which the Appellant is entitled to appeal on the basis of). The judge refused the asylum claim (see paragraph 20). The judge also went on to dismiss the Article 8 claim on the basis that was hopeless (see paragraph 17).

Grounds of Application

5. The grounds of application state that the judge erred, by misdirecting himself, on the basis that he considered the Article 8 claim, notwithstanding the fact that the Appellant had been granted leave to remain on 4th October 2017, on the basis of his relationship with Ms [P]. The grounds of application do not address at all the judge's decision on the protection claim.

Submissions

6. At the hearing before me on 1st April 2019, the Appellant, who appeared in person, agreed that he had not made an appeal against the asylum decision of the judge. Indeed, he said he found it difficult to quibble with that decision. Mrs Aboni, however, on her part, relied upon the Rule 24 response, to the grant of permission given on 4th March 2018, that the Respondent Secretary of State did not oppose the Appellant's appeal because the Appellant had already been granted leave on the basis of his Article 8 claim, and that was not a matter for determination in an appeal before Judge Andonian. However, the judge's findings with respect to the asylum claim, which had not been challenged, should not be set aside, as they stood.

Decision

7. The decision of the First-tier Tribunal involved 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.
8. This is an appeal where the appellant had already been granted leave to remain on the basis of his family life with his UK partner. There was no Article 8 issue to be determined by the judge. The only issue related to his asylum claim. The judge decided that asylum claim. That decision has not been appealed. The appellant who has appeared before me in person today has openly stated that he is not in a position to appeal it. The judge, however, ought not to have proceeded to determine the Article 8 claim when it was not before him. He had no jurisdiction to do so.
9. I, accordingly, remake the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. The appeal of the appellant on Article 8 grounds, having been allowed, I remake the decision and hold that the appellant cannot succeed on his asylum claim for the reasons that were given by Judge Andonian. The appeal of the Appellant is dismissed.

Notice of Decision

10. The Appellant's appeal is dismissed.
11. There is no anonymity order.

Signed

Date

Deputy Upper Tribunal Judge Juss

25th April 2019