



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002374

First-tier Tribunal No: HU/56890/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 19 November 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

**Marlene Fungai MTANDAGAI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr P Richardson of Counsel instructed by Aurex Legal Solicitors.

For the Respondent:

Mr K Ojo, Senior Home Office Presenting Officer

Heard at Field House on 19 July 2024

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Clarke dated 25 March 2024 dismissing the Appellant's appeal against a decision of the Respondent dated 17 May 2023 refusing a human rights claim.
2. The Appellant is a citizen of Zimbabwe born on 28 February 1965. Her human rights claim is primarily founded on her relationship with her partner Mr Ignatius Nyapokoto (date of birth 17 February 1952) - herein 'the Sponsor'.

3. The Appellant entered the UK on a visit visa on 13 December 2008. A claim for asylum, made on 23 February 2009, was refused on 19 March 2009; a subsequent appeal was dismissed with the Appellant becoming 'appeal rights exhausted' on 26 May 2009. Further submissions made in September 2016 were refused in October 2016, and yet further submissions made in July 2021 were refused in October 2022. The Appellant made further submissions again on 9 January 2023, the refusal of which, on 17 May 2023, is the foundation of these proceedings.
4. The Respondent accepted that the relationship with the sponsor was genuine and subsisting, but found that there were no insurmountable obstacles to the couple living in Zimbabwe, or very significant obstacles to the Appellant's reintegration; further there were no other exceptional circumstances such as to render the decision to remove disproportionate.
5. The Appellant's appeal to the First-tier Tribunal was refused for essentially similar reasons. In particular the First-tier Tribunal Judge found that there was nothing in the country situation in Zimbabwe to amount to serious hardship for the Appellant and the Sponsor to go to Zimbabwe as a couple, or for the Appellant to return alone and the Sponsor visit her there (paragraph 6); in this context the Judge recognised the Sponsor was not likely to go to Zimbabwe because he considered the prospect unattractive (paragraph 9). The Judge gave consideration to the possibility of the Sponsor supporting an out-of-country application for entry clearance, but found that the position was unclear in respect of the financial requirements of the Immigration Rules because of the limited amount of supporting financial evidence provided by the Sponsor: e.g. see paragraphs 10, 16 and 20. Taking all such matters into account the Judge concluded that a fair balance between the competing public and individual interests did not favour the Appellant.
6. The Appellant now challenges the decision of the First-tier Tribunal further to the permission to appeal granted on 20 May 2024 by First-tier Tribunal Judge Lawrence.

Discussion

7. Although a number of different issues were raised in the application for permission to appeal, the grant of permission to appeal was limited. The grant of permission is in these terms:

"2. There is no arguable irrationality or unreasonableness in the judge's approach to the question of whether there would be insurmountable obstacles to family life outside of the United Kingdom. All the issues raised in the grounds were considered by the judge and their conclusion was open to them.

3. There is arguable material error in the judge's consideration of whether it would be disproportionate for the Appellant and her partner to maintain their relationship while living apart in Zimbabwe and the United Kingdom, respectively. That is because it is arguable that the judge was mistaken in finding that there was no evidence that flights to Zimbabwe from the United Kingdom [sic.], for the reasons stated in the grounds with reference to pages 65 to 67 of the Appellant's bundle. The judge does not appear to have made a finding that it would not be disproportionate for the Appellant and her partner to continue their family life together in Zimbabwe, which is a different question to whether there would be insurmountable obstacles to them doing so. The finding that the partner could live in Zimbabwe if he so chose arguably does not equate to a finding that it would not be disproportionate to expect him to do so."

8. It may be seen that the grant of permission identifies two arguable grounds. I address them in turn.

Cost of flights

9. The reference in the grant of permission to pages 65 to 67 of the Appellant's bundle is to a printout of an internet search on cheapflights.co.uk seemingly conducted on 17 November 2023 for a return flight between 24 November and 17 December. There is a wide range of results - not all of which are within the date specified in the search: some appear to be for return flights, other for one-way flights; some appear to be direct and others with one or more stopovers. The cheapest single fare appears to be £384, and the cheapest return fare £580.
10. The Grounds seek to make criticism of the closing clause in the following passage at paragraph 22 of the Decision:
- "Whilst the partner has semi-retired, he could live in Zimbabwe if he so chose, and receive his health care there, or he could visit the Appellant, and receive his health care in the UK or both countries I was told that the flights were prohibitively expensive but there is no evidence of this".*
11. Having referred to the Internet search included in the Appellant's bundle, and asserted that the cost of flights shown average £600 to £800, paragraph 6 of the Grounds makes reference to the supporting evidence filed before the First-tier Tribunal in respect of the Sponsor's recent payslips, and bank statements.
12. I am not persuaded that there is any material error of law in this regard. The First-tier Tribunal Judge did not say in terms that there was no

evidence of the cost of flights: what was said was that there was no evidence that flights were prohibitively expensive. Whilst I acknowledge that there is some ambiguity as to whether or not the Judge gave express consideration to the particular internet search provided to him, it seems to me that the pleading here does not get beyond the Judge's clear finding that "*We do not have the full financial picture of the partner including what his pension is*" (paragraph 16). In my judgement it follows that irrespective of the cost of flights, the evidence did not demonstrate that they were prohibitively expensive for the Sponsor. As such, the Judge's observation at the end of paragraph 22 was entirely sustainable. It is not vitiated for error of law.

Proportionality of living together in Zimbabwe

13. As Mr Richardson acknowledged, this aspect of the grant of permission does not reflect any of the pleaded Grounds.
14. Be that as it may, it is readily apparent that the Judge gave consideration to the circumstances of the Sponsor in the UK, and gave reasons for the finding that the Sponsor would not return to Zimbabwe: see paragraphs 8 and 9. It is clear that the Judge did not consider it a likely scenario that the Appellant and the Sponsor would reside together in Zimbabwe. Even though such a hypothetical scenario was alluded to in aspects of the Decision - e.g. see at paragraph 6 and 7 in the specific context of a consideration of aspects of the Immigration Rules - in circumstances where ultimately the Judge found that it was not a scenario that would likely not eventuate, it can hardly be a criticism that the proportionality of such an arrangement was not expressly evaluated in the context of Article 8. Instead, the Judge appropriately considered proportionality by reference to the likely scenario of the Appellant returning without the Sponsor.
15. In the circumstances I do not identify any error of law in this context, or otherwise.

Notice of Decision

16. The decision of the First-tier Tribunal contained no material error of law and accordingly stands.
17. The appeal remains dismissed.

I. Lewis
Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)
18 November 2024