Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/06730/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 11th October 2013	**On 24th October 2013**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

IDAH ZHAKATA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ahmed of Bankfield Heath Solicitors
For the Respondent: Mr S Spence, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Kempton made following a hearing at North Shields on 12th June 2013.

Background

2. The Appellant is a citizen of Zimbabwe born on 2nd February 1931. She arrived in the UK on a visit visa on 29th March 2012, issued following a successful appeal, to stay with her daughter, Patience Wright. She applied for indefinite leave to remain as her dependant on 19th June 2012.

3. The application was refused on 13th February 2013. The Respondent was not satisfied that the Appellant was wholly or mainly dependent upon her relative present and settled in the UK nor that she did not have close relatives in her own country to whom she could turn to for support.

4. Patience Wright had given evidence on the appeal against the refusal to grant the Appellant a visit visa. She said on that occasion that her brother Washington was the main carer of the Appellant who had no intention of staying in the UK since she needed to be near the burial place of her late husband. Washington was a meteorologist, advising the government on climate change, and his income was quite sufficient to maintain the Appellant. He was an academic attached to the University of Zimbabwe and a Task Force Bureau Member of the Intergovernmental Panel on Climate Change.

5. The Appellant's case was that Washington was no longer working in Zimbabwe and was a student in Cape Town with no income. It was also said that he was working part-time and studying part-time and his work takes him to other countries.

6. The judge recorded the evidence and said that it was clear that the Appellant wanted the court to believe one set of facts for the purpose of obtaining a visit visa to the UK and was now prepared to put forward an entirely different set of facts to ensure that she had her current application granted. She dismissed the appeal.

The Grounds of Application

7. The Appellant sought permission to appeal on a number of grounds.

8. Firstly there was a paucity of findings about the Appellant's circumstances in Zimbabwe. It was argued that the judge had failed to make findings about her financial dependency upon individuals there. The Appellant's evidence was that her son Jericho was said not to be in Zimbabwe and no findings had been made upon whether he was or was not. Nor were there any findings about whether the Appellant was wholly or mainly dependent upon her daughter Ivy or indeed Washington.

9. Secondly, the judge had failed to direct herself properly to the case of Devaseelan and take Judge Grimshaw's (the judge who heard the visit appeal) findings as her starting point. She had found the Sponsor to be entirely credible. The judge suggested that the Sponsor had been landed in the position by her brother Washington but had failed to grapple with the issue as to whether she was wholly or mainly financially dependent upon her.

10. Thirdly, the judge had not properly asked herself whether the Appellant was without close relatives to turn to for financial support. She had found that Washington had been the "public master" but had not make clear findings about whether he was still in Zimbabwe or not. Nor had she made a finding as to whether there was a problematic relationship between the Appellant and her daughter-in-law.

11. Fourthly, the judge had made negative findings in respect of the change of circumstances but had failed to support them with adequate reasons.

12. Finally the judge had failed to properly assess the issue with respect to Article 8.

13. Permission to appeal was initially refused by Judge Chambers on 5th July 2013 but, upon renewal to the Upper Tribunal, granted by Judge Kebede who said that it was arguable that the judge had not made clear and proper findings as to what she had accepted and what she had not accepted.

14. On 14th August 2013 the Respondent served a reply defending the determination.

Submissions

15. Mr Ahmed relied on his grounds and submitted that the judge had failed to make proper findings on the central issue as to whether the Appellant's son was still in Zimbabwe. The judge had suggested that she accepted the evidence that the Sponsor had been landed in a "situation" but had failed to consider what the consequences were and should have made a clear finding as to whether she accepted there had been a change in the Appellant's circumstances.

16. Mr Spence submitted that this was a well-reasoned determination. The burden of proof lay with the Appellant and the judge was entitled to find that it had not been discharged.

Findings and Conclusions

17. There is no error of law in this determination.

18. With respect to Ground 1 it is clear that, from reading the determination as a whole, that the judge did not accept that there had been a change of circumstances.

19. She said "if I were to accept her evidence as credible it seems that at best she has been landed in this situation by her brother Washington who in fact seems to have orchestrated the whole situation to the benefit of his mother".

20. I accept that the judge makes no finding in that paragraph as to whether Washington had moved from Zimbabwe, but simply that he was the person who was behind the application.

21. The judge then states at paragraph 22:

> "It is very convenient that Washington suddenly moves from Zimbabwe to Cape Town in South Africa and Germany and so he can not be classed as a relative in Zimbabwe any longer."

which is at the least a strong expression of doubt about the veracity of the account. Unfortunately there is a typographical error in the next sentence as Mr Ahmed acknowledged. It should have read _

> "However, I do not accept that is the case. It is not clear if his family are still in Zimbabwe. His home is less than an hour from his and it may well be that his wife and children, the Appellant's grandchildren, are still living nearby."

22. The judge did not express herself in particularly clear terms. However from reading the determination as a whole it is quite apparent that she did not believe the account of a change of circumstances. She recorded that at the time of the visit visa appeal in 2012 it was said to be Washington who paid for his mother's essential requirements and that the Sponsor's brothers and sisters are in Zimbabwe and they all provide support and care for their mother.

23. The lack of clarity of expression rendered this determination vulnerable to a challenge but, when read as a whole, I am satisfied that the judge did make the requisite factual findings upon which to base her decision.

24. With respect to Ground 2, and the Devaseelan point, the judge was clearly entitled to depart from Judge Grimshaw's assessment of the credibility of the Sponsor since the Sponsor was now putting forward a story which was at odds with the evidence put forward in the visit appeal. The judge clearly believed, and indeed said, that the Appellant and her family had put forward one story for the purpose of obtaining the visit visa and another one to try to obtain settlement and there was therefore good reason to treat the Sponsor's present evidence with some scepticism.

25. The judge should have been specific in dealing with other family members, namely the daughter and the son Jericho and a daughter who was retired but when read as a whole it is clear that the judge was not satisfied that there were no close relatives to whom she could turn to in Zimbabwe. Indeed she said:

> "I think it is very clear that this has been a well thought out and devious attempt to allow the Appellant to stay permanently in the UK."

26. With respect to Ground 4, adequate reasons were given in this determination. The findings in relation to Article 8 were brief but given that at the date of the application the Appellant had only been with her family in the UK for some three months, and only sixteen months at the date of hearing, it is not arguable that, having failed to meet the requirements of the Rules, any appeal under Article 8 could be successful.

Decision

27. The judge did not err in law and her decision will stand. The Appellant's appeal is dismissed.

Signed Date

Upper Tribunal Judge Taylor