



IAC-FH-CK-V1

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

Appeal Numbers: IA/04620/2014
IA/04629/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2014**

**Determination
Promulgated
On 21 October 2014**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
Ms G A BLACK
Between**

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS CHANTELE TAMARA ELLISON
MR DYLAN TATENDA NDLOVU**

Claimant

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Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Claimants : Mrs H Price, Counsel instructed by M A Consultants
(London)

DETERMINATION AND REASONS

1. This matter comes before me for consideration as to whether or not there was an error of law in a determination before the First-tier Tribunal (Judge Gibbs) promulgated on 25 June 2014. For convenience I shall

refer to the parties as the Secretary of State who is the appellant in these proceedings, and to the claimants who are mother and son.

Background

2. The main claimant is a citizen of South Africa and her date of birth is 3rd October 1975. She entered the UK as a visitor and was at that time pregnant with the second claimant, Dylan, who was born in the UK on 17th February 2005. She was refused an extension of leave as a student with a right of appeal. The appeal was dismissed and her appeal rights were exhausted in 2007. The claimants were issued with notices as over stayers and removal directions were made under section 10 Immigration & Asylum Act 1999. The main claimant applied for indefinite leave to remain and under Article 8 on the basis of private and family life.
3. In the reasons for refusal dated 30th December 2013 the Secretary of State refused the application under paragraph 322(1) of the rules and went on to consider Appendix FM and paragraph 276 ADE of the immigration rules. It was accepted that the claimant met the requirements of R-LTRPT.1.1 a,b,d, (i) ,d(ii) but not d (iii) and EX 1.(a)(ii). It was accepted that the second claimant resided in the UK for all of his life. The main issue was whether or not it was reasonable for him to move to South Africa. Neither claimant had any immigration status in the UK.
4. The Tribunal found that there was no contact with the second claimant's father, the main claimant was solely responsible for him and that she had had no contact with her family in South Africa since 2008. The Tribunal placed weight on the fact that the second claimant would be entitled to apply for British citizenship in February 2015. It also placed weight on significant family ties as between the claimants and close relatives in the UK who formed a family unit. The second claimant was settled at school where he attended for 5 years. The Tribunal took into account the four year delay by the Secretary of State in making a decision. Reliance was placed on **Azimi-Moayed & others(decisions affecting children;onward appeals)[2013] UKUT 00197 (IAC).**[13]

Grounds for permission

5. The grounds argued that the Tribunal failed to consider the feasibility of relocation of the second claimant to South Africa in terms of family support, social and cultural ties or adaptability, and failed to consider and apply EX.1 to the circumstances of the first claimant.

Permission

6. Permission was granted by First-tier Tribunal Judge White on 16 July 2014 on both grounds.

Error of law hearing

7. I heard submissions from both representatives. The Secretary of State's main concern is that the Tribunal failed to consider the alternative position for the family to live in South Africa and in particular the second claimant's likely position and ability to integrate. I am satisfied that the Tribunal engaged with the evidence and made clear findings supported with sound reasons. The Tribunal found the evidence from the first claimant to be credible [11]. I summarise the findings made:
- i) the second claimant had spent all of his life in the UK and was distressed at the prospect of moving to an entirely new country[12] [14]
 - ii) he was 7 years old at the date of hearing
 - iii) he is settled at school[12]
 - iv) he lives in a close family unit with his mother and has significant ties with other close relatives which would be severed [12]
 - v) he has no contact with his father and his mother is solely responsible [11]
 - vi) his mother is settled with family living in the UK
 - vii) there are no financial concerns as the claimants are supported family in the UK
 - viii) it would be hard for the first claimant to find employment in South Africa where there would be no home for them.
 - ix) weight was placed on the fact that Dylan would be entitled to British citizenship in February 2015.
 - x) weight was placed on the 4 year delay in reaching a decision by the Secretary of State.[12]
8. I find no support for the argument that the determination was "thin" and inadequately reasoned. Rather in my view it is a concise and focused analysis of the relevant issues under the relevant rules. The Tribunal is not required to deal comprehensively with each and every issue. The determination shows that the Tribunal fully engaged with all the relevant issues and its approach was sound in law citing **Azimi-Moayed & others (decisions affecting children; onward appeals)[2013] UKUT 00197 (IAC)** and having regard to where the best interests of the child lie. The conclusion reached is sustainable based on findings made which adequately deal with the reasonableness of any relocation in South Africa[14].
9. As a child who has lived in the UK for over seven years, the second claimant has lived in the UK for what is considered to be a relevant period in developing social and cultural ties.
10. As to the second ground of appeal, I accept that the Tribunal failed to specifically apply the provisions of EX.1. and dealt with the same in one sentence at [16]. However, I am satisfied that this is not a material error as the outcome would be the same. The substance of the findings in the determination show that the main claimant met EX.1 requirements having regard to its conclusion under paragraph 276ADE .

Decision

11. There is no material error of law.
The determination shall stand.

Signed

Date 21.10.2014

Deputy Upper Tribunal Judge G A Black
No anonymity order.

The First -tier Tribunal made an award for a fee repayment which shall stand.

Signed

Date 21.10.2014

Deputy Upper Tribunal Judge G A Black