



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

Appeal Number: AA/01757/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**Decision & Reasons**

**On 24 July 2015**

**Promulgated**

**On 22 September 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**BERTHA MERCYLIN SIMANGO**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Hussein instructed by Fuscobrowne, Sheffield

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Ms Bertha Mercylin Simango, was born on 10 August 1986 and is a female citizen of Zimbabwe. The appellant had appealed against a decision of the respondent dated 20 January 2015 refusing the appellant asylum and directing the removal of the appellant from the United Kingdom. The First-tier Tribunal (Judge Robson) in a decision dated 21

April 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal. The grant of appeal (Judge P J G White) is limited; the judge had found that the appellant was not (as she had claimed) a former boyfriend of the deputy director of the CIO in Zimbabwe and that that individual was not the father of her child. Granting permission, Judge White stated that he found that the First-tier Tribunal Judge was not arguably wrong in his assessment of the evidence and his conclusions. The grant of appeal is limited to the judge's alleged failure "to have adequate regard to the best interest of the appellant's child" pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009. In the Rule 24 notice, the respondent stated:

The appellant's child was but 6 months old at the date of the hearing, has not yet commenced education and cannot be said to have formed a private life in the UK. The judge has recorded at paragraph 69 that there was no suggestion other than that the child would travel with the appellant. It has not been suggested by the appellant that there are any particular circumstances, e.g. health or any other person sharing responsibility for the child's upbringing in which it might be considered that the child's Article 8 rights might be breached.

2. I consider that that submission, succinctly made, is accurate. This was a case in which the refusal letter of the respondent [61] clearly considered Section 55 as part of the respondent's analysis of the grounds for granting discretionary leave to the appellant. The child's youth was noted (the child had not resided in the United Kingdom for more than seven years) as was the appellant's failure to demonstrate that,

your child has no social, cultural or family life ties in Zimbabwe because you state that your maternal grandmother still lives in Bulawayo ... additionally it is in the best interests of your child to remain with his mother, thereby maintaining a family unit. ... furthermore, you have not raised any medical conditions which might warrant consideration by the Secretary of State for the grant of leave to remain in the United Kingdom ...

The judge had regard to all the evidence in the matter as he stated at [35(c)]. At [69], he wrote:

I record the fact that there is no suggestion other than that the child would travel with the appellant and therefore that family life would not in any way be disrupted by returning to Zimbabwe.

3. The judge did not make any formal finding as to the child's private life but it was axiomatic from the fact that the child was only 6 months old that he had developed no private life independent from that which he enjoys with his mother. Given the particular circumstances in this case (the child's youth, lack of any private life ties to the United Kingdom including educational and social ties and the absence of any medical conditions) I consider that the judge's assessment, albeit brief, was adequate. He was entitled to find that the Section 55 assessment should begin and end with the fact that this child would remain in the care of his mother and that the mother, having no legitimate reason herself to remain in the United Kingdom, would return to Zimbabwe with the child. Indeed, the grounds make no attempt to identify any evidence before the judge which might

have led to a different outcome. The grounds simply state [10] that “the judge failed to apply the test of ‘best interests’ of the child which would be best served where the only families he has lived with are residing”. I am not entirely sure what that statement means but I am clear that the grounds fail to establish any reason which might lead me to find that the judge’s assessment of the child’s best interests under Section 55 and his Article 8 ECHR analysis generally is in any way flawed.

**Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 September 2015

Upper Tribunal Judge Clive Lane