IAC-AH-KRL-V5

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06887/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 19th November 2014	**On 23rd January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS FAITH APRONIA GWENZI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss N Patel, Counsel
For the Respondent: Mrs R Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Zimbabwe born on 3rd November 1981. The Appellant claimed to have arrived in the United Kingdom by plane using her own passport on 8th August 2002. She claimed asylum on 12th June 2013. On 2nd July 2013 the Appellant's claim for asylum and subsequent related applications were refused by the Secretary of State. The Appellant appealed and the appeal came before Immigration Judge Brunnen sitting at Manchester on 21st August 2013. At that hearing the Appellant appeared in person. The Secretary of State was not

represented purportedly due to staff shortages as set out in their letter of 20th August 2013. In a determination promulgated on 29th August 2013 the Appellant's appeal was dismissed on all grounds.

2. On 11th September 2013 following the instruction of solicitors by the Appellant Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended that

   (i) that the Immigration Judge had committed or permitted a procedural irregularity which made a material difference to the outcome of the fairness of the hearing and failed to address the issue of an adjournment at the commencement of the hearing and/or failed to grant an adjournment when requested;

   (ii) the Immigration Judge had failed to consider significant case law and facts when assessing the Appellant's human rights claim under Article 8 of the European Convention of Human Rights; and

   (iii) had failed to take into consideration material case law, in particular the authority of *Beoku-Betts v the Secretary of State for the Home Department [2008] UKHL 39* particularly with regard to the purported failure by the First-tier Tribunal Judge to consider the impact removal has on each individual family member of the Appellant, including siblings and partner with whom the Immigration Judge had accepted the Appellant had an established relationship.

3. On 30th September 2013 Designated Judge David Taylor granted permission to appeal. In granting permission he noted that the First-tier Tribunal Judge had been aware that the Appellant's leave to remain in the United Kingdom as a family visitor had expired in March 2003 and she had remained here since then as an illegal overstayer. He noted that she had made no attempt to regularise her status in the United Kingdom until more than ten years later when she claimed asylum in June 2013. He further noted that the first Ground of Appeal argued that the judge had erred in failing to grant an adjournment to enable the Appellant to obtain legal representation. He considered that there was no arguable merit in this and that the Tribunal was well accustomed to dealing with unrepresented Appellants and there was no suggestion that the Appellant was a vulnerable adult who might for that reason require representation.

4. However, he did note that the only other ground related to the judge's decision under Article 8 (outside the Immigration Rules). He noted that bearing in mind the judge's statement at paragraph 35 of his determination that there is no *"insurmountable obstacle"* to the Appellant's partner – himself originally from Zimbabwe – returning there with her, but the ground was arguable. He considered that the judge had arguably erred in applying the wrong test which is one of reasonableness and not one of insurmountable obstacles.

5. On 14th October 2013 the Secretary of State responded to the Grounds of Appeal under Rule 24. Within those grounds it is submitted that it was immaterial whether

the judge used the term *"insurmountable obstacle"* when it was contended that the term is interpreted to mean whether it is reasonable to expect someone to return. The Rule 24 statement stated that on the evidence before the judge it was clear that whether considered under the Rules paragraph (paragraph 35 of the determination) or under the second stage test as approved in *MF (Nigeria) [2013] EWCA Civ 1192* (paragraphs 39 to 43 of the determination) that the correct approach was taken for consideration of proportionality. Further, it was submitted therein that paragraph 42 of the determination makes it clear that family life could reasonably be enjoyed elsewhere and that the correct test had therefore been applied.

6. It was on that basis that the appeal first came before me in the Upper Tribunal on 25th November 2013 to determine whether or not there had been a material error of law in the decision of the First-tier Tribunal Judge. At that hearing it was put to me that the only appeal that was extant before me related to one under Article 8 of the European Convention of Human Rights. I noted that the First-tier Tribunal Judge had considered Article 8 at paragraphs 32 to 43 of his determination and that he had at paragraph 35 analysed the requirements of Appendix FM and paragraph 276ADE and had also analysed the position of the Appellant's partner concluding the fact that now that he is settled in the United Kingdom did not in itself constitute an insurmountable obstacle. I found that it was difficult from consideration of the determination to establish whether or not it was on that basis alone that the judge looked at the position under Article 8 and whilst noting at paragraph 41 that he had referred to the reasonableness test, there was nothing within the determination to show that he had applied that test and on that basis I found that there was a material error of law and that the decision should be set aside.

7. However I qualified the basis upon which I found such material error. I noted that *Sanade* was good authority for stating that once it is recognised there is only one family life, and that, assuming the Appellant's proposed removal would be disproportionate looking at the family unit as a whole, then each affected family member is regarded as a victim, and that where a child or indeed the remaining spouse is a British citizen, and therefore a citizen of the European Union, it is not possible to require them to relocate outside the European Union or to submit that it would be reasonable for them to do so. I noted that that aspect had not been considered in any great detail and certainly had not been analysed alongside the observations of the Upper Tribunal in *MF (Nigeria)*. In such circumstances I was satisfied that there were material errors of law in the determination of the First-tier Tribunal's analysis under Article 8 and that the correct approach was for the matter to be reheard before me as a fresh appeal under Article 8 (not an appeal under the new Immigration Rules) and I consequently set aside the decision on that basis alone and gave directions for the rehearing of this matter.

8. Those directions included a direction that there would be leave to the Appellant by her solicitors to lodge an up-to-date bundle the content of such bundle to be served on the UK Border Agency and lodged at court at least seven days prehearing. The bundle was to include any up-to-date witness statement relied upon, any up-to-date

skeleton argument relied upon, and authorities and relevant objective evidence limited to the issue of the appeal under Article 8 alone.

9. It was on that basis that the appeal came back before me for rehearing in April 2014. The Appellant appeared by her instructed Counsel Miss Patel. In support of the appeal I was provided with an up-to-date bundle of evidence from the Appellant's instructed solicitors, along with a supplemental bundle which consisted of skeleton argument and witness statements all of which I gave due consideration to. The Secretary of State appeared by her Home Office Presenting Officer Mr Harrison. Mr Harrison had previous experience of this matter having appeared before me when the error of law was considered.

Evidence

10. The Appellant attended to give evidence. She relied on two documents, these being her original witness statement and her supplemental witness statement dated 18th April 2014. She confirmed that she is in a relationship with Noel Chivavya and that she has been cohabiting with him for in excess of two years. She stated that Mr Chivavya is a British citizen and has lived in the UK since 2003, that he is currently employed at Hitchen Foods Limited as a line leader where he has worked since May 2011. He is settled in his job and earns in the region of £19,000 per annum. She stated that it is their intention to marry once her visa position has been clarified and that they would like to purchase a property together and have children. The Appellant advised that they have been attending an infertility clinic due to difficulties she has experienced in getting pregnant. She states she has considerable family in the UK and sees them regularly and that she has been in the UK for in excess of twelve years and is settled and integrated here. She confirms that she does not have any criminal convictions and is a person of good character and she seeks permission to remain in the UK with her family and partner and to continue her life with him here.

11. In supplemental evidence-in-chief she confirms that she has no family in Zimbabwe and that she has 32 family members, the majority of whom are cousins living in the UK. She reiterates that she has lived with her partner for almost three years and that she knows nobody in Zimbabwe.

12. The Appellant was cross-examined by Mr Harrison and confirms that she came to the UK in 2002 to visit her cousin. She acknowledged that she was granted leave until October 2002 to remain in the UK and that she asked for a further leave in November 2002 but that that application was refused. When it was put to her that from March 2003 to March 2013 when she claimed asylum she had no right to be in the UK, her response was merely to state that she gave her passport to her sister. Mr Harrison put it to the Appellant that she was an adult and did she not think she had a responsibility to look after her own affairs in the UK, to which she responded that she was not sure.

13. Mr Harrison inquired as to whether or not the Appellant ever asked about her legal status post-2003 and she advised that she did but not until 2009 and further indicated

that when she started her current relationship in 2010 that her partner did not know her status in the UK and that all he knew was that she had forwarded papers to solicitors to consider in 2009. She confirmed to Mr Harrison that she had no relatives whatsoever living in Zimbabwe.

14. Mr Chivavya attended and gave evidence. He confirmed his witness statements and that he is a British national and that he has been in a relationship with the Appellant since 2010. He confirms that he is settled in his job earning in excess of £19,000 per annum. He states he does not wish to return to Zimbabwe to restart his life, in that it would be hard for him to go and find employment and property. He further confirms that it is their intention to marry once the Appellant's visa situation has been resolved and that the Appellant is currently undergoing fertility treatment. He confirms that he supports her financially and that she has no reliance upon state benefits and she would be in a position to apply for a job providing she is granted an appropriate visa.

15. Miss Patel asked him to explain his relationship in a bit greater detail and Mr Chivavya pointed out that he has known the Appellant for a number of years but that their relationship did not begin until 2010 and that they have lived together for some three years. He indicates that they are both members of the Catholic Church and attend church. He states that for some two years now the Appellant has tried to get pregnant and that he cannot contemplate a situation by which the Appellant is returned to Zimbabwe. He states he cannot return because he has his life here and that he has recently been promoted in his job. He further confirms that he has no family in Zimbabwe but he has a brother in the UK and he has been in the UK himself now for some eleven years.

16. Under cross-examination from Mr Harrison Mr Chivavya confirmed that he came to the UK in 2003 and claimed asylum, and although it was never granted he acknowledged he was given indefinite leave to remain and he is now a British citizen. He stated that when he met the Appellant he did not know her status in the UK and he did not find out until they were living together. He stated he has no friends in Zimbabwe and that his friends are scattered around the world and some live in the United States. He indicated there would be great expense caused if it was necessary for the Appellant to return to Zimbabwe and reapply to join him as a partner and that he would like to marry the Appellant but it would be necessary for him to consult with the head of his family who is his first cousin and it would be necessary for cultural reasons to meet her family. If they do get married he would wish to get married in church.

Submissions/Discussions – April 2014

17. Mr Harrison indicated that this is a case solely put on an assessment of Article 8 outside the Immigration Rules and the effect of any separation or to consider moving elsewhere is what is to be considered, i.e. interference with private life. He submits that there is a clear lack of clarity of the exact position of the Appellant within the UK, but suffice to say that two and a half years ago her partner was aware she did

not have status in the UK and despite this they have continued to build a relationship akin to marriage and that that is what would be interfered with. Consequently he submitted the issue is one of proportionality.

18. He contended that it would be proportionate to require the Appellant to leave the UK pointing out that she entered in 2002 and by March 2003 she knew she was without any status in the UK and that for ten years she has been an overstayer. Throughout that time she has been an adult and whilst the Appellant states that initially she was under the control of her sister/cousins that it was not until 2009 she had control of her own passport and took steps to regularise her stay. That is, in the Secretary of State's view, not an adequate reason for overstaying.

19. Mr Harrison submitted that it is following the legitimate aim to require the Appellant to leave the UK and to thereafter seek entry clearance as anyone else would as the partner of Mr Chivavya. He points out that there is no asylum claim outstanding and therefore there is no reason why the Appellant cannot return to Zimbabwe. He does however acknowledge that that is not a clear cut conclusion bearing in mind the relevant case law to have to go through the bureaucratic process of having to reapply. He submitted that this is a simple case of the legitimate aim of immigration control being followed and that this is, to use his words, "a straightforward case of proportionality". He asked me to refuse the appeal.

20. Miss Patel took me to her skeleton argument and submitted that the Appellant has established family life with her partner and also her extended family. She refers me to her skeleton. She accepts that this is a traditional Article 8 case and the question is whether or not it would be proportionate for the Appellant to be asked to leave the UK and her extended family. She relies on a number of authorities but specifically refers me to *Beoku-Betts v SSHD [2008] UKHL 39* and the fact that the appellate authorities in determining whether the Appellant's Article 8 rights have been breached has to take into account the effect of proposed removal upon all members of the family unit. She submits that it is necessary for the Tribunal to conduct a balancing exercise and that the burden is on the Respondent to show that it is proportionate to exclude an Appellant from this country.

21. Miss Patel pointed out that it has already been accepted by the Secretary of State that the Appellant has family life in this country and that she is in a long-term relationship and that the couple are actively taking steps to start a family in the UK. She submits that if the Appellant were to be removed even temporarily this would interrupt their family life in the UK and submits that in such circumstances that would be unreasonable. She reminds me that the Appellant has no family in Zimbabwe, that she has been here for twelve years, has developed strong family ties within the UK and that her partner is settled in the UK earning £19,500 per annum. She submits that the legitimate aim will usually be weighed in the Appellant's favour even when there are not children and that it is clear looking at the authorities that entry clearance is not the answer to this appeal and that the Appellant has taken steps to regularise her status and she asked me to allow the appeal.

The Position in August 2014

22. It subsequently occurred to me that prior to promulgation Section 117B of the Immigration Act 2014 had come into force and that neither legal representative had had the opportunity to make submissions to me on that specific point. Consequently rather than promulgating my determination in August 2014, I gave directions that there be leave to both the Appellant's solicitors and the Secretary of State to lodge written submissions on the effect, if any, of Section 117B of the Immigration Act 2014 and I restored the hearing for such further oral submissions as either party's legal representative wished to make to be considered in addition to those written submissions I had directed previously.

23. It is on that basis that the appeal now comes back before me for final consideration. The Appellant continues to be represented by her instructed Counsel Miss Patel. On this occasion the Secretary of State is represented by her Home Office Presenting Officer Mrs Petterson. The Appellant's instructed solicitors have lodged a skeleton, the detail of which I have read and considered in its entirety. Mrs Petterson apologises but points out that there is no skeleton argument provided by the Secretary of State.

Submission/Discussions – 19th November 2014

24. Mrs Petterson acknowledges that the Appellant meets the English language requirement and that her partner earns £19,000 and consequently the issue of finance is not one that I need to consider. She submits that the key issue relates to proportionality and the establishment of private life. She points out that the application was made some five years ago and that prior to the presentation of the present application the Appellant had overstayed for some six years and that I should not give weight to her private life. She accepts that the Appellant has a partner but points out that she came here in 2002 as a 21 year old and that she has a poor immigration history and that I should refuse the appeal.

25. Miss Patel submits there are only two issues, namely the Appellant's relationship and her private life and the weight to be applied to each factor. She submits that there is no legal definition given to the phrase "little weight" and that it is still for me to take all the circumstances into account as they currently stand. She submits that it is important to note that the Appellant did not enter her relationship until after she had submitted her application and that the statute does not refer to the phrase "no weight" but to little weight. The question is is it proportionate to apply little weight to these particular circumstances and it is for the Tribunal to strike a fair balance between the Appellant and the public interest. She asked me to look at all the evidence adduced regarding the relationship, pointing out that the financial and language requirements are satisfied and that the Appellant will therefore be able to integrate into UK society and in fact that she already has. She submits the Appellant wishes to contribute to UK society and that it would be appropriate to give her credit for this and to allow the appeal. In reply Mrs Petterson merely points out that making an application does not create an entitlement for leave to remain.

Findings, Including an Assessment of the Law

26. It is against this background and these submissions that this longstanding matter comes before me now for final determination. The facts of this case are relatively straightforward:

- The Appellant is a citizen of Zimbabwe.
- At time of hearing this appeal she has been in the UK for twelve years.
- She does not meet the Immigration Rules.
- For a period from 2003 to 2013 she was an overstayer.
- Since 2010 she has been in a settled relationship.
- Her partner is a British citizen originally from Zimbabwe.
- She has no children but she is undergoing IVF treatment.
- She has no family in Zimbabwe.
- She has extensive family in the UK.
- Her partner is in full-time employment.
- Her partner supports her and she does not receive benefits.

27. The question arises as to whether in such circumstances it is appropriate to allow the Appellant's claim for Article 8 outside the Immigration Rules.

28. In any consideration of an Article 8 claim the starting point is the law itself. Article 8 states:

(a) everyone has the right to respect for his private and family life, his home and his correspondence;

(b) there should be no interference by a public body with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.

29. The general approach to Article 8 cases is that in *Nhundhu and Chiwera (01/T/H/0613)*. In those cases the Tribunal said that, in deciding claims under Article 8, there is a five stage test which must be applied in order to determine whether a breach has occurred;

(i) does family life, private life, home or correspondence exist within the meaning of Article 8;

(ii) if so, has the right to respect for this been interfered with;

(iii) if so, was the interference in accordance with the law;

(iv) if so, was the interference in pursuit of one of the legitimate aims set out in Article 8(2); and

(v) if so, is the interference proportionate to the pursuit of the legitimate aim?

Those were essentially the five questions endorsed by the House of Lords in *Razgar [2004] UKHL 27*.

30. It is, of course, well-established that, where the Appellant is in the UK and removal will interfere with the family life/private life she (and since *Beoku-Betts v SSHD [2008] UKHL 39* her family) already enjoy in the UK, then Article 8 can be engaged. In *Ullah and Do [2004] UKHL 26* the House of Lords accepted that Article 8 could, in principle, be relied upon if the effect was that the infringement of the Appellant's rights would occur in the country to which she was to be removed. That scenario of course would not apply in this instant case where the Appellant would be returned to Zimbabwe, where there is no suggestion that she would not be in a position to continue her life albeit that I fully understand she would much prefer to remain in the UK with her partner.

31. In *Huang and Kashmiri v SSHD [2007] UKHL 11* the House of Lords said that once Article 8 is engaged the crucial question is whether the interference complained of is proportionate to the legitimate aim sought to be achieved. The House of Lords phrased the test as follows:

> *"If family life cannot reasonably be expected to be enjoyed elsewhere the question is simply whether taking full account of all the considerations weighing in favour of a refusal the refusal of leave prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by Article 8. The House of Lords said that attention must be paid to the severity and consequences of the interference."*

It is clear in that authority and *AS (Pakistan) v SSHD [2008] EWCA Civ 1118* that the question of whether the life of the family can reasonably be expected to be enjoyed elsewhere is part of the consideration of proportionality. It is necessary to consider whether the decision is proportionate and the proportionality decision is one for the Immigration Judge. The test is not one of exceptional circumstances. Once Article 8 is engaged the crucial question is whether the interference complained of is proportionate to the legitimate aim sought to be achieved. If family life cannot reasonably be expected to be enjoyed elsewhere, the question is simply whether taking full account of all the considerations weighing in favour of a refusal, the refusal of leave prejudices the family life of the applicant in a manner sufficiently

serious to amount to a breach of the fundamental right protected by Article 8. Attention must therefore be paid to the severity and consequences of the interference. It is also necessary to give due consideration to the weight to be attached to immigration control and the onus lies upon the Respondent to show that the interference or lack of respect is *"necessary in a democratic society for one of the stated interests."*

32. The Appellant through her Counsel submits that she ought to benefit from the exceptions in Appendix FM in that she and her partner would face insurmountable obstacles if they attempted to relocate to Zimbabwe. I am not satisfied that such threshold has been reached. There is no practical reason why the Appellant cannot relocate back to Zimbabwe. She is a Zimbabwean national. Further whilst her partner is a British citizen and may have a secure job over here there is no reason why he too cannot move, if he so wishes, to Zimbabwe. Consequently I am satisfied that the Appellant does not meet the test to fall within an exception to Appendix FM.

33. The Tribunal in *Gulshan* made clear and has repeated subsequently in *Shahzad (Article 8: legitimate aim) [2014] UKUT 00085 (IAC)* at paragraph (31):

> *"Where an area of the rules does not have such an express mechanism, the approach in R (Nagre) v Secretary of State for the Home Department [2013] EWHC 720 (Admin) ([29]-[31] in particular) and Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC) should be followed: i.e. after applying the requirements of the rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them."*

34. Consequently only if there are arguably good grounds for granting leave to remain outside the Immigration Rules is it now necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them. Further whilst appreciating that this appeal was heard prior to 28th July 2014 the Immigration Act 2014 is now in place and brings with it mandatory requirements relating to the weight to be attached to the public interest under Article 8 which override existing case law. Section 117B, Article 8 states:

> *(1) The maintenance of effective immigration controls is in the public interest.*
>
> *(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –*
>
> *(a) are less of a burden on taxpayers, and*
>
> *(b) are better able to integrate into society.*
>
> *(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –*

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

35. In this case I acknowledge that the Appellant speaks English, is able to integrate into society but is not financially independent in that she is totally reliant for her support on her partner. Paragraph 4 makes it clear that little weight should be given to private life and a relationship formed with a qualifying partner that is established by a person at a time when the person is in the UK unlawfully. I am satisfied that when the Appellant approached solicitors in 2009 she had not entered her current relationship with Mr Chivavya. I give her credit for this fact and I accept that the relationship was not created solely as a means to try and circumvent the Immigration Rules.

36. The Appellant was for six years an overstayer. She could return to Zimbabwe and make a fresh application to join her partner. I acknowledge that the Appellant has claimed that there are considerable family members in this country but none have come forward to provide oral testimony and it is conceded (quite properly) by Miss Patel the fact that the Appellant is undergoing fertility treatment would not in any way justify her claim for reaching the threshold of her claim succeeding on medical grounds. The fact remains that the Appellant whilst in a relationship is a single woman who has overstayed for a very considerable number of years. Technically there is no reason why she could not return to Zimbabwe although I appreciate if she were to do so the position would be that she would then have to make a fresh application to enter the United Kingdom as the partner of a British citizen. Back in the hearing before me in April Mr Harrison acknowledged that it was a factor for me to consider as to whether requiring an Appellant to return in such circumstances was a proportionate step.

37. In some respects I am satisfied Section 117B of the Immigration Act 2014 is of help to the Appellant's claim. The Section does little more than bring into statute principles that were already prevalent before the courts. However reference is made particularly at paragraphs 2 and 3 to place emphasis on the public interest and in particular the economic wellbeing of the United Kingdom to ensure that entrants are financially independent, not a burden on the taxpayer and able to integrate into society. I acknowledge that Ms Gwenzi is not financially independent but that is at present very much due to her immigration status. What I am satisfied is that she has been here now for some twelve years, that she has integrated into society and that she is not a burden on the taxpayer, being financially supported by Mr Chivavya who is a British citizen. Having heard the evidence of both Ms Gwenzi and Mr Chivavya I am satisfied that they are in a relationship (something accepted by Mr Harrison and Mrs Petterson on behalf of the Secretary of State) and that it is their intention to continue within that relationship on a permanent basis.

38. Reference is made to me with regard to the weight to be given to private life in this matter. I acknowledge under 117(5) little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. Clearly Ms Gwenzi's status is precarious and must be so until or unless her appeal succeeds. While she was an overstayer she did not enter into her relationship until such time she had submitted a fresh application.

39. In order for leave to remain to be granted outside the provisions of the Immigration Rules there need to be compelling or exceptional circumstances not sufficiently recognised under the new Rules that outweighed the public interest in deportation – *Haleemudeen [2014] EWCA Civ 558*. It is necessary to look at all the evidence to see if there is anything which has not been adequately considered in the context of the Immigration Rules which could lead to a successful Article 8 claim. Authorities do not qualify or fetter the assessment of Article 8 and there is no prior threshold which dictates whether the exercise of discretion should be considered; rather the nature of the assessment and the reasoning is informed by threshold considerations.

40. In this case the Appellant has been in the UK twelve years. She has established private and with her partner a family life. He is a British citizen. She speaks English. She is not dependent on state benefits. She approached solicitors prior to entering her current relationship. I acknowledge she has a poor prior immigration history. She is not an economic burden on the state. It would be extremely difficult if not impossible for her partner to relocate and continue his business activity in Zimbabwe. It would be possible for the Appellant to return to Zimbabwe and to thereafter make a fresh application to join Mr Chivavya in this country as his partner under the Immigration Rules. The question is however is such a draconian step proportionate. Weighing all these factors together I am satisfied that it would be disproportionate to return the Appellant to Zimbabwe for that purpose and for all the above reasons I am satisfied that this is one of those rare cases where the Appellant's claim succeeds outside the Rules pursuant to Article 8 of the European Convention of Human Rights.

Notice of Decision

The Appellant's appeal is allowed under Article 8 of the European Convention of Human Rights.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed Date **23rd January 2015**

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application for a fee award is made and none is ordered.

Signed Date **23rd January 2015**

Deputy Upper Tribunal Judge D N Harris