



IAC-AH-KRL-V1

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

Appeal Number: IA/46967/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 8 October 2015**

**Decision & Reasons Promulgated
On 27 October 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KASONDE NSOFU MUNONYEDI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr A Adewole, Liberty & Co Solicitors

DECISION AND REASONS

1. The respondent, Mrs Kasonde Nsofu Munonyedi, was born on 10 September 1975 and is a citizen of Zambia. She entered the United Kingdom as a student in 1994 and left the country, returning at a later date apply for leave to remain in 2003. That leave was refused but she remained in the United Kingdom without leave until she returned to Zambia again in 2009. In 2010, she married Mr Peter Munonyedi in Zambia. Mr Munonyedi is a British national. She applied for entry clearance to the United Kingdom but was refused. Her appeal was allowed by an Immigration Judge

and she was granted leave to enter as a spouse in September 2011. However, she failed to use that visa and instead applied for a family visit visa in 2014 which was granted. Having remained following her visit, she was refused further leave to remain on 6 November 2014 and a decision was also made to remove her. She appealed to the First-tier Tribunal (Judge Caswell) which, in a decision and reasons dated 1 May 2015 allowed the appeal on human rights grounds (Article 8, ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The Secretary of State asserts that the judge failed to indicate why the Immigration Rules had not been met by the appellant in this instance. The judge had failed adequately to explain why the appellant should be granted leave to remain under Article 8, ECHR when it was not clear at all that she would satisfy any of the necessary Immigration Rules.
3. The judge found [29] that the appellant's husband's child (A) is "genuinely attached to the appellant as a maternal figure" and it was then challenged evidence that the child which the appellant was carrying at the date of the First-tier Tribunal would be British and could not reasonably be expected to relocate to Zambia with her mother. The judge found [24] that it would be in the interests of the child A and also the unborn child not to be separated from the appellant and that she should remain in the United Kingdom.
4. As often happens in cases of this sort, matters have moved on since the date of the First-tier Tribunal hearing. On 8 May 2015 (a week after the First-tier Tribunal decision was promulgated) the appellant gave birth to a male child. That child is a British citizen. The Secretary of State does not challenge the appellant's evidence that the child is a British citizen nor did Mr Diwnycz, for the appellant, seek to persuade me that the child's interests would be properly addressed if his mother were to be removed from the United Kingdom. Likewise, Mr Diwnycz did not seek to persuade me that the young child, as a British citizen, could properly be required to leave the European Union.
5. In the circumstances and even if I were to accept that Judge Caswell erred in law (and I make no such finding, none being necessary), I would exercise my discretion and refrain from setting aside her decision and reasons. Given the circumstances as they now stand, nothing whatever would be gained by my setting aside and remaking the decision.

Notice of Decision

6. This appeal is dismissed.
7. No anonymity direction is made.

Signed

Date 26 October 2015

Upper Tribunal Judge Clive Lane