



IAC-TH-LW/AH-SAR-V1

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

Appeal Number: OA/02125/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

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

Appellant

**and**

**MISS A N  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Staunton, Home Office Presenting Officer  
For the Respondent: Mr Bhebhe, Legal Representative, Njomane Immigration Law Practice, Luton

**DECISION AND REASONS**

1. The Appellant in these proceedings is the Secretary of State, however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Zimbabwe born on 10<sup>th</sup> January 1993. She appealed against the decision of the Respondent dated 18<sup>th</sup> December 2013 refusing to grant her entry clearance to the United Kingdom as the adult dependent relative of a

person present and settled in the United Kingdom under Appendix FM of the Immigration Rules.

3. Her appeal was heard by Judge of the First-tier Tribunal Somal on 17<sup>th</sup> October and 17<sup>th</sup> November 2014. The appeal was allowed and the determination promulgated on 2<sup>nd</sup> December 2014.
4. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Grant-Hutchison on 22<sup>nd</sup> January 2015. The grounds for permission are that the judge failed to give reasons or adequate reasons why the Appellant's application meets the requirements of the Immigration Rules. The issue is long-term personal care and the fact that there has been a failure on the part of her family to put in place any care arrangements in Zimbabwe. The grounds refer to the Appellant having family members in Zimbabwe who could provide her with support. They then go on to state that the judge misdirected herself in coming to the decision that the Appellant's appeal should be allowed outside the Immigration Rules as she erred in her approach to the Article 8 assessment by failing to identify why the Appellant's circumstances can be defined as compelling or exceptional. They also state that the judge gave no consideration to the Immigration Act 2014 or Part 5A of the Nationality, Immigration & Asylum Act 2002.
5. On 13<sup>th</sup> March 2015 the Appellant appeared before me and I found there to be material errors of law in the judge's decision. My decision, giving my reasons for this finding, was promulgated on 13<sup>th</sup> April 2015. I set aside the First-tier Tribunal's decision which was promulgated on 2<sup>nd</sup> December 2014 and directed a second stage hearing on all issues.

### **The Hearing**

6. The Appellant's mother [SM], the sponsor, took the stand. She asked that the statement she had made for the First-tier hearing be used as evidence for this hearing.
7. The Appellant's representative asked her what arrangements she had put in place to help the Appellant up to today's date. The Sponsor said she has a friend, from the church in Zimbabwe, who she phones and asks to check on the Appellant but this friend has a life of her own and a big family to look after so she can only go occasionally to check on the Appellant. She said this is not a suitable arrangement. She said the Appellant does not have much help in Zimbabwe. The Sponsor was asked what medical care and treatment the Appellant has in Zimbabwe and she said that medical care is available but not to the level required by the Appellant. She said that the Appellant, because she has no-one supervising her, spends her day sleeping in her room. She does not cook or bathe or communicate with anyone and does not eat properly. The Sponsor said the Appellant requires care on a daily basis as she is unable to look after herself.
8. The representative asked the Sponsor what family the Appellant has in Zimbabwe. She said her grandparents are there but they are elderly and they live in a remote area. She said there are no hospitals in that area and no electricity in the houses and the water supply is poor. She said they live a long way from the Appellant, around

500 kilometres. The Sponsor was asked why she cannot go and stay with her grandparents and she said because there are no hospitals there. She said that her grandparents are old and would be unable to look after the Appellant in her present condition. She said they do not have much money. She said they will not move away from the rural area because of their age. The representative asked her, if her grandparents lived near her, would it make a difference to the Appellant, but the Sponsor said she does not think so. She said if the Appellant was healthy she would have to look after her grandparents, not the other way round.

9. I asked if there are any medical reports on the grandparents. I was told that there are not.
10. The Sponsor went on to say that the Appellant has mental health problems. She is depressed and anxious and needs professional care. She was asked what relatives there are in Zimbabwe on her husband's side and she said her husband had a brother but he died in May 2014.
11. The representative asked the Sponsor what financial support she and her husband provide and she said they send about £150 a month and sometimes more if it is needed, because the cost of living is going up. She said it is probably nearer £250 a month now. She said that amount covers rent and food, electricity and water and fees for the doctor and for counselling. She said the Appellant stays in shared accommodation. The Appellant's representative asked her how she sends the money and she said through Western Union and the Appellant gets the money because a church member or a friend goes with her to collect it and helps her with shopping. She was asked why she cannot go back and look after her daughter. She said her daughter, the Appellant, is very important to her and to her husband and that she and her husband have a genuine marriage. She said they have a 2 year old daughter now and the whole family is British apart from the Appellant. She said their life is in the United Kingdom. They are settled here and they work here and pay tax and she said they have been living here for a long time. She said that for her to go back to look after the Appellant would be unreasonable and would lead to the breakdown of her marriage and her family life. She said it would be better if the Appellant was in the United Kingdom. She could look after her properly here. She said it is unfair if the Appellant is not allowed to come to the United Kingdom.
12. I asked the Sponsor about her relatives and she said she has a brother in New Zealand and two sisters in the United Kingdom.
13. The Presenting Officer cross-examined the Sponsor. He asked her when she came to the United Kingdom and she said in December 2011 and she was asked why she came. She said she came to settle and to join her husband here. She was asked when she got married and she said 15<sup>th</sup> October 2010 and she was asked if her husband had been living in Zimbabwe or the United Kingdom when they married and she said in the United Kingdom. The Presenting Officer asked the sponsor how she met her husband and she said they met in Bulawayo in December 2008. She was asked if she was living with the Appellant before she came to the United Kingdom and she said she was and she was asked if this was in the same accommodation the Appellant stays in now and she said it was not. She said the Appellant lives in shared

accommodation with other lodgers. She was asked if these other lodgers are friends of the Appellant and she said the Appellant does not talk about them and does not seem to have any friends. She was asked how often she speaks to the Appellant and she said they telephone each other and e-mail each other. There are no regular times, it varies.

14. The Sponsor said the Appellant has health issues and she was asked what they are. She said she has asthma and anxiety and depression and also has suicidal ideation. The Presenting Officer asked her what treatment the Appellant has for her asthma and she said she has an inhaler and tablets that she pays for. She said she has therapy sessions for her anxiety and depression two times a month. She said she also has tablets for that and she, the sponsor, pays for them. She said the Appellant has to take the tablets every day. The Presenting Officer asked the Sponsor how often her friend in the church looks in on the Appellant and she said once or twice a month or if she phones her friend and asks her to look in.
15. The Presenting Officer asked the sponsor if she has visited the Appellant and she said she visited in August 2015 and her husband visited in 2014. She was asked why she did not visit in 2014 and she said she had been recovering from having a baby and had been unfit to travel. The Presenting Officer asked her if she had not seen the Appellant between 2011 and 2014 and she said that is correct and she was asked how the Appellant was when she left in 2011 and she said she was 18 years old, was well, fit and healthy. She said she had been studying and she finished studying in December 2011. She said she has not worked since then.
16. The Sponsor was asked when the Appellant got depressed and she said that when she moved out of her friend's house in October 2012 she began to get depressed. She said her friend's family had to downsize and no longer had room for the Appellant.
17. A second witness took the stand being the Sponsor's husband, [PM]. He is the stepfather of the Appellant and lives at the same address as the Sponsor. He asked that his statement be used as evidence for the hearing. He was asked how the Appellant is and he said she is depressed and suicidal. He said she goes to therapy but she lives on her own and her mental state is poor. He said she has asthma and has no ambition and does not care about life. He was asked what family he has in Zimbabwe and he said he has no-one. He said a brother died and a brother is in South Africa and his parents are dead. He said he has other siblings in the United Kingdom and America.
18. There are some medical notes in the Appellant's bundle and I asked if there is an up-to-date medical report on the Appellant but there is not.
19. The Presenting Officer cross-examined this witness. He asked him about the Appellant's suicidal ideation. He said she tried to kill herself in 2014. He said he visited her in May 2014 and her suicide attempt was in March 2014. He asked the witness if there has been any improvement in the Appellant's health since May but he said there has been no change, but no further suicide attempts.
20. The witness was asked by the Presenting Officer how often her mother's friend from the church visits her and he said about twice a month or more if they ask her to visit.

He said the Appellant is supposed to take medication every day. He was asked if there is anyone to remind her to do this and he said there is not and very often she does not take it. He said he and the Sponsor get in touch with her telling her to take her medication and they have told her roommates to make sure she takes her medication but she still sometimes forgets. He was asked if the Appellant talks about her roommates and he said not really. He said she hardly communicates with him and his wife.

21. The Presenting Officer asked the witness if he works and he said he is an accountant and his wife is a support worker.
22. The Presenting Officer made his submissions relying on the Entry Clearance Officer's decision of 18<sup>th</sup> December 2013. He referred to the Respondent's bundle Annex B. He referred to E22 of that bundle being a letter from the Appellant's representatives to the Entry Clearance Officer. At paragraph 3 of this letter it states that the Appellant lives alone in exceptionally compassionate circumstances in Zimbabwe. He referred to the case of **R v Immigration Appeal Tribunal ex parte Gui Mario Joseph** dated 15<sup>th</sup> February 1988. He submitted that he is relying on this case which states that the phrase "most exceptional compassionate circumstances" must exclude almost every imaginable case. He submitted that this Appellant's condition and circumstances in Zimbabwe do not overcome that hurdle.
23. He submitted that the facts are that her mother came to the United Kingdom and her mother can visit her in Zimbabwe and can communicate with her in Zimbabwe. He submitted that there is no reason why this cannot continue. He submitted that her mother could go back to stay in Zimbabwe.
24. I was referred to E32 in the Appellant's bundle being a report by Dr Njau of Lobengula Medical Clinic in Zimbabwe. This report states that the Appellant's illness started soon after her mother left for the United Kingdom. He submitted that the report does not suggest that the Appellant comes to the United Kingdom to live with her mother. The report makes it clear that the Appellant has been prescribed with medication in Zimbabwe and can be treated there and is being treated there. He submitted that there is nothing to suggest that she would be getting different medical treatment if she was in the United Kingdom. He submitted that a friend of her mother from the church visits her twice a month and sometimes more, but she does not get daily care.
25. I was asked to consider the Appellant's private life and assess public interest against the Appellant's human rights. I was referred to the case of **EV (Philippines) & Others [2014] EWCA Civ 874**. This states at paragraph 60 that the United Kingdom cannot provide medical treatment for the world. He submitted that if the Appellant comes to the United Kingdom she will receive the same treatment here as she does in Zimbabwe. He submitted that because her mother is here does not give her an automatic right to come to the United Kingdom. The situation has arisen because of the choice of her mother and stepfather, as they want to stay in the United Kingdom and not in Zimbabwe.
26. I was asked to dismiss the appeal.

27. The Appellant's representative made his submissions relying on his skeleton argument. He submitted that Appendix FM of the Immigration Rules and E-ECDR.2.4. and 2.5 must be satisfied. I was referred first of all to E-ECDR.2.4. which states that the Appellant must, as a result of age, illness or disability, require long-term personal care to perform everyday tasks. He submitted that clearly her age is not a relevant factor, but she is ill and is disabled because of her medical condition. She is unable to function because of her mental illness and he submitted that she requires long-term personal care to carry on with her life normally and to perform everyday tasks. I was asked to find that the medical evidence supports this.
28. I was referred to the case of **Osman (Somalia)** which is on file, OA/18244/2012. He submitted that this is a similar Upper Tribunal case. He submitted that without the help of the Sponsor this Appellant is unable to get the required level of care. There is no-one in Zimbabwe who can provide this care to the required standard. He submitted that we do not know how long the Appellant's illness may last. He submitted that the evidence makes it clear that she is unable to do normal everyday tasks and is unable to look after herself, so she does not have a reasonable life in Zimbabwe. He submitted that professional care is not what is required, it is personal care that is required.
29. With regard to the Appellant's grandparents he submitted that they are in their 80s and are frail and are unable to take care of the Appellant. In any case they live 500 kilometres away from her.
30. He submitted that when the case was heard by the First Tier Tribunal the judge found that the terms of the Rules had been satisfied. The problem with that determination was that the First Tier Judge did not link the Rules with the evidence. He submitted that there is robust evidence to support the Appellant's claim and based on the oral evidence today there is no-one in Zimbabwe, either on her mother's side or her stepfather's side who can properly look after the Appellant.
31. He submitted that her mother should not require to return to Zimbabwe to look after the Appellant. This is not necessary and would be a disproportionate interference with her mother's family life.
32. He submitted that the terms of the Rules have been satisfied.
33. With regard to Article 8 and the said case of **EV (Philippines)** he submitted that the Sponsors in this case are British. He submitted that they will maintain and accommodate the Appellant and there will be no recourse to public funds. The Appellant will not be a burden on the state. The Appellant will be living with her mother and her stepfather and this is her family life. He submitted that the fact that she is over 18 years of age does not mean that she cannot have a family life with her mother. There can be family life between adults.
34. The representative submitted that if I find that Article 8 in terms of the Rules cannot be satisfied then Article 8 of ECHR outside the Rules applies and a claim under Article 8 outside the Rules must succeed. He submitted that it would be disproportionate to exclude the Appellant from the United Kingdom.

35. With regard to Section 117B he submitted that he has addressed this in his skeleton argument.
36. He asked me to allow the appeal under the Immigration Rules and on human rights grounds.

### **Decision and Reasons**

37. The burden of proof is on the Appellant and the standard of proof is the balance of probabilities.
38. I have considered all of the evidence on file, the oral evidence given at the hearing and the submissions of both parties, the skeleton argument of the Appellant's representative.
39. This Appellant has applied for entry clearance as an adult dependent relative under Appendix FM of the Immigration Rules. For the Appellant to be successful in this claim, because she is over 18 years of age, she has to show that she is living in the most exceptional compassionate circumstances in Zimbabwe. First of all I have to consider compassionate circumstances and secondly I have to consider whether there are any aggravating features to make them exceptional.
40. The Appellant is staying in shared accommodation. When the Sponsor left Zimbabwe the Appellant was fit, well and happy. The Appellant is educated but is unable to work because she is not well. Her mother in the United Kingdom supports her financially. Her mother states that she also keeps in touch with her by telephone and e-mail.
41. I have to consider the medical evidence. The Sponsor's evidence is that the Appellant has no relatives in Zimbabwe. The Appellant is an adult. The division of families is inevitable if some of the family members are over the age of 18.
42. There is a medical report from Dr Njau dated 5<sup>th</sup> July 2013. This states that the Appellant is depressed, withdrawn and indifferent to her environment. She has been prescribed with anti-depressants and goes to psychotherapy. The Appellant told the doctor she tried to commit suicide. It is clear that the Appellant is getting medical treatment in Zimbabwe. There is no evidence that if she comes to the United Kingdom her medical treatment will be different to that which she is receiving in Zimbabwe. The doctor's letter does not state that the Appellant's health would improve if she came to the United Kingdom to stay with her mother and stepfather. The Appellant's representative argues that personal care is different from medical or nursing care and his argument is that the Appellant requires long-term personal care, but that is not what the medical evidence indicates and the medical evidence is not up-to-date. I find that the Sponsor and her husband are exaggerating the Appellant's condition.
43. The Appellant's mother and stepfather state that the required level of care is not available in Zimbabwe. There is no-one there who can reasonably provide it. The evidence has not established that that is the case. The doctor has suggested that a family member should be available to care for the Appellant. In 2011 the Appellant's mother left Zimbabwe, leaving the Appellant on her own. At that time the Appellant

was an adult. Her mother's evidence is that she contacts the Appellant by telephone and Skype, but she is not prepared to return to Zimbabwe to care for her. This in itself makes me believe that the Appellant's mother is exaggerating the present situation. I do not find that it has been established that the required level of care in the country where the Appellant is living cannot be obtained with the financial help of the Sponsor. For this appeal to succeed under the Rules not only does the Appellant have to be living in compassionate circumstances they have to be very exceptional compassionate circumstances. I believe that if that was the case the Appellant's mother would be prepared to return to Zimbabwe to care for the Appellant. Her mother's move to the United Kingdom was one of choice, not necessity. She has chosen her husband over her daughter. She is, however paying for medical treatment for her daughter and accommodation for her daughter and I find that the Appellant is therefore not living in the most exceptional compassionate circumstances in Zimbabwe. I find that a nurse or other carer could be employed by the Sponsor to care for the Appellant if she feels that is necessary. The evidence, however, apart from the oral evidence, does not suggest that the Appellant needs daily care. With regard to her attempted suicide the only evidence of this is hearsay and oral evidence.

44. The personal care, which I am told is required by the Appellant, has to be long-term personal care. The medical evidence does not state that the Appellant's medical condition is long-term. With the treatment she is receiving in Zimbabwe she may well start to recover and be able to look after herself.
45. I have to consider the situation of the Appellant's grandparents who live in a rural area in Zimbabwe. I have no medical evidence about their state of health. I am told they are elderly but there is nothing to support the oral evidence about them. Perhaps the Appellant could stay with them or they could travel to the Appellant and look after her.
46. This Appellant's claim cannot succeed under the Immigration Rules.
47. I now have to consider Article 8. Article 8 is now contained in the Immigration Rules. I do not find that the Appellant has family life with her mother in the United Kingdom. She has her own life in Zimbabwe. She is an adult and was an adult when her mother left in 2011. I accept that there can be family life between adults but there is no evidence before me to show that there is anything unusual or exceptional in the Appellant's relationship with her mother.
48. The public interest question is included in the Immigration Rules.
49. I have considered paragraph 276ADE of the Rules and it is clear that its terms cannot be satisfied. I have also considered Appendix FM and paragraphs E-ECDR 2.4 and 2.5 and again their terms cannot be satisfied.
50. I am now considering Article 8 outside the Rules. To do this I need to look at the Nationality, Immigration and Asylum Act 2002 and the new Part 5A therein which contains Sections 117A to D. I have to carry out a proportionality exercise. I have to weigh the Appellant's and her mother's human rights against public interest. This Appellant is receiving medical treatment in Zimbabwe. If she comes to the United



Kingdom she will probably receive the same medical treatment and may well receive this on the NHS and this has to be taken into account when public interest is dealt with. I have to consider the case of **Razgar [2004] UKHL 27**. When the balancing exercise is carried out I have to look at the maintenance of effective immigration control. I have been told that no claims on public funds will be made but if the NHS is used then this is in effect, a claim on public funds. The Appellant will not be financially independent. She will be relying on her mother and stepfather. She is an adult and she was an adult when her mother left her in Zimbabwe. When proportionality is assessed public interest must succeed.

51. I find that this Appellant's family and private life is in Zimbabwe and her claim cannot succeed under Article 8 of ECHR.

**Notice of Decision**

52. I dismiss the Appellant's appeal under the Immigration Rules.
53. I dismiss the Appellant's appeal under Article 8 of ECHR.
54. Anonymity has been directed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray