Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/18646/2013

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham	**Decision & Reasons Promulgated**
On 3 September 2015	**On 4 September 2015**

Before

UPPER TRIBUNAL JUDGE PITT

Between

PROUD MNCEDISI DUBE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lane, instructed by TRP Solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 4 August 2015 of First-tier Tribunal Judge Raikes which refused the appeal against refusal of entry clearance as a dependent child.

2. The appellant is a citizen of Zimbabwe, born on 3 September 1995.

3. Judge Raikes found that the sponsor, the appellant's father, did not have sole responsibility, that there were not "serious and compelling family or other considerations which make exclusion of the child undesirable" and that it had also not been shown that the decision amounted to a breach of the appellant's rights under Article 8 the ECHR.

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4. Ground 1 argues that the First-tier Tribunal did not apply the correct test under paragraph 297 (i) (f) of the Immigration Rules of "serious and compelling family or other considerations which make exclusion of the child undesirable". The grounds refer to the wording used by the judge at [35], [38] and [39] which was for a need to show that the appellant was "living in serious and compelling circumstances that would make his exclusion from the UK and undesirable".

5. The just set out the correct test is at [8]. The wording used at other points of the determination does not, in my judgement, show that the correct test was not applied in substance. It is suggested that the wording used meant that material considerations were left out of the assessment. Mr Lane set out a number of what he maintained were those material considerations [6] of his skeleton argument. To my mind this list comes fully within the comments in VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC) which stated in the head note:

> “Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet”

and at [24]:

> “This is not how appeals should be mounted. As McCombe LJ in VW (Sri Lanka) [2013] EWCA Civ 522 said: "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge’s decision is legally flawed because it did not deal with a particular matter more fully. In my judgement, with respect, that is no basis on which to sustain a proper challenge to a judge’s finding of fact".

6. This submission is also put on the basis of the evidence being accepted at its highest. It was not. Judge Raikes found the sponsor not to be a reliable witness as regards sole responsibility at paragraphs [36] and [37]. It is the appellant’s mother who was found to be the parent with most parental responsibility in emotional and practical terms. The social work report from which some factors are taken was prepared at a time when the appellant was living in different circumstances and, in any event, was assessed in the context of paragraph 297(i) (f) at [39] but not found to show that the test was met given the importance of the appellant’s relationship with his mother.

7. This ground fails to recognise that it was entirely open to Judge Raikes to make a finding at [40] to the effect that the appellant’s relationship with and proximity to his mother was important, his welfare being provided for by that relationship and care from her family in Zimbabwe with whom the appellant was living. Where that was so, it is difficult to see how paragraph 297(i)(f) could be met.

8. Ground 2 raises what, to my mind are immaterial matters. The challenges were no more important an objection to a reference at one point in the

decision to "appellants" rather than "appellant". The judge was not obliged to refer in terms to the appellant's skeleton argument. Mr Lane effectively conceded the lack of merit in the written ground and sought to re-argue it as a challenge to the finding at [51] that Article 8 was not engaged. I can only refer again to the sustainable finding on the strength of the appellant's relationship with his mother and satisfactory nature of his current environment. In that context it was open to the Judge to find at that any interference was not sufficient to engage Article 8 as the decision kept the appellant in those circumstances. A submissions that finding on Article 8 being engaged went behind a concession as to the appellant having a genuine relationship with his father misstates the reasons given at [51].

9. Ground 3 maintained that the judge failed to give adequate reasons. I did not find that this ground had any merit. It was open to the judge to find it reasonable for evidence of a school place being refused to be provided and to place weight on the point when it was not. It was equally open to the judge to look for better evidence to support the allegation of abuse by the appellant's step-father. Judge Raikes did not make a bare finding at [56] that the appellant was sufficiently well provided for by his mother's relatives. The comment was made in the context of the all of findings in the earlier parts of the decision as to the importance of his relationship with his mother, proximity to her, care offered by her family and so on.

10. Ground 4 is really a submission that the judge was required to make a finding every aspect of the appellant's case arising from the evidence. He was not. The determination contains more than sufficient reasons explaining to the appellant why the appeal did not succeed.

11. Ground 5 maintains that the judge misdirected himself as to the ratio of Huang v SSHD [2007] UKHL 11 by imposing a test of exceptionality. In fact, the judge refers correctly to the ratio of Huang at [50] and, again correctly, to R (Razgar) v SSHD [2004] UKHL 27 at some length at [48]. The reference to a case succeeding under Article 8 being "rare" or "so special on its facts" does not show that a higher test, one of exceptionality was applied. The grounds fail to identify where or how, in the substance of the article 8 assessment the judge, such an incorrect approach was taken. Given that the finding at [51] as to Article 8 not being engaged here is sustainable, there was no requirement for a proportionality assessment applying the Huang and Razgar tests in any event so this ground cannot be material.

12. For all of those reasons I did not find that an error on a point of law had been shown in the First-tier Tribunal decision.

Decision

13. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed Date
Upper Tribunal Judge Pitt