Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/12704/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14th March 2016	**On 26th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

Y M S T
(ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ACCRA

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondent: Mr D Akin-Samuels, instructed by JDS Solicitors

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but nonetheless for the purposes of this decision I shall refer to the parties as they were described before the First-tier Tribunal that is the Secretary of State as the respondent and Miss ST as the appellant. The appellant is a citizen of Cameroon aged 16 years born on 9th February 1999 and she appealed against a decision of the Entry Clearance Officer dated 23rd September 2014 refusing her entry clearance to join her mother and father under paragraph 297 of the Immigration Rules. First-tier

Tribunal Judge Majid allowed the appeal in a decision promulgated on 10th September 2015.

2. At paragraph 11 the judge set out the following

> *"11. The dispositive aspects of the case are as follows:*
>
> *a) I have carefully perused the documents to reach the conclusion that this case should be handled by an illuminated use of discretion, remembering that here we are dealing with the bet interest of a 16 year old girl who, as one can appreciate, is vulnerable due to her residence in Cameroon with two teenage boys.*
>
> *b) The Appellant's aunt used to look after her but in August 2013 she died and now she is living with a friend of her mother who is not willing to commit to the longterm supervision of this girl.*
>
> *c) In their oral evidence both the Appellant's parents have said that they are very concerned about their daughter's welfare and she should be with them. They are keen to get her into school in the UK and to look after her well.*
>
> *d) The Appellant is entitled in law to claim benefits – particularly Child Benefit. For her parents to say to me that they will not claim any benefit cannot be accepted by me. The fact the Local Authority has given a written assurance that the Appellant could join her parents in the same dwelling without any increase in the Housing Benefit is, of course, admissible evidence.*
>
> *...*
>
> *20. On 4 February 2011 a five-member bench of the Supreme Court (the highest judicial body in the UK) gave its judgment in ZH (Tanzania) v. SSHD [2011] UKSC 4. It is widely regarded as a landmark decision following the significant judgments from the House of Lords on Article 8 ECHR which have emerged in the last few years including in particular Beoku-Betts [2008] UKHL 39, Chikwamba [2008] UKHL 40, and EB (Kosovo) [2008] UKHL 41. Reversing the Court of Appeal decision, the Supreme Court unanimously held that the best interest of the child had to be considered and given paramount weight as part of the assessment of proportionality under Article 8 ECHR.*
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> *21. In ZH (Tanzania) [2011] case the Supreme Court said "In reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interest. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors.*

...

29. Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, cognisant of the fact that the burden of proof is on the Appellant and the standard of proof is the balance of probabilities, I am persuaded that the Appellant comes within the law and can benefit from the relevant Immigration Rules, as amended."

3. The judge allowed the appeal but this was challenged, with permission, by the Secretary of State on the basis that there was an absence of reasoned findings, there was no indication of balancing the evidence or considering the relevant merits of the different strands of the evidence. There was an entire absence of findings fundamental to the appeal such as the status of the appellant's parents in the UK and why they could not live with her in Cameroon. There were no findings as to why the appellant's circumstances were different at the date of claim to the circumstances of August 2013 when the carer died. There were no findings as to why the appellant could not live with the family members such as cousins and family. There were no findings on credibility a relevant issue given that the sponsors gave conflicting evidence on the family members still in Cameroon.

4. There was a lengthy summary of the legal principles and authorities from paragraph 16 onwards but the Tribunal Judge had no regard to Section 117B(3) of the Nationality Immigration and Asylum Act 2002 and had misdirected himself in relation to the best interests of the child and 3. S55 of the Borders Citizenship and Immigration Act 2009 of the Borders Citizenship and Immigration Act 2009.

5. At the hearing before me Mr Akin-Samuels relied on his skeleton argument and submitted that the appellant was a young Cameroonian who was 15 years old at the time of the entry clearance application and her mother was an asylum seeker and had since been naturalised as a British citizen. He submitted that paragraph 29 showed that the judge had taken into account all of the oral and documentary evidence but agreed that he could not point me to specific findings within the determination save for a general finding in relation to paragraph 11 that this was the 16 year old girl.

6. Mr Whitwell emphatically concentrated on the lack of any reference to **EV (Philippines) & Ors v Secretary of State for the Home Department** [**2014**] EWCA Civ 874 and the absence of reasoned findings.

7. In conclusion, it is evident that there were no findings regarding key issues in this appeal not least the immigration status of the parents, the prospects of other family members living with the appellant and the oral evidence of the parents with regards to whom, it was merely recorded, that "they are keen to get her into school in the UK and to look after her

well." The judge did not engage with the content of the Entry Clearance Officer's refusal specifically the income of the mother, or that the sponsor would be able to maintain and accommodate the appellant in the United Kingdom. There was no reference to Section 117 of the Nationality Immigration and Asylum Act 2002 and the legal direction that the best interests of the child should be given "paramount weight as part of the assessment of proportionality under Article 8 ECHR" is simply incorrect.

8. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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 him or any member of their 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. This is because the appellant is a minor.

Signed Date 21st April 2016

Deputy Upper Tribunal Judge Rimington

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