Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07590/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 7 and 29 November 2017	**On 6 December 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[L M]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Winter, Advocate, instructed by Gray & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DTERMINATION AND REASONS

1. The appellant is a citizen of Zimbabwe, born on [ ] 1983.

2. The respondent refused the appellant's claim on protection and other grounds for reasons explained in her letter dated 12 July 2016.

3. First-tier Tribunal Judge Blair dismissed the appellant's appeal by determination promulgated on 29 March 2017.

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4. The first ground of appeal to the UT is that the judge erred at ¶22 -24 by not referring to submissions made on a report to the police in Zimbabwe of a missing person, made in an election week when abuses peak, and by finding no coherent explanation for discrepancies arising from the report.

5. I advised at the hearing on 7 November that I found no merit in this ground. As Mr Matthews submitted, the background evidence on which it is founded does nothing to explain away the discrepancies between the report and the evidence from the appellant and her husband, or to show why the report might be falsified on points of detail. This is no more than disagreement on a factual matter which the judge was entitled to resolve as he did.

6. Ground 2 (which was plainly the reason for the grant of permission) disclosed failure to resolve the appeal in terms of ¶276ADE (vi) of the immigration rules.

7. The appellant had not suggested that remaking of the decision on this issue involved any further hearing of evidence, and had not applied to introduce any further evidence; but Mr Matthews had been handicapped in preparation for that eventuality by the absence of the respondent's file containing the underlying evidence.

8. On the view that only ground 2 was established, parties agreed that remaking of the decision was apt to take place in the UT at a further hearing.

9. A decision on error of law was issued, setting aside the decision of the First-tier Tribunal. That decision recorded it as common ground that (although decided in the context of ¶399A rather than 276ADE) on "integration" the starting point is at ¶14 of *SSHD v Kamara* [2016] EWCA Civ:

> … the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

10. Notice was issued of a further hearing, for submissions on the remaking of the decision (in terms only of ¶276ADE of the rules), on 29 November 2017.

11. Under cover of a letter dated 28 November 2017, the appellant provided counsel's skeleton argument "and an inventory of productions upon which we intend to rely at the hearing".

12. The productions include further evidence – some simply updating, some general background, but also new evidence about the appellant's uncle in Zimbabwe.

13. Mr Matthews opposed the admission of any new evidence.

14. There was considerable force in that objection, given the history of the case to date; non-compliance with rule 15 (2A) and with directions issued earlier in the case; and the very late stage at which the evidence was tendered.

15. By way of background, there were two other cases on the day's list, in which even more seriously defective applications were made (through other agents). As the hearing day developed, however, it was possible to give Mr Matthews time to consider the evidence, and although the respondent's opposition was not withdrawn, the evidence was admitted.

16. The appellant's skeleton argument refers to *Kamara* (above). It refers also to *Ogondimu* [2013] Imm AR 422, on the view that although the wording of the rule has changed, factors mentioned there remain relevant: time spent in the country where the person would have to go; age at which the person left; exposure to that country's cultural norms; whether she speaks the language of that country; extent of family and friends in that country, and quality of relationships with them.

17. I understood Mr Matthews to agree with that submission, so the applicable law is not in any dispute.

18. Mr Winter's submissions were along the lines of the skeleton argument, grouped around these points:

    (i) Current political instability in Zimbabwe.

    (ii) Length of residence of the appellant in the UK (since 2001).

    (iii) Situation of her husband and child, her dependants in these proceedings.

    (iv) Lack of family ties in Zimbabwe (mother in law in South Africa; mother, brother and sister all settled in the UK).

    (v) Economic situation in Zimbabwe (references to background evidence given).

    (vi) Appellant's child never having lived in Zimbabwe.

    (vii) Appellant's child attending nursery in the UK.

    (viii) Appellant and child's close bonds with family in the UK.

    (ix) Appellant's family in UK also have children.

    (x) No accommodation to return to in Zimbabwe.

(xi) Conditions to be faced by appellant and family in Zimbabwe (background references given).

(xii) Employment prospects poor (background references given).

(xiii) Living conditions to be faced (background references given).

19. The principal points I took from the respondent's submissions were these:

(i) Remaking of the decision was confined to a discrete issue.

(ii) There was no challenge to the FTT's resolution of the claim on article 8 grounds, which incorporated consideration of the best interests of the child.

(iii) The only challenge brought by the appellant against the outcome on protection grounds had been resolved against her.

(iv) Those adverse findings were relevant to the outcome on the one outstanding issue.

(v) Standing the FTT's findings on humanitarian protection and on article 3, the same factors could not lead to success on the private life basis of "very significant obstacles to integration". That was not an easier legal alternative, available on the same facts. It set a high bar.

(vi) The appellant had been found not to be a credible witness regarding the alleged detention of her husband's father and her mother-in-law's flight to South Africa. There was no reason to credit her current claims to have no useful family connections in Zimbabwe. In respect of her husband's family, the starting point was to the contrary.

(vii) The appellant would not be returning to Zimbabwe alone. The presumption was that she would return with her husband and their daughter. Based on the FtT's findings, her husband's father was a government official, likely to be comparatively advantaged.

(viii) The appellant included in her new inventory of productions a letter and copy documents from an uncle, to promote her allegations of likely deprivation, but the information showed that he was benefiting from private medical health treatment, which was available only to the relatively favoured few.

(ix) Although President Mugabe has recently left office, there was no evidence of a politically deteriorating situation, such as might cause the appellant any difficulty in integration.

(x) The appellant speaks English, the principal common language in Zimbabwe. Her screening interview record shows that she also speaks Shona, the other principal language of the majority.

(xi) The appellant grew up and reached the age of majority in Zimbabwe.

(xii) The appellant has continued to live among members of the Zimbabwean diaspora.

(xiii) There was no reason to think that the appellant would not be well attuned to the cultural norms of the country.

(xiv) There was no reason to accept the appellant's assertions of the extent of deprivation and lack of family contact to which she would be exposed.

(xv) The appellant would have the benefit of returning with a package provided by the respondent to help re-establish yourself and to obtain employment and housing.

(xvi) There were undoubtedly difficulties over housing and employment in Zimbabwe, but the appellant and her husband would be relatively advantaged rather than disadvantaged.

20. Mr Winter in response submitted thus:

(i) It was irrelevant to refer to the appellant's poor immigration history.

(ii) Absence of a challenge to findings on humanitarian protection and article 3 grounds did not resolve the issue of integration.

(iii) The respondent sought to interpret the evidence from the appellant's uncle to show that circumstances were not as bad as painted, but notably his letter referred to "Nigel", presumably another close relative [a cousin, perhaps?], having to leave the country for South Africa.

(iv) Provision of a package by the respondent was meant as a cushion or a starting base, not to ensure longer term support, or integration.

(v) The evidence of difficulties over housing and accommodation was that these apply not only to the deprived few, but to the mass of the population.

21. I reserved my determination.

22. Having followed up the appellant's background references, there is no doubt that the situation in Zimbabwe remains bleak for the majority of the population – which is why so many of them have left for South Africa, the UK and elsewhere.

23. The factors which the appellant prayed in aid illustrate her great (and understandable) reluctance to relocate herself and her family to Zimbabwe, and the preferability of life in the UK; but they do no more than that. They do not bear significantly on the issue of integration.

24. The appellant has advanced everything she could, but the argument on her side is effectively rebutted by the respondent's submissions. On the essential question of integration – the "insider or outsider" question – there is really nothing in her favour.

25. Far from there being obstacles to the appellant's integration in Zimbabwe, still less "significant" or "very significant" ones, everything points to her being an insider not an outsider, and to a relatively easy adjustment, substantially assisted by the respondent.

26. The appellant's appeal, as brought to the FtT, is **dismissed** on all available grounds.

27. No anonymity direction has been requested or made.

6 December 2017
Upper Tribunal Judge Macleman