



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/00502/2017

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons Promulgated

On 20 March 2018

On 22 March 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

Miss RUVIMBO RENEILO NAKHOZWE

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M A Rana, Counsel

(instructed by Sabz Solicitors LLP)

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Designated First-tier Tribunal Judge McCarthy against the decision and reasons of First-tier Tribunal Judge Moore who had dismissed the Appellant's entry clearance appeal (made on human rights grounds) in a decision and reasons promulgated on 9 November 2017.
2. The Appellant is a national of Zimbabwe, born on 15 March 1999 and thus already an adult by the time her appeal was heard. As noted already, the appeal lay on human rights grounds only, although that question had to be approached through the lens of the Immigration Rules, as the judge did. The judge found that the Appellant had been left in the care of her aunt at the age of two when her mother and sponsor left Zimbabwe. Sole responsibility had not been shown to have been exercised, the evidence was deficient in various ways and there were no serious or compelling family or other considerations.
3. Permission to appeal was granted to the Appellant by Designated Judge McCarthy because he considered that the judge had arguably erred by failing to consider the fact of the Appellant's sponsor's chemotherapy treatment and its impact on her ability to travel. It was arguable that this made exclusion of the Appellant disproportionate in Article 8 ECHR terms.
4. Standard directions were made by the tribunal. A rule 24 notice opposing the appeal was filed by the Respondent.

Submissions

5. Mr Rana for the Appellant (who had appeared below) applied to adduce evidence which had not been before the First-tier Tribunal judge. This evidence was said to relate to current circumstances. The

tribunal declined to admit fresh evidence, not available to the trial judge, as it could not affect the determination of whether there had been a material error of law. Such evidence could be considered in the event that a rehearing was found necessary.

6. Mr Rana also sought to expand the grounds of appeal to include what he submitted was an obvious R v the Secretary of State for the Home Department, ex p Robinson [1997] 3 WLR 1162 point, namely the relationship between the Appellant and her two half siblings in the United Kingdom. The tribunal demurred that the point was obvious, let alone material. There had been ample opportunity to seek permission to appeal on any potentially material issue arising from the judge's decision and reasons, and it was too late to raise what on its face was a weak point.
7. Mr Rana went on to submit that there was a complete absence of any mention of the Appellant's sponsor's medical condition in the determination. The judge had faithfully recorded the existence of such evidence and also the submissions made on the point, but then had said nothing further. That was a material error of law and the decision and reasons should be set aside and remade. This issue was explored further in dialogue with the tribunal, by reference to the medical evidence which had been before the trial judge.
8. Ms Isherwood for the Respondent submitted that there was no material error of law. The medical evidence had not shown that the Appellant's sponsor was unable to travel to Zimbabwe. Indeed, the evidence showed that the sponsor had made a good recovery from a potentially serious situation. The onwards appeal should be dismissed.
9. Mr Rana reiterated the submissions he had made earlier by way of reply. There were no adequate reasons.

Discussion – no error of law

10. It is the case that the trial judge recorded both the medical evidence which referred to the Appellant's sponsor's operation and subsequent chemotherapy, and the submissions made by counsel for the Appellant, yet made no clear reference to that evidence in his decision and reasons. The remainder of the decision addressing the other issues is careful and thorough. Ordinarily, such a failure would amount to an obvious material error of law, which would necessitate a rehearing.
11. Nevertheless, error of law though that was, it was not in the event material as it had no bearing at all on the judge's secure primary finding, namely that the Appellant had failed to demonstrate that her sponsor had sole responsibility for her. The judge gave full and detailed reasons for reaching that finding. They are unimpeachable and must stand.
12. The difficult point is whether the judge's references to there being no compelling family or other considerations which made the exclusion of the child undesirable (see [29] of the decision) and that there were no exceptional circumstances (see also [29]) were sufficient to address the evidence of the sponsor's condition as it stood at the time of the hearing. (The tribunal has no need to go into the specific details of that condition here, which would be intrusive.) There was no medical report for the judge to consider, however brief. Instead there were a series of medical notes. These showed that the Appellant had been operated on as a medical emergency, had recovered well and was receiving chemotherapy as a conservative and preventative measure. There was no suggestion that the Appellant was unfit to travel reasonably soon or faced significantly reduced life expectancy. Nothing to the contrary was identified to the tribunal either at first instance or in the Upper Tribunal.
13. Thus, highly desirable though fuller reasons from the judge may have been, it was open to him to find on that evidence that it neither amounted to a compelling consideration or an exceptional circumstance. The medical evidence was insufficient to have

warranted such a conclusion. That of course by no means suggests that sympathy is not due to the Appellant's sponsor, but appeals cannot be decided on sympathy, only on evidence which can properly be found to be compelling or exceptional for these purposes.

14. For these reasons, the tribunal finds that limited and inadequate reasons provided by the judge did not to a material error of law. The outcome of the appeal would have been the same, as the evidence fell short of what was required for a different result. The onwards appeal must be dismissed.

DECISION

The onwards appeal is dismissed

The original decision and reasons stands unchanged

Signed

Dated 20 March 2018

Deputy Upper Tribunal Judge Manuell