



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

Appeal Number: PA/03531/2017

THE IMMIGRATION ACTS

Heard at Field House

Oral Decision

& Reasons

On 5 February 2018

Promulgated

On 8 March 2018

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[C P]

(~~ANONYMITY DIRECTION NOT MADE~~)

Respondent

Representation:

For the Appellant: Mr S. Kotas, Home Office Presenting Officer

For the Respondent: Mr R. Toal, Counsel, instructed by

DECISION AND REASONS

1. This is the appeal of the Secretary of State brought against the determination of First-tier Tribunal Judge Griffith whose determination was promulgated on 10 October 2017 in which he allowed the appeal of [CP] on human rights grounds. He dismissed the asylum appeal and the Article 3 claim and no challenge is made to those findings. Consequently the only material aspect of the claim was the Article 8 claim.
2. I shall refer to [CP] as the appellant as she was in the First-tier Tribunal. She is a citizen of Zimbabwe who was born on 1 February 1976. She is

now 42 years old and is a single woman with no dependants. She has what has to be described as a poor immigration history. She came to the United Kingdom in 1994 as a visitor with her aunt but then returned to Zimbabwe. The significant entry into the United Kingdom as far as we are concerned is the last that took place when she returned to the United Kingdom in September 2000 with a six month visit visa. That visit visa would have expired in March or April of 2001. She was then aged 24 and she has remained as an overstayer ever since. She sought to remain as a student in 2003. That was refused in 2005. It was considered and refused at a time when she had no extant leave and there was therefore no continuation leave. She later applied for further leave to remain and this was also refused. She was served with a notice of removal on 7 August 2015 and later submitted additional grounds. The application was refused in September 2015. Very much at the end of the period, she claimed asylum on 9 October 2015 in circumstances where there was no arguable case that she was at risk of serious harm on return to Zimbabwe. The human rights claim was a parasitic claim attached to that asylum claim, brought under the operation of Article 8.

3. The appellant has three sisters in the United Kingdom. [M] was born in 1983, [J] in 1979 and [S] in 1981. Between those three sisters there are some four nephews and nieces and the one which is of most significance for our purposes is K who was born on [] 2005. She is of course the appellant's niece and she is now aged 12. There are other children who are mentioned but they do not pose such a significant difficulty.
4. The judge dealt with the appellant's claim under Article 3 following the diagnosis of PTSD which was provided in a report by Professor Katona. It was based upon incidents of domestic violence experienced by her in the United Kingdom. He concluded that the appellant was suffering from PTSD and he recommended treatment in the form of cognitive behavioural therapy rather than antidepressants. He failed to give any reasons to support his conclusions and it was as a result of this that the judge did not attach significant weight to his report as outlined at paragraph 51 of the determination. However it is clear that the judge took into account Professor Katona's report as one of the factors which assisted him in reaching his conclusion in relation to Article 8.
5. In addition there was a report of Mr Horrocks. That was referred to expressly in paragraph 56 of the determination in which the judge says that he had regard and placed significant weight on the report of Mr Horrocks. He then summarised it in very very brief terms. They were, in my judgment, inadequate to do justice to it. On the face of it the fact that the appellant does not fall within the public interest criteria set out in Appendix FM of the Immigration Rules and does not meet the requirements of paragraph 276(1)(iii) was a significant factor in the consideration that the judge was required to carry out. The appellant does not meet the public interest requirement of the Immigration Rules. That was a matter recorded by the decision maker in the decision of March 2017.

6. However during the course of the hearing this morning I was referred to the report of Mr Horrocks. It is an impressive piece of report writing which clearly influenced the judge and which, had it been set out in greater detail, would doubtless have made my preliminary view of the merits of this appeal rather different. He sets out in his report following an interview with the appellant in September 2017 that she and all of her siblings were exposed to high levels of domestic violence at home and difficult relationships with their parents. It led to a very divisive family breakdown. That may have been part of the history and, if it were only a matter of history, would be of no particular relevance in the appeal before us. However it is clear that the long term sequelae of that severe abuse that the children suffered has had its impact - and continues to have its impact - on the lives of the siblings. In summary, the role that has been taken by the appellant is a role which is described as a parenting role to her siblings to the extent that she has become almost a maternal figure for them in the absence of their mother. Both the appellant and [J] spoke in similar terms about the role that she plays and the past family experiences.
7. The appellant herself was the victim of further domestic violence at the hands of her partner, [B], who had followed her from Zimbabwe. Her own vulnerability also features in the report.
8. In November 2006 the appellant returned to London in order to be close to her sisters and her grandmother. At that time K was about 11 months old. Her mother, [M], whose mother was in full-time work, was looked after by the appellant. [M] was struggling a great deal with her parenting role. She used to drink alcohol to excess. She was also the victim of domestic violence with her then partner. As a result of that early, very short period of some six months or so, the relationship between K and the appellant was developed. The role played by the appellant was an extensive one, not simply directed towards K, but towards her mother, the appellant's sister, [M]. She helped [M] attend alcohol misuse programmes and the appellant used to be involved in school events for K. Once social services became involved because of the ongoing domestic violence, the appellant would attend meetings with them. However, when [M] and K were moved to a women's hostel, the appellant continued to be involved and support her sister and niece. The appellant describes her sister as a vulnerable individual as a result of her experiences. She struggles to meet her own needs, let alone the needs of her daughter who was born when she was very young. Her difficulties had continued and there has been more recent involvement with social services over the last eighteen months following allegations that [M] was abusing K. Mr Horrocks appears to believe that as a result of the intervention of [CP], it was possible for [M] to remain living with K.
9. As a result of the housing department's involvement with the family, they decided in 2016 that the appellant could no longer live with [M] and K in their home but she continues to have contact in a very overt way, seeing them three times a week and staying overnight. The appellant attends all

of K's activities when she takes parts in plays, singing and sports. She takes K to guides and other sporting events such as school sports day. She is said by Mr Horrocks to be the first point of contact if an adult is required. She attends meetings, took K to her entrance exams for her secondary school and used to take her to and from school after her mother had started working full-time until K was able to manage this on her own. It is the appellant who talks with K about the problems of puberty. K herself is too shy to talk to her mother about such matters and her father is clearly not reliable. The appellant said that [M] had made a lot of progress and is now in full-time employment but remains very dependent on her elder sister and continues to be very immature in her functioning.

10. Mr Horrocks continues with the description and interview with K herself and it is clear from this that K places a great deal of reliance on her aunt's presence. There was also an interview with [J], her other sister. She describes her sister as speaking to [M] on the telephone several times during the day. They talk about everything and anything. Indeed [M] will call her in the middle of the night. The appellant calms her down and helps her out. She also described [M] as making progress and trying her best but was still very vulnerable. [J] also spoke about the risks if [M] were to revert to her alcohol misuse or even were she to go back to her abusive partner. She described the role that the appellant played in trying to keep the family together, notwithstanding the fact that [M] herself is often abusive to the appellant and says hurtful things but this is tolerated by her sister as part of the process of trying to keep the family together.
11. The report then deals with a series of questions. I am not going to refer to those questions and the answer that were provided. They are set out in paragraphs 4 onwards of the report but the summary of those findings is that the appellant's sister [M] is a vulnerable individual and needs a considerable amount of support that would inevitably be lost, were the appellant to be removed to Zimbabwe.
12. The conclusions and recommendations are set out in Section 5 of the report and paragraph 5.3 concludes

"On this occasion in the absence of the protective role played by [CP] and the lack of any progress in terms of the functioning of [M] there is a not inconsiderable risk that K would be removed from the care of her mother and that she would require alternative long term care arrangements. As a result there would be risks that K would suffer further emotional harm as well as harm to her educational and social development because of the upheavals in her life."

That report clearly underpins and informs the conclusion that is reached by the First-tier Tribunal Judge in paragraph 57 of his determination where he says

"I am satisfied that the relationship between the appellant and her adult sisters, her nieces and nephews and in particular her relationship with [M] and K goes far beyond the usual family ties and amounts to

family life, removing the appellant would be a significant interference capable of engaging Article 8.”

The judge then goes on to deal with proportionality and reaches his conclusion based both on the family situation and the background that Mr Horrocks referred to as well as the medical evidence which was provided by Professor Katona which although not meeting Article 3 standards was a material factor when it came to the consideration of proportionality.

13. Before I deal with my ultimate conclusion, I feel it necessary to deal with the way this was approached by the Presenting Officer at the hearing before Judge Griffiths. The note of what is said is as follows.

‘Although I also submitted that her physical conditions were not serious enough to engage Article 3 either and that the suggestion in the psychiatric report of suicide risk was very speculative, I did accept that they might engage Article 3. Similarly, although her carer roles of her sisters appeared to be merely the convenience she offered for child-care like many families and so amounted to nothing more than normal emotional ties, I did concede that combined with her medical issues and the length of residence, this might tip the overall Article 8 balance in her favour. I suspect that the new evidence on her mental state will lead to the judge allowing the appeal but possibly on Article 8 only.’

14. That was obviously a prescient statement by the Presenting Officer but it also assists me in forming a view as to how the case was approached. It was clear that the Secretary of State, as represented by the Presenting Officer, was clearly mindful of the matters to which I have referred and was providing the judge with a fairly open opportunity to consider Article 8 in its roundest form. In particular, this was not a case where paragraph 276ADE(1) afforded the public interest element of the appeal the range that is sometimes possible in other cases. Neither Appendix FM nor paragraph 276ADE(1) makes reference to the principles which we all now associate with the decision in *Kugathas v Secretary of State for the Home Department [2003] INLR 170*. The emotional ties for which one looks for evidence, the closeness between siblings and the emotional links that tie them together do not normally result in family life such as to prevent removal. There is understandably a high threshold to be met before those emotional ties and links provide protection against removal. In the circumstances described in the material placed before him, I think it was open to the judge to reach the conclusion that he did. It is for those reasons that I allow the appeal.
15. I apologise for dealing with the report of Mr Horrocks in such detail but I think it was only by reference to a detailed consideration of the report that the impact it had on the judge’s thinking comes through. That is to some extent reflected, I think, in the note that was made by the Presenting Officer. The report clearly influenced the stance that he adopted before the judge.

DECISION

- (i) I dismiss the Secretary of State's appeal.
- (ii) The determination of the First-tier Tribunal Judge revealed no error of law and his determination shall stand as the proper disposal of the appeal.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL