Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15776/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 July 2019	**On 2 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

ROBERT ADRIAN CAMPBELL LOGAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Bazini, Counsel instructed by One Immigration (Leicester)
For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed against a decision of the Secretary of State to refuse him leave to remain on human rights grounds. That appeal was heard first in the First-tier Tribunal before First-tier Tribunal Judge Robertson and dismissed. The appeal then came before me on 17 April 2019 when I set aside the decision of the First-tier Judge. I wrote:-

> "1. The appellant appeals against a decision by Judge of the First-tier Tribunal Robertson who, in a determination promulgated on 28 November 2018,

dismissed the appellant's appeal against a decision dated 11 July 2018 to refuse him leave to remain on private life grounds. I have decided to set aside the decision of the First-tier Judge and I direct that the appeal proceed to a hearing afresh which will take place on 12 July 2019.

2. In brief, I have found that there are two errors of law in the determination. Firstly, that the judge erred in her consideration of the family life of the appellant here and secondly, in not considering, or not giving appropriate scrutiny to, the multiplicity of relevant factors in this case which could have led to a decision that the removal of the appellant would be a disproportionate interference with his rights under Article 8 of the ECHR.

3. In particular I consider that the judge erred in paragraph 17 of the determination when she stated that although she accepted that the appellant had a close family bond with his children there was nothing more than normal emotional ties between a father and his children and, furthermore, when she appeared to assert that he was not currently financially independent – a conclusion which is not sustainable given the conclusions of the Supreme Court in **Rhuppiah v SSHD [2018] UKSC 58**. I would add that Mr Kotas very properly accepted that sufficient scrutiny had not been given to the factors which would mean that the removal of this appellant would be disproportionate.

4. The facts of this case are unusual. The appellant was born in Zimbabwe on 31 January 1971. His father had been born in New Zealand in 1939 and his paternal grandmother was born in Britain. The reality is that had Zimbabwe not been expelled from the Commonwealth the appellant would be entitled to an ancestry visa. Moreover, as I expand below the reason the appellant left Zimbabwe - because of the treatment he received as a white farmer from the Zimbabwean regime - was the behaviour of the regime which prompted that country's expulsion from the Commonwealth.

5. I would add that Mr Bazini indicated that, some years after the expulsion of Zimbabwe from the Commonwealth, Zimbabwean citizens who had grandparents born in Britain were still being treated as commonwealth citizens when the issue of ancestry visas were considered by the Home Office. Furthermore, although it appears that the appellant would not be entitled to New Zealand nationality, despite his father being born there it is possible that he would be entitled through his mother, who was born in Holland, to Dutch nationality and should that be the case he would be entitled to leave to remain as an EEA worker.

6. The appellant came to Britain in 2006 as a husband with his wife who, although born in Zimbabwe, was of British descent and therefore entitled to indefinite leave to remain. They came with their three children, Ryan born on 11 July 1991, Danielle born on 21 July 1994 and Erin, born on 30 August 1997. The appellant was given the appropriate two years' leave to enter. Before, however, he could make the application for indefinite leave to enter his passport was stolen. As he did not have a passport the Home Office would not entertain the application for an extension of stay and similarly did not accept further applications made for leave to remain on human rights grounds on the basis that he did not have a passport. It was not until a decision to refuse to consider an application was challenged by

judicial review that the application was considered and then refused, that refusal being the subject of this appeal. In the meantime, however, the strains of his situation, and possibly his treatment in Zimbabwe by ZANU-PF, led to the appellant becoming depressed and suffering mental health problems. He remains on antidepressants.

7. That, it appears, was a factor in the breakdown of his marriage, although the appellant's wife, who lives approximately one hour from where he lives with his son Ryan, remains supportive of him and they are still married. The appellant lives with Ryan, who supports him financially, as the appellant is unable to work. His daughter Erin has herself suffered mental health problems caused, in part, by the lack of security. Following the decision of the House of Lords in **Beoku-Betts v SSHD [2008] UKHL 39**).and a number of other judgments in the Court of Appeal and in the European Court of Human Rights, I consider that these factors would mean that the judge should have found that there would be an interference with the appellant's family, as well as his private life, if he were removed. I would add also that, of course, his family life here was established while he was legally in Britain. It is further of note that the appellant has done all he could to regularise his status since his initial leave to enter expired but was unable to do so because of his lack of a passport. It is his evidence that he attempted to obtain another passport from the Zimbabwean authorities here but they stated that he would have to return to Zimbabwe. He was reluctant to do that because of the treatment which he had received there before which caused him to leave, that is the appropriation of his farm (albeit that he was given a small amount of compensation) and the harassment which he received in Zimbabwe.

8. The appellant has chosen not to apply for asylum but given that he himself was a member of the MDC and that his father was a prominent critic of Mugabe, there must have been a case for asylum which could have been made ten years ago given his own past political involvement. It may, possibly, now be arguable that what he would face on return might amount to persecution.

9. I would add that there was considerable evidence put forward at the appeal which indicated the difficulties faced by the small white minority in Zimbabwe now, let alone the financial difficulties which he might face in making a living there which it is arguable could lead to the lack of ability to reintegrate into life in Zimbabwe in any meaningful way.

10. It is of note that the Presenting Officer at the appeal in the First-tier did not challenge the appellant's evidence relating to his family relationships or his ancestry or the reasons that he and his family left Zimbabwe.

11. Mr Kotas indicated that he would endeavour to ascertain whether or not the appellant might still be treated as a Commonwealth citizen by the respondent and therefore entitled to an ancestry visa and if he is able to obtain any definite answer he will correspond with Mr Bazini who will also make his own researches in that regard. The respondent may also wish to reconsider his response in the light of the various factors which I have set out above.

12. For the reasons which I have given above I set aside the determination of the First-tier Judge and I will direct that the appeal appears to a hearing fresh before me on 12 July 2019.

Directions

(1) The appeal is listed for a hearing afresh on 12 July. Time estimate, three hours.

(2) The appellant will inform the Tribunal of any response which he receives from the Dutch Embassy with regard to his application for Dutch nationality.

(3) The appellant will prepare a skeleton argument cross-referenced to the documentary evidence in support of the appellant's claim (a skeleton argument will largely reflect the terms of the grounds of appeal cross-referenced to the bundle of documents".

2. I now come to remake the decision. Ms Jones very properly did not make submissions other than referring to the letter of refusal

3. For the reasons which I set out in my first decision I found that the appellant has both family life here and indeed I find that he is exercising private life here. His removal would be an interference with his both his family and private life here.

4. With regard to the family life I would point out that I am aware that Ryan is his stepson, but clearly he is a child of the family and it is clear that the appellant is exercising family life with Ryan, his wife, and Erin, his biological child, who is just an adult. While of course these relationships are ones between adults, the support that Ryan is giving to him clearly takes this case beyond the position of mere ties between adults, and there is clearly emotional dependence between all members of the family. I would add that the appellant would qualify as self-supporting following the decision in **Rhuppiah**.

5. Having found the appellant is exercising private and family life here I must then consider whether or not he would succeed under the Rules under the provisions of paragraph 276ADE(1)(vi). I find that he would because I consider that there are very significant obstacles to his reintegrating into life in Zimbabwe. I say that given that he had a farm there, that although that farm was purchased it was purchased for a very small amount, but the reality is that the background evidence makes it quite clear that those such as the appellant, who no longer have property or a means of livelihood there would have great difficulty in reintegration. Moreover, he is not merely a white dispossessed farmer. The additional factors relates to his own involvement with the MDC and his father's political profile. Indeed, given his profile I consider that he might well have an arguable case to apply for asylum. I consider that the background documentation makes it quite clear that he would not be able to reintegrate. There is nothing to indicate that a man such as he would be able to find work and start a full life again. I consider that the appellant would qualify for leave to remain under the provisions of paragraph 276 ADE (1) (vi)

6. However, even if I were wrong in that conclusion, I can only find that his removal would be disproportionate. I find that because there are a large number of compelling and exceptional circumstances in this case. These I set out in my earlier decision. They relate to his family relationships here, to his own mental health and indeed to an extent that of Erin too, but also to his particularly close ties with this country. The issue raised at the previous hearing as to whether or not he would be able to apply for a grandparent visa by descent, has now been resolved by the evidence that has been put forward in the e-mail from Miss Wackett to Mr Neil O'Brien MP dated 24 June 2019. The reality is that should the appellant make such an application that would succeed. He would be entitled to work here because his paternal grandmother was born in Britain.

7. I consider that given all the circumstances of the case, including the time which he has lived here, and I would emphasise that he has at no time lived without making attempts to remain, and that indeed the fact that he did not get an extension of stay almost ten years ago was because of the exceptional circumstances in that his passport was stolen, that following the judgment in **Chikwamba** it would be inappropriate to expect him to leave the country to make an application for the ancestry visa abroad.

8. These are exceptional and compelling factors, which again lead me to the conclusion that he is entitled to leave to remain. Having set aside the determination of the First-tier Judge I therefore remake the decision allowing this appeal.

9. No anonymity direction is made.

Decision.

This appeal is allowed on human rights grounds.

Signed:  Date: 17 July 2019

Deputy Upper Tribunal Judge McGeachy