Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/18460/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 September 2018	**On 8 January 2019**
Prepared 21 September 2018	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

[S M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:
For the Appellant: Mr M Allison, Counsel instructed by Turpin & Miller LLP (Oxford)
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Zimbabwe, date of birth 8 May 2001, applied for entry clearance for settlement under paragraph 297 of the Immigration Rules HC 395 (as amended) (the Rules). The ECO, on 23 June 2016, rejected that application on the basis that the Appellant did not satisfy paragraph 297 of the Rules in relation to requirements to be met by a

person seeking indefinite leave to enter the United Kingdom as a child of a relative present and settled in the United Kingdom.

2. The ECO refused the application with reference to paragraph 297(i)(a) to (e) of the Rules but did not specifically address 297(i)(f) albeit in his concluding remarks said "I am not satisfied there are serious and compelling circumstances that make your exclusion from the United Kingdom undesirable". I take that to refer to sub-paragraph (f) of the Rule. The appeal came before FtTJ Pacey (the Judge) who on 21 November 2017 dismissed the human rights appeal.

3. Permission to appeal was given by FtTJ Pooler on 17 May 2018.

4. Much of the argument upon which the case was put to the Judge clearly referred to paragraph 297(i)(f) of the Rules. The skeleton argument provided by Mr Pipe of counsel clearly addressed the issue and asserted amongst other things that the Appellant met the requirements of that sub-paragraph of the Rules. Reliance had also been placed by Mr Pipe quite correctly on the case of Mostafa [2015] UKUT 112. The Judge addressed the case law that had been provided. It is fair to say he did not explicitly address sub-paragraph (f) but rather as Mr Bramble, it seemed to me, correctly pointed out did address the relevant factors that were being put forward as the reasons why the appeal could succeed on sub-paragraph (f) grounds. It was not it seemed to me seriously argued that the Appellant succeeded under other sub-paragraphs of 297(i).

5. It therefore was correct to say that on the evidence that was put forward, which was fairly recited by the Judge earlier in the decision, particularly made reference to the sponsorship statement, the updated sponsorship statement and the correspondence from the Appellant about her circumstances: All contained in the Appellant's bundle. Those matters were fairly set out earlier in the Judge's decision. It seemed to me quite unexceptional that the Judge should then have reached conclusions

particularly matters expressed in paragraphs 26 to 33 of the decision. Accordingly, I conclude the Judge had made sufficient findings in addressing that issue and more particularly had concluded that the case did not demonstrate the sound and compelling reasons to succeed under sub-paragraph (f).

6. The case of TZ [2018] EWCA Civ 1109 makes a well understood point but in this case the Judge had concluded that the Appellant did not succeed with reference to the Rules and accordingly it was not the case where it inevitably drove the conclusion that the ECO's decision was disproportionate.

7. Mr Bramble accepted, as indeed he must, that the Judge having made passing reference [D25] to the issue of Section 55 of the UK Borders Act 2009 but never provided any considered analysis of the wishes of the Appellant or, I suppose, the best interests of the Appellant in any specific analysis. The Judge did refer to the wishes of the Appellant, her discomfort in her accommodation during the school holidays and how she claimed some relatives or persons, she had stayed with, had treated her: Not in an abusive sense but to a degree using her for domestic chores within the household where she was staying.

8. Those matters were taken into account by the Judge and I concluded that any other Tribunal properly addressing the matter would be unlikely to have reached any different decision.

9. I therefore find that the Judge's error in failing to specifically make findings, as is well understood should be done, was an error of law. The question was whether it is material since the Judge did the best she could with the material she had. This seemed to me an unhappy case where through no criticism whatsoever of counsel who appeared below or of Mr Allison the evidence was as has become evident somewhat lacking and would have been better prepared to address those matters; which perhaps

could have been more persuasive on the issues of 'best interests' and 'proportionality'. The Judge did what she could with the material she had. To that extent therefore I conclude that the failure to analyse best interests was a error of law but the evidence upon which any analysis could only have been reached if evidence was contained within the Appellant's bundle.

10. It was not suggested that there was additional oral evidence that made a material contribution to that issue so the decision would not have been substantively different from that arrived at. Whilst I accept the error of law I do not regard it as a material error in the outcome of the appeal. The further criticisms made by Mr Allison are directed at a failure to take into account the aspirations of the Appellant's Sponsor. However I thought the Judge did have them in mind when reciting the evidence particularly the explanation of the Sponsor's involvement in the life of the Appellant, her husband's supportive position and their joint wish that the Appellant should come to live with them.

11. I considered therefore that those matters were in play and were considered by the Judge. To that extent therefore the absence of them from the analysis specifically did not seem to me to be likely to have made or would have made a material difference to the outcome of the appeal.

12. The final two criticisms relate to what are claimed to be irrational and inadequate findings made by the Judge. Irrationality is a high threshold to establish and rather the adequacy and sufficiency of the reasoning for the findings was potentially the better challenge. However, it is not for me to substitute a different view to that of the Judge even if I might not have reached the same view.

13. To that end I therefore have considered the points raised about the adequacies of the Judge's findings. I concluded that the criticisms have an aspect of 'the counsel of perfection'. I find decisions should not be taken

apart and analysed in such a narrow way. To do so is easily done but in fairness to the Judge, she did the best that could be done on the material before her.

14. I conclude that the criticisms do not go to show a material error of law in the adequacy or sufficiency of the reasons.

15. The Appellant is still under the age of 18 and is not apparently living an independent life. There were no other issues taken it seems with the balance of paragraph 297(2), (3), (4) and (5) of the Rules and the Appellant did not fall under the general grounds for refusal.

16. On one view the outcome of the appeal is most unfortunate but if this matter is to be pursued, fuller thought needs to be given to the presentation of the evidence to support a further application.

17. For these reasons, the Original Tribunal made no material error of law. The Original Tribunal's decision stands.

NOTICE OF DECISION

The appeal is dismissed.

ANONYMITY DIRECTION

No anonymity direction was apparently sought before the Judge nor is one required.

Signed Date 13 December 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has been dismissed and therefore no fee award is appropriate.

Signed Date 13 December 2018

Deputy Upper Tribunal Judge Davey