



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

Appeal Number: PA/07161/2017

THE IMMIGRATION ACTS

**Heard at Birmingham
On 25 January 2019**

**Decision & Reasons Promulgated
On 09 April 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**T K M
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dixon C ins Genesis Law

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

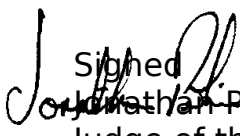
1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because this is a protection claim and people seeking international protection are generally entitled to anonymity.
2. This is an appeal by a citizen of Zimbabwe against the decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary

of State refusing her asylum and refusing her leave on human rights grounds.

3. There is no criticism of the decision to refuse her asylum. The possible error in the case concerned the decision to refuse her leave on human rights grounds to remain in the United Kingdom.
4. The short point is that the appellant is the mother of two children. Presently both children reside in the United Kingdom and it was argued that it was not only in their best interests that she remained with them but that it was a disproportionate interference with their rights to remove her.
5. It is right to make plain, as did Mr Mills and Mr Dickson did at the beginning of the hearing, that the proposal by the Secretary of State is to remove the appellant to Portugal. This is important. The First-tier Tribunal considered as a possibility removal to Zimbabwe which is the appellant's country of nationality. That was never the Secretary of State's intention and it is now plain from Mr Mills' concession this morning, if it was not plain already, that this case only ever concerned removal to Portugal. Portugal, of course, is the country of choice because the appellant daughter is a Portuguese national. It follows there is no question of this decision involving children losing their rights to reside in the European Union and the cases that rule against that are not relevant because it is not going to happen.
6. The appellant's daughter was born in 2002. Clearly in the ordinary course of events it is desirable that she has close contact with both of her parents but sadly the parents have separated. They have decided that it is best to arrange their affairs so that the boy lives with his father, I understand in Leeds, and the daughter lives with her mother, I understand presently in Leicester. The family is split. There was evidence before the First-tier Tribunal that the appellant's daughter enjoyed a proper relationship with her father and there are photographs of happy times together. This is wholly unremarkable but this is not a case put on the basis that the relationship between the child and her father was more than ordinarily important. It is not a case, for example, where there is evidence of the possibility of real damage because of the separation, rather the reality is that separation has already happened. Family members live in separate households and the Secretary of State's proposal is to remove the appellant so that the family members live further apart. Portugal is not the far ends of the earth. It is somewhere within the European Union where access is straightforward and unrestricted. There is no suggestion that it is unconscionably costly or otherwise difficult for visits to take place with reasonable frequency. The telephone and Skype and no doubt other contact mechanisms presently in place can continue.
7. These points were considered briskly at paragraphs 38 and 39 of the First-tier Tribunal's decision but they were most certainly considered. The judge had in mind the interference in the private and family life of the child that would be consequent on separation and found that, given the

family had already split and given that contact could certainly continue, that the interference was wholly proportionate.

8. With the benefit of hindsight and bearing in mind that the judge's attention was focused rather away from that point but on conditions in Zimbabwe, the part of the Decision and Reasons dealing with the welfare of the children could have been done better but there are few decisions of Judges that could not have been done better with the benefit of hindsight and the relevant points are considered the conclusion is rational.
9. I add a slight rider to this because the appellant insists that she cannot go to Portugal. The evidence for that is skimpy and consists simply of an email chain in which the Portuguese Embassy, which was not appraised of the full position, seemed to suggest that she would not be allowed to go. It was never suggested to them, as far as I can see, that she would be accompanying a child who was a national of Portugal and she would be exercising her treaty rights. That point is not made out but even if it is, it is something to consider in a future decision. It is not indicative of anything being wrong with the decision that is made. It follows therefore that I am satisfied that the points that needed to be considered have been considered and a proper conclusion given. I find no material error and I dismiss the appeal.


Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 4 April 2019