



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003391
First-tier Tribunal No:
HU/01549/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

GERTRUDE MAZIRE
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person assisted by Mr C Mupara of Counsel
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 6 October 2023

DECISION AND REASONS

1. The Appellant, who has Down's syndrome, is a citizen of Zimbabwe whose date of birth is recorded as 29th August 1977. On 25th November 2021 she made application for leave to remain in the United Kingdom on the basis of private life. On 3rd October 2022 a decision was made to refuse the application and the Appellant appealed to the First-tier Tribunal.
2. The appeal was heard by Judge Plowright who in a decision dated 22nd May 2023 dismissed the appeal.
3. Not content with that decision by Notice dated 6th October 2022 the Appellant made application for permission to appeal to the Upper Tribunal which permission was granted by Judge Gumsley on 27th July 2023 on the basis that:

“After finding that there would be very significant obstacles to the Appellant’s integration in Zimbabwe (albeit if returned alone) [the judge] failed to have sufficient regard to the principle set out in TZ (Pakistan) [2018] EWCA Civ 1109. It is also arguable that in concluding that other relatives of the Appellant would remain or go to Zimbabwe to look after her, [the judge] failed to have sufficient regard to the reality of the present situation and matters such as the fact that the Appellant’s mother had leave to remain (even accepting that there was no specific evidence as to the Appellant’s mother’s medical condition) and the Appellant’s siblings various circumstances and outstanding applications and claims, and thereby wrongly speculated as to what the result of these applications or the intentions of these relatives would be”.

4. I had the benefit of discussing the matter at some length with Ms Lecointe for the Secretary of State and Mr Mupara, who represented the Appellant in the First-tier Tribunal and who attended and assisted the Upper Tribunal in this matter today, although she, that is to say the Appellant, remains a litigant in person because of direct access.
5. Ms Lecointe accepted that if the status of each of the other family members had been known there was the possibility of the judge below going on to consider whether or not the family members as one family, having regard to the guidance in **Beoku-Betts [2008] UKHL 39**, *might* leave or be returned as a family at the same time and have considered therefore what impact that might have on the family life of the members of the family, but that was not the case.
6. The circumstances in the First-tier Tribunal were as Judge Gumsley observed and it is in those circumstances that Ms Lecointe, quite properly in my judgment, accepts not only that there was an error of law but also that in the re-making of the decision the only proper decision to be made is to allow the appeal and so in those circumstances the decision of the First-tier Tribunal is set aside and replaced with a decision that the appeal is allowed pursuant to Article 8 of the Human Rights Convention. I also make a full fee award in the sum of £140.
7. No anonymity order is made.

Decision

The Decision of the First-tier Tribunal is set aside and remade such that the appeal is allowed pursuant to article 8 of the ECHR.

A full fee award in the sum of £140 is made



Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 October 2023