Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: OA/18530/2012**

OA/18534/2012

OA/18548/2012

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 24 July 2014

Determination Promulgated
On 13 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

WUZIYA MARECHRA

EUNICE TANAKA MARECHARA

GREGORY TAGUMA MARECHERA

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Sarah Marechra the sponsor

For the Respondent: Ms C Johnson Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not deem it necessary to make an anonymity direction.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Law promulgated on 16 December 2013, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 13 August 1961 and is a citizen of Zimbabwe. The second and third Appellants are the children of the Appellant and Sponsor.
4. On 4 May 2012 the Appellant together with his two children applied for entry clearance to join Sarah Marechera for family reunion.
5. On 21 August 2012 an Entry Clearance Officer refused the Appellant's application by reference to paragraph 352A of the Immigration Rules. The refusal letter gave a number of reasons: there was no evidence that the parties were living as part of a family unit before Ms Marechera left Zimbabwe as they appeared to be living at different addresses; there was little evidence of any contact between the parties since the sponsor left Zimbabwe; the Respondent did not accept that the marriage was subsisting.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Law (hereinafter called "the Judge") dismissed the appeal against the Respondent's decision. The Judge found that the starting point for his determination was the decision of Judge Greasley who heard the Appellant's asylum appeal on 4 May 2006; Judge Greasley had found the Sponsor to be completely lacking in credit; he found no evidence that the sponsor and the Appellant and their two children lived together in one household as a family; he found the sponsor's credibility further undermined by the delay in her application for reunion; he found that while the parties were legally married he did not accept the marriage was subsisting; he went on to consider the matter under Article 8 and took into account that he did not accept that the marriage was subsisting ;the Appellant did not meet the requirements of the Rules; the Appellant and the children would be a burden on public funds which was relevant to the economic interests of the United Kingdom ; he did not find the decision disproportionate
7. Grounds of appeal were lodged in relation to the Appellant only not their two children and on 26 February 2014 Upper Tribunal Judge Connor gave permission to appeal.

8. At the hearing I heard submissions from Ms Marechara on behalf of the Appellant that :

   (a) She relied on the grounds of appeal drafted by her previous representatives.

9. On behalf of the Respondent Ms Johnstone submitted that :

   (a)The Judge set out clearly in paragraph 21 of the determination why the Appellant did not meet the requirements of the Rules

The Law

10. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:
   "*Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility),*

particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."

Finding on Material Error

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

13. This was an appeal by the first Appellant against a refusal of leave to enter the United Kingdom as the spouse of a refugee under Rule 352A and the second and third Appellants under Rule 352D.

14. The refusal letter in respect the first Appellant put in issue whether he met the requirements of 352A(iv) :

"*each of the parties intends to live permanently with the other as his or her spouse and the marriage is subsisting."*

15. In respect of the second and third Appellants the issue was whether they met the requirement of 352D(iv)

"was part of a family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum."

16. Ground 1 as drafted by the Appellants previous representatives argues that the Judge 'failed to resolve conflicts of fact and opinion'. I am satisfied that in resolving the conflicts generally in the evidence the Judge was entitled to take into account the determination of Judge Greasley in relation to the sponsor's asylum appeal and specifically his adverse credibility findings that the '*Sponsor had been economic with the truth throughout the asylum process.'* He noted that the Judge had found that in explaining her late claim for asylum the sponsor had invented an account of meeting a bogus lawyer in the United Kingdom to cover up the fact that she had been found working illegally in the United Kingdom.

17. In resolving the issue of whether the Appellants met the specific subsection of the Rules in issue the Judge therefore was entitled to conclude having heard the Sponsor give oral evidence and looked at the documents provided that the details

were ‘scant’ in relation to her life in Zimbabwe with the Appellants and he concluded in paragraph 18:

“*I have not found any evidence of specifics relating to the children and the Sponsor living together in one home where they had a family life that they are seeking to replicate in the United Kingdom*.”

18. I am satisfied that this was a finding open to him that made clear that the second and third Appellants did not meet the requirements of the Rule in issue. I am satisfied that it was then open to the Judge to reject as he did at paragraph 19 the explanation given by the Sponsor for the delay in making an application for the Appellants to join her and that this account, taken together with the lack of evidence of contact and financial support until recently, were relevant to the issue of whether the marriage was subsisting and they had been a family unit prior to the sponsor leaving Zimbabwe.

19. The Judge, having clearly identified the issues again at paragraph 20, was entitled to conclude that the Appellants could not meet the requirements of the Rules. Although it is argued in the grounds that the Judge has confused the provisions that relate to the first Appellant and his two children and indeed applied the wrong Rules he sets out the different provisions as they relate to the Appellants at paragraph 1 of the determination and these subsequent findings make clear that he appreciated what the issue was in relation to each of the Appellants.

20. Ground 3 argues that the Judge assessment under Article 8 which is set out at paragraphs 24-36 of the determination is flawed. The Judge followed the steps as set out in Razgar. The only criticism that might be levelled is that in accepting that there was family life for Article 8 purposes the Judge was generous and given his findings in relation to the Immigration Rules the Judge should have concluded that the Appellants fell at the first Razgar hurdle. However the requirements of the Rules that he was considering are different to the test under Article 8. Given that he had accepted that the Appellant and sponsor were still legally married and that the children were indeed the children of the sponsor and first Appellant he has accepted that the first question in Razgar was answered positively. He acknowledged that the issue was one of proportionality and I am satisfied that in assessing that he was entitled to take into account that the different test set out in

the Rules had not been met and also to take into account that on the evidence before him the Appellants would be a burden on public funds. He concludes that the decision is proportionate.

21. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning. His task was to resolve two key issues, whether the first Appellant and the sponsor intended to live together permanently and the marriage was subsisting and whether the sponsor had lived in a family unit with the second and third Appellants. The Judge clearly found against the Appellants on those two issues. The grounds are simply a disagreement with findings that were open to the Judge having found the sponsor wholly unworthy of belief.

CONCLUSION

22. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

23. **The appeal is dismissed.**

Signed Date 9.8.2014

Deputy Upper Tribunal Judge Birrell