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

Appeal Number: AA/02265/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 November 2015**

**Decision & Reasons Promulgated  
On 16 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**THE SECRETARY OF STATE FOR THE  
HOME DEPARTMENT**

Appellant

**and**

**MC  
(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Nath, Home Office Presenting Officer.

For the Respondent: None.

**DECISION AND REASONS**

1. Whilst the Secretary of State is the appellant in these proceedings in the Upper Tribunal, I retain the descriptions of the parties, as appellant and respondent, as they were in the First-tier Tribunal.
2. The First-tier Tribunal made an anonymity direction and I maintain this given my references to the appellant's health and personal circumstances.

3. The appellant is a citizen of Zimbabwe. She appealed to the First-tier Tribunal against the decision of the respondent to refuse her asylum and human rights claims. Her appeal against the decision in January 2015 to refuse her asylum claim was dismissed in the First-tier Tribunal and is not the subject of this appeal before me.
4. The respondent averred that the First-tier Tribunal Judge T E Richards-Clarke (“the FTTJ”) made a material error of law in allowing the appeal “on the basis that the decision under appeal is not otherwise in accordance with the law and is remitted to the Respondent to make lawful decisions in relation to the Article 8 and discretionary leave applications made by the Appellant in 2009/2010”.
5. The respondent’s representative submitted that the FTTJ had failed to take into account (admittedly for lack of evidence) that the respondent had made a decision on the appellant’s substantive application and requests for reconsideration of her claim outside the Immigration Rules. The respondent’s representative also noted that there had been no application for discretionary leave by the appellant. Thus there had been no outstanding application in that regard.
6. However, at the error of law hearing on 13 October 2015, the respondent’s representative conceded that the FTTJ had erred materially in law in failing to identify that the respondent had considered the application in the light of the former version of paragraph 276ADE(1)(vi). This error was irrespective of the FTTJ’s erroneous decision to allow the appeal on the ground that there was an earlier outstanding application. For this reason I found there was a material error of law in the FTTJ’s decision. I set it aside preserving the findings of fact of the FTTJ for a fresh decision to be made under paragraph 276ADE(1)(vi). Because the appellant had no legal representation at the hearing before me on 13 October 2015, further evidence would be required on the issue and because the appellant was suffering, at the hearing before me, from an eye condition which might impact on her ability to give evidence fully and comprehensively, I directed that the matter should be decided at a resumed hearing. Thus it comes before me now.

### **Submissions**

7. Mr Nath, for the respondent, submitted that the appellant had not demonstrated that she fulfilled the criteria in paragraph 276ADE(1)(vi) of the Immigration Rules insofar as her private life was concerned. There were no obstacles to her return.
8. I summarised the appellant’s case and she confirmed it was an accurate summary. She also told me she would be unable to subsist in Zimbabwe on return; she had no familiarity as an adult with the Zimbabwean way of life and would miss her family in the UK, namely her aunt and uncle.

### **The preserved facts and my findings**

9. Insofar as the human rights claim is concerned, the FTTJ's findings are as follows. The appellant's immigration history is set out in paragraph 2 of the decision (and the appellant confirmed to me that this was an accurate record save that she had been granted further leave to remain as a student in 2010 until 27 September 2010, the date of expiry of her last leave to remain):

"On 26 December 2001 the Appellant left Zimbabwe and arrived in the UK with a visit visa valid for 6 months. The appellant was granted further leave to remain on 15 April 2002 as a visitor until 15 July 2002. She was granted a variation of leave [sic] on 16 September 2002 as a student until 30 March 2003. She was granted subsequent leave as a visitor from 9 April 2003 and then again from 26 July 2003 to 31 November 2005 [sic]. She was then granted a variation of leave on 29 November 2005 [sic] and subsequent extensions as a student until 31 August 2009".
10. According to the record of asylum interview, the appellant applied for discretionary leave to remain in August 2010 but this was refused. The appellant claimed asylum on 5 March 2014 at the suggestion of the Home Office (again, according to her interview record). Her asylum claim was refused and her appeal against the refusal was unsuccessful and is not challenged before me.
11. The FTTJ notes an earlier finding in the determination of Immigration Judge Phull promulgated in December 2009 to the effect that "Appellant had entered the United Kingdom in 2001 and lived with her maternal Aunt and Uncle. To all extent and purposes they are her legal guardians and responsible for her welfare. Judge Phull also found the Appellant's Uncle "to be a credible witness giving his evidence in a candid and frank manner"."
12. There is no challenge to the credibility of the appellant's evidence and I find it reliable.
13. The appellant is now 31 years old. She arrived in the UK as a visitor when she was 17 years old and has therefore lived here for 14 years. She lived then and continues to live with her aunt and uncle, whom she has always called "mum and dad". They were her guardians whilst she was a minor in this country. As the appellant says, she started her adult life in the UK. Having initially entered the UK as a visitor she eventually studied here, obtaining various higher qualifications. She has also worked here and has had personal relationships here. She speaks English at home.
14. The appellant says she is unable to hold a full conversation in Shona and that, as a result, she has been ridiculed by some Zimbabweans resident in the UK because she is not able to converse with them. She has not been back to Zimbabwe since her arrival here but considers her lack of Shona language skills would hamper her on return.
15. So far as her background in Zimbabwe is concerned, the appellant was raised by her grandparents from the age of five. She attended primary

school whilst in their care and she had a happy childhood. They are now both deceased. They were the biggest influence on her when she was growing up. The appellant's aunt and uncle used to support her grandparents in Zimbabwe and they supported the appellant also. The appellant's bond with her aunt and uncle has always been strong. The appellant was sent to boarding school when she was 13 for four years. She spent school holidays at her grandfather's home. The appellant does not know why her biological parents did not look after her.

16. The appellant is a qualified dental nurse, a qualified dental radiographer and qualified oral health educator, with nearly ten years experience working for the NHS. She was a head nurse. Due to her immigration status she has been unable to work but has kept up to date on current UK dental regulations by attending dental shows and reading articles online.
17. The appellant has no criminal convictions. She is a valuable member of her local community and volunteers for her local church and with the British Red Cross refugee services. She is trained in first aid and emergency response.
18. The appellant told me that her biological parents live in Zimbabwe but she has no contact with them. She also has a sister and brother living there but, again, has no contact with them either. She has a step-sister living in South Africa. Her aunt had had contact with her biological parents over the telephone and that her own last contact with them was about 5 or 6 years previously. It had been several years since she had had telephone contact with anyone in Zimbabwe. She told me she had extended family in Zimbabwe but has no contact with them or with anyone there.
19. The appellant's evidence is that she would find it difficult to obtain work in Zimbabwe, even as a qualified dental nurse and radiographer. She told me she had looked into the possibility of employment but that "dentistry in Zimbabwe is not a big thing": people do not go to the dentist regularly as they do in this country. She said she had looked for jobs online and not found any. She was asked if she could get any work in Zimbabwe and said that the unemployment rate was very high and that she did not know what other jobs were available. She considered she would be a vulnerable person on return as a single woman without a support network and unable to support herself.

## **Discussion**

20. The burden of proof is on the appellant to demonstrate she fulfils the criteria in the Immigration Rules insofar as her human rights claim is concerned. The standard of proof is the balance of probabilities.
21. There is no suggestion that the appellant fulfils the criteria in Appendix FM as a result of her relationship with her aunt and uncle and I find that she does not, given her age and circumstances. She has been financially

independent of her aunt and uncle in the past, for many years, whilst working for the NHS.

22. Paragraph 276ADE(1) provides the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK. The subparagraph of relevance to the appellant is (vi) which provides as follows:

“(vi) ... is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant’s integration into with the country to which he would have to go if required to leave the UK.”
23. The appellant left Zimbabwe at the age of 17 to come to the UK as a visitor. She remained here as such and later was granted leave to study here. She has obtained various qualifications as a result.
24. The appellant has shown herself to be diligent and hard-working. She has achieved much during her time in the UK and this is to her credit. She is a useful member of her community. She has had a career as a dental nurse in this country and has worked as such. Her resourcefulness suggests that she would be able to live independently on return to Zimbabwe albeit she would find the transition difficult initially due to her absence from that country. She is currently being supported by her aunt and uncle in their home and there is no evidence to suggest they could not provide her with some initial financial support to enable her to set herself up on return. I note the appellant’s aunt has not been well and is now retired and her uncle is about to retire. However, given that the appellant is currently being supported by her aunt and uncle, these matters would not preclude the continuation of such support for a short period after the appellant’s return to Zimbabwe.
25. The appellant undoubtedly has a close relationship with her aunt and uncle and their children and I take this into account. However, she has been financially independent of her aunt and uncle for a number of years, whilst working for the NHS, and could be so again albeit in her country of origin.
26. I also take into account the appellant would be returning as a single lone woman. However, she has several professional qualifications and I find that she would in due course be able to find some work and to support herself on return. I appreciate that work as a dental nurse may not be readily available in Zimbabwe but she could take lesser work in the interim until she found work which was more fulfilling professionally. I have no doubt that her qualifications and experience in the UK would stand her in good stead in the Zimbabwean employment market notwithstanding the high levels of unemployment in that country. Such employment, in either capacity, would enable her to accommodate and maintain herself.
27. The appellant is a Zimbabwean citizen and spent her formative years in Zimbabwe where she was educated. She is familiar with Zimbabwean

customs and society, albeit her linguistic ability has waned somewhat since she left. Given her evident intellectual ability and personal drive, I find that she would be able to recover her Shona language ability in due course. I do not see her inability to hold a full conversation in Shona as a significant obstacle to her reintegration into Zimbabwean society. Furthermore, the fact that the appellant is involved in the Zimbabwean diaspora in the UK suggests that she has retained her links with Zimbabwean culture and society whilst in this country and that this would assist her with integrating on return.

28. The appellant claims that women are at risk of violence in Zimbabwe. She relies on the current Country of Information Report. However, the law criminalises violence against women in Zimbabwe and protection is therefore available for her in that regard. In any event, her protection claim has been dismissed on appeal.
29. For these reasons, I am unable to find that the appellant has demonstrated that she fulfils the criteria in paragraph 276ADE(1)(vi) insofar as her private life is concerned.
30. I have also considered whether an Article 8 assessment is required, outside the Rules. I bear in mind the principles in [SS \(Congo\) and Ors \[2015\] EWCA Civ 387](#) and [Sunassee \[2015\] EWHC 1604](#). I consider that the evidence has been considered adequately under the Immigration Rules insofar as the appellant's personal circumstances are concerned: her circumstances are not compelling such as to justify an assessment outside the Rules.
31. The decision of the FTTJ having been set aside, I remake it dismissing the appeal on the ground that the appellant does not fulfil the criteria in paragraph 276ADE(1) of the Immigration Rules or on human rights grounds.

### **Decision**

32. The appeal is dismissed under the Immigration Rules and on human rights grounds.

Signed  
Deputy Upper Tribunal Judge A M Black

Date

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed  
Deputy Upper Tribunal Judge A M Black

Date