



IAC-AH-CJ-V1

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

Appeal Number: AA/03713/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 18 August 2015**

**Decision & Reasons Promulgated
On 9 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**EMILY CHADZAMAKONO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Miss Warren, instructed by Pickup Scott, Solicitors

DECISION AND REASONS

1. I shall in this decision refer to the appellant as the respondent and to the respondent as the appellant, as they appeared respectively before the First-tier Tribunal. The appellant, Emily Chadzamakono, was born on 4 February 1985 and claims to be a citizen of Malawi. She appealed to the First-tier Tribunal (Judge Hindson) against a decision of the respondent to remove her to Malawi having refused her claim for asylum. The First-tier Tribunal allowed the appeal on human rights grounds (Article 8 ECHR). The Secretary of State now appeals, with permission, to the Upper

Tribunal. There is no cross-appeal in respect of the asylum/Article 3 ECHR decision of the First-tier Tribunal.

2. The appellant has a child (G) who she claims is the natural child of Stephan Tawoum who it is accepted is a German citizen. The judge found that Stephan Tawoum is the biological father of G who appears to have allowed the appeal on the basis that it would not be reasonable to expect the appellant (who is separated from Stephan Tawoum and is the only carer for G) to be removed from the United Kingdom given that it would not be reasonable to expect G to leave the European Union (see *Izuazu* [2013] UKUT 45 (IAC)).
3. The grounds of appeal draw attention to the fact that the judge had evidence before him that the German Embassy in the United Kingdom had not formally recognised G as a German citizen because Stephan Tawoum's name did not appear on G's birth certificate [35]. The grounds assert that it was a misdirection in law to find that the child was a German national. I find that that ground has no merit. The judge was required to consider the question of the child's nationality on the basis of the evidence which was before him; he was not required to seek to perfect the evidence of either party. He observed that the Family Court had recognised G as the natural child of Stephan Tawoum as had Northamptonshire County Council which had also had dealings with the child. The judge correctly recorded at [34] that the standard of proof was the balance of probabilities. He noted the "clear finding" of the Family Court which had been "supported by CAFCASS and the local authority". The judge concluded that "[Stephan Tawoum] is the biological father of G". He also noted that it was not contended that Stephan Tawoum had any active role in the child's upbringing. The judge has reached the decision which was plainly available to him on the evidence and has supported his decision with clear and cogent reasoning. The grounds of appeal are little more than a disagreement with the judge's findings. Further, it is not suggested by the Secretary of State that, if Stephan Tawoum is the father of G, it would be reasonable to expect the appellant (as G's only carer) to separate from her child and return to Malawi. The judge's conclusion may be a little brusque but, in the light of the contents of the remainder of the decision, is adequate. The appeal is dismissed.

Notice of Decision

4. This appeal is dismissed.
5. No anonymity direction is made.

Signed

Date 10 November 2015

Upper Tribunal Judge Clive Lane