IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/30121/2014
IA/30123/2014

THE IMMIGRATION ACTS

Heard at Birmingham Centre City Tower	**Decision & Reasons Promulgated**
On 20th October 2015	**On 27th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CATHRINE CHIKUVANYANGA
CHELSEA CHIKUVANYANGA
(ANONYMITY ORDER NOT MADE)

Respondents

Representation:
For the Appellant: Mr N Smart, Senior Home Office Presenting Officer
For the Respondents: Mrs K Obayelu of Goshen, Solicitors

DECISION AND REASONS

1. Cathrine Chikuvanyanga and Chelsea Chikuvanyanga are mother and daughter. They come from Zimbabwe. The daughter was born in this country on 30th November 2001. I will refer to them as "the Claimant(s)". Their appeals against the Secretary of State's refusal to grant leave to remain and to remove them to Zimbabwe, which had been made on 10th July 2014, were allowed by Judge of the First-tier Tribunal C M Mather

© CROWN COPYRIGHT 2015

following a hearing on 21st October 2014. The appeal of the second Claimant was allowed under paragraph 276ADE(iv) of the Immigration Rules and that of the first Claimant under Article 8 ECHR.

2. The Secretary of State was granted permission to appeal against those decisions. The Grounds of Appeal contend that the judge erred in considering whether there were compelling circumstances which would make it appropriate to disrupt the second Claimant's life in the United Kingdom, rather than considering the correct test under paragraph 276ADE(iv), which was whether it would or would not be reasonable to expect her to leave the UK. With regard to the first Claimant it was said that the reasoning was inadequate.

3. At the hearing before me Mr Smart relied on the Grounds of Appeal. He said that the thrust of the appeal was that the judge had relied on the guidance in **Azimi-Moayed and Others (decisions affecting children; and onward appeals) [2013] UKUT 197 (IAC)** in considering compelling circumstances but he accepted that at paragraph 26 of her decision the judge had stated that it would not be reasonable to expect the second Claimant to leave the United Kingdom. Mrs Obayelu for her part submitted that there was no error in the decision. Although the judge had referred to compelling circumstances she did address the issue of reasonableness and there was therefore no material error of law. With regard to the first Claimant Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (which was in force as at the date of hearing before the judge at first instance) applied the same test in respect of the first Claimant. Mr Smart for his part very fairly accepted that the section in question would work against the argument of the Secretary of State.

4. Having considered those submissions I came to the view that there was no material error of law in the decision of Judge Mather. Although she had referred to whether there were compelling circumstances which would make it appropriate to disrupt the social, cultural and educational ties of the second Claimant, who was as at the date of hearing 13 years of age and had been born in this country, it is the case that in the penultimate sentence of paragraph 26 of her decision the judge expressly found that it would not be reasonable to expect the second Claimant to leave the United Kingdom and that she therefore met the requirements of paragraph 276ADE(iv) of the Rules. A finding in that regard was open to the judge on the evidence and was adequately reasoned. In the light of the duty to consider the best interests of children it was also appropriate for her then to consider the case of the first Claimant under Article 8 ECHR and to allow her appeal on that basis. Again that decision was open to her on the evidence. Had she made a specific reference to Section 117B(6) of the 2002 Act the issue might have been clearer to a reader but nonetheless I find that the decision was adequately reasoned and there was no material error in this respect either.

Notice of Decision

5. There was no material error of law in the decisions made by the Judge of the First-tier Tribunal and her decision that these appeals be allowed therefore stands. There was no request for an order for anonymity and no such order is made.

Signed Date 26 October 2015

Deputy Upper Tribunal Judge French