IAC-FH-AR-V2

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: OA/05661/2014

**THE IMMIGRATION ACTS**

**Heard at Stoke-on-Trent**
**On 10 April 2015**
**Prepared 10 April 2015**

**Decision & Reasons Promulgated**
**On 12 May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**ECO PRETORIA**

Appellant

**and**

**SAMANTHA HAZVINEI CHINYANI**
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**
For the Appellant: Mr A McVeety, Senior Presenting Officer
For the Respondent: Mr T Royston, Counsel, instructed by Paragon Law

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the ECO and the Respondent is referred as the Claimant.

2. The Claimant, a national of Zimbabwe, date of birth 20 May 1993, appealed against the ECO's decision, dated 14 March 2014, to refuse an application for family reunion with reference to paragraph 319V of the Immigration Rules HC 395 as amended.

3. The appeal came before First-tier Tribunal Judge Shanahan (the judge) who on 14 January 2015 allowed the appeal on Article 8 ECHR grounds, it being clear that the Claimant did not succeed under the Immigration Rules.

4. Permission to appeal that decision was given by First-tier Tribunal Judge Manuell, (Designated First-tier Tribunal Judge) on 24 February 2015.

5. A Rule 24 response was lodged by Mr O'Ryan, Counsel for the Claimant, who appeared before the judge, but he was unable to attend and provided for the purposes of the hearing before me a copy of his note of the hearing before the judge. Mr Royston provided a skeleton argument which was consistent with the grounds previously settled by Mr O'Ryan.

6. At the hearing Mr McVeety indicated that he was not pursuing the third ground of appeal raised by the ECO, namely the issue of whether consideration had not been given to the reasonableness of expecting the Sponsor to move back to Zimbabwe; bearing in mind the Sponsor is a refugee.

7. Accordingly the principal issue remained:- whether or not the judge had properly considered proportionality and, in doing so, had taken into account considerations expressed in Sections 117A and 117B of the NIAA 2002 amended by the Immigration Act 2014.

8. In submissions Mr McVeety had some difficulty given the way the grounds had been drafted in that it is clear from paragraph 15 of the decision that the judge fully understood and carried out his assessment of the issue of Article 8 outside of the Rules but with particular reference to first case law as expressed in Oludoyi [2014] UKUT 539, MM (Lebanon) [2014] EWCA Civ 985, Nagre [2013] EWHC 720 and AJ (Angola) [2014] EWCA Civ 1636 and in the circumstances understood the position that there was no threshold of exceptionality before Article 8 as a second stage could be considered outside of the Rules. There was no issue that the Claimant could meet the requirements to remain under the Rules.

9. It is therefore clear on a fair reading of the decision that the judge did have regard to the first, second, third and fourth requirements as identified in the case of Razgar [2004] UKHL 27 and plainly as expressed was reflect the sense in which as Razgar is applied by the case of Huang [2007] UKHL 11. In those circumstances the question was had the judge given sufficient reasons which were adequate and appropriate in law to show that the assessment of the balancing exercise had been properly carried out. In short, Mr McVeety argued that it had not and Mr Royston took me to the paragraphs in the decision which he said clearly reflected the fifth question being properly addressed by the judge and explicitly taking account of Section 117A and Section 117B. Whatever maybe the intention of the Secretary of State in making those amendments to the NIAA 2002, the particular issues referred to are not exhaustive but do require further consideration.

10. To this extent the issue of the Claimant's financial independence, her English language abilities, the extent to which either she would or would not be a burden upon the economic wellbeing of the United Kingdom and the issue of integration were matters which were addressed by the judge albeit with brevity in paragraph 22 of the decision. The judge also took into account the wider family life interests that the Claimant held in the United Kingdom and the significance of interference, the public interest which was essentially identified as relating to maintaining effective immigration control.

11. The belief of there needing to be an exceptional case to succeed under Article 8 ECHR is not a threshold in LTE cases, as has been made plain, but essentially there will be few cases where events demonstrate that refusal is disproportionate. In this case the judge found that it was such a case. Accordingly it is not for me to interfere with a judge's properly reasoned decision simply because I might have reached a different decision or disagreed with the judge's assessment of proportionality.

12. Accordingly, within the limitations of my consideration of errors of law arising in such decisions I do not find the Original Tribunal made any error of law. The ECO's appeal is dismissed.

13. No anonymity direction is made.

**NOTICE OF DECISION**

14. The original Tribunal's decision stands.

    The appeal is dismissed

Signed Date 6 May 2015

Deputy Upper Tribunal Judge Davey