



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

Appeal Number: HU/02452/2017

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On 19<sup>th</sup> March 2018**

**Decision & Reasons  
Promulgated  
On 20<sup>th</sup> April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**JULIETH [T]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Chohan, Counsel

For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Zimbabwe born on [ ] 1983. The Appellant entered the United Kingdom on 22<sup>nd</sup> December 2001. The Appellant entered the United Kingdom with six months leave to enter and that was further extended as a student until 28<sup>th</sup> February 2006. On 19<sup>th</sup> May 2016 the Appellant applied for leave to remain in the UK based upon her private life. In addition within the application the Appellant pointed out that she resided with her mother in the UK and that she was heavily dependent

upon her for emotional and financial support. She had pointed out that her mother was the only family member living in the UK and that her father had passed away in 2002. Both of the Appellant's brothers fled Zimbabwe and lived overseas and the Appellant claimed that returning her there would put her at risk of rape and trafficking and that she would be returning to significant hardship and destitution as she has no ties within that country.

2. The Appellant's application was refused by the Secretary of State by Notice of Refusal dated 23<sup>rd</sup> January 2017.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Alty sitting at Manchester on 2<sup>nd</sup> November 2017. In her decision and reasons promulgation on 13<sup>th</sup> November 2017 the Appellant's appeal was dismissed.
4. On 27<sup>th</sup> November 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 28<sup>th</sup> December 2017 Judge of the First-tier Tribunal Parker granted permission to appeal. Judge Parker noted that the grounds allege the judge had failed to attach appropriate weight to the compelling and exceptional circumstances in which the Appellant found herself. The judge it was contended had failed to properly understand the circumstances the Appellant would face in Zimbabwe particularly in the rural village where her remaining relatives reside and had wrongly assumed that they could look after the Appellant. The judge misinterpreted the medical evidence about the Appellant's chest pain and since the hearing the Appellant had had an MRI scan and was likely to have to have further surgery. It was contended that the judge had erred in failing to recognise the Appellant's relationship with her mother as family life; failed to apply *Razgar* and reached the wrong conclusion concerning proportionality.
5. Judge Parker noted that the judge accepted that the Appellant enjoyed family life in the UK and referred to the public interest factors but did not make a proportionality assessment of the interference in the Appellant's relationship with her mother. The judge had noted at paragraph 28 that the concern of the Appellant was "lack of practical support for her medical problems ... that would cause difficulty upon return." He found that the judge's decision that the Appellant would not face "very significant difficulties upon return" because she had relatives and could receive financial support from her mother did not engage with the Appellant's mobility difficulties and the remoteness of the village where her remaining relatives live. The grounds identified particular difficulties (if her relatives would accommodate her) including accessing public transport to collect remittances; the lack of toilet facilities and running water. He considered that the judge's assessment did not engage meaningfully with the practicalities of the Appellant's situation and found that there was an arguable error of law in the assessment of whether she would face very significant difficulties in re-

integrating upon return. He accepted that there could be no criticism of the judge for failing to have regard to post-decision facts concerning the Appellant's medical condition. There is no Rule 24 response served by the Secretary of State.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal judge. The Appellant appears by her instructed Counsel Mr Chohan. Mr Chohan is very familiar with this matter. He appeared before the First-tier Tribunal and is I believe the author of the Grounds of Appeal. The Respondent appears by her Home Office Presenting Officer Mr Bates.

### **Submission/Discussion**

7. Mr Chohan starts by adopting his Grounds of Appeal. He accepts that the First-tier Tribunal Judge has provided a detailed determination in dismissing the appeal but submits that the judge has failed to attach appropriate weight to the compelling and exceptional circumstances to her case when making an assessment of whether it would be a breach of her rights under Article 8. Further he submits that the judge has determined this case both irrationally and disproportionately in view of the Appellant's complicated and ongoing medical conditions.
8. He points out that the medical condition of the Appellant has deteriorated and that since December 2017 she has been in hospital and that she only attends before the Tribunal today on a day release basis and that she is in fact not due to be released from hospital until 20<sup>th</sup> April 2018. She suffers from arachnoiditis which has confined her to a wheelchair and she has the further complication of having a collapsed lung. He submits that the Appellant tried to explain at the hearing before the First-tier Tribunal Judge that her medical condition was not manageable within Zimbabwe and that she is under a specialist neurosurgeon in the UK. He points out that her mother is a nurse and attempts within the UK to assist the Appellant. He emphasises that the Appellant's family come from a remote area in Zimbabwe where there are no facilities. As a matter of law he submits that there is a material error of law in that the First-tier Tribunal Judge failed to take into account the Appellant's condition when making his assessment.
9. He submits that considering the Appellant's condition her prospects of getting the required support in Zimbabwe are virtually nil and reminds me that her mother is settled here and a nurse and that the question to be answered by the Tribunal was whether the Appellant could return and cope with life back in Zimbabwe and he indicates that the finding of the judge is quite frankly perverse.
10. He submits that the judge failed to include key information provided during the Appellant's oral testimony including the fact there is no running water or electricity and that the community uses the bush as a bathroom and toilet. He points out that the judge was made aware that the nearest

water source in the form of a community borehole was at least an hour's walk away and the nearest clinic is a two-hour walk away as well as the nearest convenience store. There is further no public transport to get to and fro and that the only relative the Appellant has in Zimbabwe is an aunt who is in her late 70s and that she has her own medical issues to contend with. It is pointed out to me that the Appellant states that her condition requires equipment for personal hygiene purposes and as such she would need a bath lift or shower chair.

11. Mr Chohan submits that the judge has entirely misdirected herself as reality does not afford the Appellant the luxury of having disability equipment fitted into a non-existent bathroom in Zimbabwe and neither she nor anyone close to her can raise or be expected to provide the cost of such items.
12. He points out that the Appellant disagrees with the contention made that the Appellant was being dishonest in stating in her oral testimony that she had no contact with her siblings since she left Zimbabwe in 2001 and she is aware that they are in no position whatsoever to take care of her. Further it is emphasised that she does not have two brothers living in Zimbabwe. They live in South Africa and they only travel to and fro across the border in order to renew their visas.
13. Mr Chohan takes me to paragraph 29 of the judge's decision which sets out the Appellant's medical condition. He had noted therein (and at paragraph 33) that a planned review of the Appellant's medical condition was planned. Whilst accepting that the judge could not be criticised for not knowing what that review said he points out that it shows that she is physically unable to work and that living where she does with her mother in a terraced house such accommodation is unfortunately unsuitable for her.
14. In all the circumstances he considers that the judge has failed to consider and/or give adequate and insufficient consideration to the evidence in support of why her case is exceptional. He asked me to find that the decision is riddled with material errors of law and to set it aside and to remit the matter back to the First-tier Tribunal for rehearing.
15. Mr Bates suggests that I am being invited to speculate on the Appellant's ongoing medical condition and that at paragraph 29 of the decision the judge dealt with the facts. He submits that for the Appellant to succeed under Article 8 the case would be a rare one and that the right is qualified. He reminds me of the authority of *Trebowan* pointing out that what is required is more than "mere difficulty". He contends that at paragraph 26 the judge has made findings rejecting that there is no contact with the Appellant with her family and contends that her mother is not providing 24-hour care. He accepts that funds are not a problem in this case and on that basis indicates the Appellant would not have difficulty in reintegrating into society.

16. Whilst acknowledging that there is a change in medical evidence now available he submits that this does not indicate long-term health needs and certainly that that was not the position that was before the First-tier Tribunal Judge. He submits that the judge had regard to all the circumstances and noted that the Appellant was capable of self-caring. He submits that this is a case of mere hardship and that the threshold set in *Trebowan* was not reached. He contends that if there is change in the Appellant's medical condition then there would be an option for a further application to be made at that time. He asked me to find that there is no material error of law in the decision of the First-tier Tribunal Judge.

## **The Law**

17. Areas 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 fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
18. 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 of argument. Disagreement with an Immigration Judge's factual conclusion, 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 which 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 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.

## **The Appellant's Current Medical Condition**

19. There is no doubt that the Appellant has substantial health difficulties. These stem from her having a benign tumour on her spinal cord. Following a scan in January 2017 the tumour was removed but that left residual scarring and a possible tumour and in April 2017 she was diagnosed with a cyst on her spinal cord which was asymptomatic. However in May 2017 that became symptomatic and that is documented in letters. That remained the position when the Appellant appeared before the First-tier Tribunal judge.

20. On 8<sup>th</sup> November a further MRI scan confirmed the cyst and on 20<sup>th</sup> November following an appointment with her consultant she was advised that there was the risk that she would lose the use of her legs and that she could suffer from paralysis. On 13<sup>th</sup> December 2017 surgery was undertaken to remove the cyst and the Appellant's lung collapsed during surgery. Fortunately the lung has been re-inflated.
21. The Appellant having been sent to rehabilitation on 2<sup>nd</sup> January 2018 had difficulty in breathing and had fluid in her lung and she was thereafter readmitted to the Walton Centre. Her spinal fluid was not being drained and the surgeon put in a valve to control the rate of drainage. She now has a magnetic valve inserted and pressure is regulated but she does point out that the stent that was inserted can move and the valve requires regular adjustment and that this can only take place at the Walton Centre. She is also having regular checks as to whether the benign tumour has regrown.
22. The result of this invasive procedure is that the Appellant suffers from arachnoiditis. Arachnoiditis is inflammation of the nerve endings of the spinal column. It is a most debilitating and painful condition and can lead to paralysis and a complete failure for a person to be able to self-care. It is against this current background that this appeal has to be considered.

### **Findings on Error of Law**

23. Although Mr Bates does not actually use these words the Secretary of State's argument appears to be that what the Appellant seeks to do is merely disagree with the findings of the judge. That I do not accept. I conclude that there are errors of law in the decision of the First-tier Tribunal Judge. At the date of hearing the Appellant had been living in the UK continuously for close on sixteen years. The Appellant's credibility is unchallenged and I find that the findings of the judge fail to properly consider whether the Appellant's medical conditions are ongoing, require support of a medical team to help her recovery and that by stating that she expects the Appellant to return to Zimbabwe where it is accepted there is inadequate healthcare and entirely incomparable to the medical facility provided in the UK that the judge may bearing in mind where the Appellant would be being returned to be placing her in a position that would present significant obstacles to her integration back into the country. The judge erred in law in failing to consider to give adequate consideration to the evidence in support of why the Appellant's case was exceptional. In all the circumstances the correct approach is to find there is a material error law and to set aside the decision and to remit the matter to the First-tier Tribunal for rehearing with none of the findings of fact to stand.
24. I do acknowledge that the Appellant comes before me with a differing and more serious set of medical conditions than were before the First-tier Tribunal Judge. Bearing in mind the errors of law I do not consider the approach suggested by Mr Bates on behalf of the Secretary of State to be

the correct one namely that it would be open to an Appellant to make a fresh application based on the change of medical condition. The pragmatic and practical approach is for these issues to be dealt with at the rehearing. To that end I enclose a direction for the Appellant to produce further medical evidence to the court.

### **Decision and Directions**

25. The decision of the First-tier Tribunal Judge contains material errors of law and the matter is remitted to the First-tier Tribunal for rehearing. Directions are given hereinafter for the rehearing of this matter:
- (a) On the finding that there is a material error of law in the decision of the First-tier Tribunal Judge the decision is set aside and the matter is remitted to the First-tier Tribunal sitting at Manchester on the first available date 28 days hence with an ELH of three hours with none of the findings of fact stand.
  - (b) That the appeal be reheard before any Judge of the First-tier Tribunal other than Immigration Judge Alty.
  - (c) That there be leave to either party to serve on the other party and file at the Tribunal a bundle of such further subjective and/or objective evidence upon which they intend to rely at least seven days prior to the restored hearing.
  - (d) That there be leave to the Appellant to file and serve updated medical evidence in support of the Appellant's claim at least seven days prior to the restored hearing.
  - (e) That the Appellant do attend court for the purpose of cross-examination.
  - (f) That whilst it is not envisaged that the Appellant will require an interpreter in the event that an interpreter is required then her instructed solicitors must notify the Tribunal within seven days of receipt of these directions.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris