



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

Appeal Number: PA/02038/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 November 2018**

**Decision & Reasons  
Promulgated  
On 12 December 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**RB  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Dzuiti, Solicitor

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Zimbabwe. She was born on 5 February 1992.
2. The appellant appealed against the respondent's refusal to grant asylum, humanitarian protection and on human rights grounds dated 25 January 2018, however, before Judge Wilsher (the judge), the other claims having been withdrawn, the appeal proceeded only on Article 8 grounds.
3. The judge allowed the appeal on human rights grounds. He said inter alia, the following:

“7. The justification put forward for the interference with family life is the need to maintain immigration control. This is an important consideration and I must consider it carefully. The appellant arrived in the UK through Ireland where she claimed asylum. She withdrew that asylum claim before me and I find as a fact that she always intended to come to the UK principally to pursue family reunion with her mother and two siblings. She had previously applied for entry clearance on that basis in 2010 but this had been refused. I was told that it was easier to get a visa to go to Ireland and then to travel across. Clearly this is an abuse of the immigration system. On the other hand however I find that there is a clear and important welfare interest of the two children at stake in this case. I also find that the appellant did genuinely have strong connections with the UK through her mother and siblings and therefore this was not an appellant who sought to obtain a foothold here which just did not exist otherwise. The relevant case law confirms that powerful reasons are required to require a qualifying child to leave the UK. Similarly, the principle behind s.117B(6) is that a person with an existing parental relationship with such a child should not be forced to leave the UK unless it would be reasonable to expect the child to go with them. In this instance, Glen Jr is the qualifying child who will lose contact with his father and stepmother if the appellant is removed with her child and the family leave together as a unit. I have already found that both the appellant and her partner have a parental relationship with Glen Jr. Glen Jr’s biological mother cannot be expected to go with him to Zimbabwe as she is settled in the UK. For these reasons I have concluded that it would be a disproportionate interference with family life and in particular the best interests of the children for this appellant to be returned to Zimbabwe in these circumstances ...”

4. The grounds claim that the judge materially misdirected himself in law. The grounds claim that the judge erred by finding that the appellant had a genuine parental relationship with her partner’s child, thereby meeting the requirements of s.117B(6). The grounds claim that the judge made a material misdirection in law by finding that the appellant had a parental relationship with Glenn Jr, her partner’s biological son. As Glenn Jr’s biological mother is in the UK and has not relinquished any care responsibilities for him, the judge erred in finding that the appellant had a parental relationship with the child for the purposes of s.117B(6). Reliance was placed upon **Ortega (Remittal; bias; parental relationship) [2018] UKUT 00298 (IAC)**. See headnote 3:

**“As stated in paragraph 44 of *R (On the application of RK) v Secretary of State for the Home Department (Section 117B(6): “Parental relationship”)* IJR [2016] UKUT 00031**

*(IAC) if a non-biological parent (“third party”) caring for a child claims to be a step-parent, the existence of such a relationship will depend upon all the circumstances including whether or not there are others (usually the biological parents) who have such a relationship with the child also. It is unlikely that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child’s life as the child’s parents.”*

5. Reliance was also placed upon **R (On the application of RK) v the Secretary of State for the Home Department (Section 117B(6)): “Parental relationship”** IJR [2016] UKUT 00031 (IAC) that supports the position that the appellant does not have a “parental relationship” for the purposes of Section 117B(6) of the 2002 Act. Paragraph 44 states;

*“If a non-biological parent (“third party”) caring for a child claims such a relationship, its existence will depend upon all the circumstances including whether or not there are others (usually the biological parents) who have such a relationship with the child also. It is unlikely, in my judgment, that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child’s life as the child’s parents as in a case such as the present where the children and parents continue to live and function together as a family. It will be difficult, if not impossible, to say that a third party has ‘stepped into the shoes’ of a parent.”*

6. The grounds submit that the judge recognised that when stating at paragraph 6 that Glenn Jr’s biological mother remained as his parent. The judge said in respect of Glenn Jr’s mother, “*I find as a fact that she would not leave the UK with Glenn Jr if the appellant were returned to Zimbabwe*”.
7. The grounds argue that the judge erred in concluding that the appellant had a genuine parental relationship with a qualifying child whilst he resided with and remained in the care of his biological mother.

### **Submissions on Error of Law**

8. Mr Jarvis relied upon the grounds.
9. Ms Dzuiti did not address any of the grounds in terms, but asked me to look at the decision as a whole, and find that the judge did not materially err.

### **Conclusion on Error of Law**

10. **Ortega** at head note 3 (see [4] above) is of significance in that it is not impossible that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the

child's life, however, that would have required specific findings on the part of the judge, absent in his decision.

11. The judge set out the circumstances at [3]. He said that the appellant could not meet the requirement to be in a parental relationship with the child. After hearing evidence, the judge said he was satisfied "*..... that there is extensive contact which is ongoing between Glenn Jnr and his father as well as the appellant. He is effectively part of her family and she treats him as her own son*". The judge did not hear any evidence from the child's mother. Nevertheless, the judge went on to say at [7], inter alia, "*I have already found that both the appellant and her partner have a parental relationship with Glenn Jnr*". That finding was arguably perverse as notwithstanding that he said at [6] that the appellant treated the child as her own son, there needed to be more in terms of **Ortega** and **R (on the application of RK)**.
12. I find that the judge materially erred in concluding that the appellant had a genuine parental relationship with a qualifying child whilst that child resided with and remained in the care of his biological mother.

### **Notice of Decision**

13. The First-tier Tribunal materially erred. The decision is set aside and will be re-made in the First-tier following a de novo hearing.

An anonymity direction is made.

### **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 her or any member of her 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.

Signed

Date 23 November 2018

Deputy Upper Tribunal Judge Peart