



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18260/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18th November 2019

Decision & Reasons Promulgated
On 28th November 2019

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

P M S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, instructed by Elder Rahimi Solicitors

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Zimbabwe born in 1979. She appeals against the decision of First-tier Tribunal Judge Callow promulgated on 14 May 2019 dismissing her appeal against the Respondent's decision dated 23 August 2018 refusing leave to remain as a spouse.
2. In a decision promulgated on 15 October 2019, Upper Tribunal Judge Stephen Smith found that the First-tier Tribunal had erred in law and he set aside the decision with no findings of fact preserved. The matter was listed to be re-heard in the Upper

Tribunal to consider the following points. Firstly, the question of whether the Appellant and the Sponsor would face insurmountable obstacles to family life continuing in Zimbabwe or, in the alternative, whether it would unjustifiably harsh to expect the Appellant to leave the United Kingdom. Upper Tribunal Judge Smith directed that further evidence should be served fourteen days before the resumed hearing. In compliance with that direction, the Appellant served a supplementary bundle.

3. The Appellant arrived in the United Kingdom in October 2000 with entry clearance as a visitor valid until 15 April 2001. She has not had leave since then although she has made numerous attempts to obtain student leave and, latterly, leave to remain as a spouse. It is the Appellant's case that her husband has suffered from a lifelong condition of obsessive compulsive disorder [OCD] such that there were insurmountable obstacles to family life continuing outside the UK.

Oral Evidence

4. The Appellant gave evidence relying on her statements dated 27 April 2018, 11 March 2019 and her supplementary statement of 6 November 2019. She stated that her first language was Shona and her second language was English, in which she was fluent. She had a GCSE in English which she obtained in Zimbabwe in 1992. She had never been asked to take an English language test in any of her applications she had made to the Home Office.
5. In cross-examination, she confirmed that she came to the UK in October 2000 and her visa expired in April 2001. She married ML in November 2017 at a time when she did not have leave to remain. She did not discuss going back to Zimbabwe at the time she married but she had discussed it since. She stated that if she was forced to go back to Zimbabwe it would be hard for ML to let her go without him and if they were separated ML would want to follow her.
6. The Appellant has relatives in Harare although her mother is in the UK. Her mother has visited her half-sister in Zimbabwe on numerous occasions. Her half-sister lives with her husband and two children. Her half-sister works for UNESCO and her husband works for a bank. Although employment prospects were poor in Zimbabwe, they were fortunate enough to be able to work and the children had not started school. The Appellant was not in touch with anyone else in Harare, although there were other extended family members.
7. If she had to go back to Zimbabwe, the Appellant said her husband would not accompany her because he works and has to stay in the UK. He has OCD. At the moment he was working as a bus driver which was better for him because he knows what he is doing. Everything is set out in a routine and he knows his hours in advance for several months ahead. He previously worked as a taxi driver and in his mother's care home.

8. ML gave evidence, relying on his witness statements of 24 April 2018, which was written by him with no assistance, and the two statements written with the help of solicitors dated 11 March 2019 and 6 November 2019. ML stated that he had been working for Arriva North Bus Company since September 2019. His training had started on 29 July and he had been paid £10.55 an hour which was increased to £10.90 an hour when he qualified. His monthly income was 38 hours a week at £10.90 per hour. This was the minimum amount he earned in a week because he very often worked more than 38 hours.
9. He was asked about his mother's ill-health and he said that she had a problem with her lung and they were keeping an eye on it. She also may have a procedure on her heart and all this was a bit worrying. ML did not want to leave his mother, she was nearly 70 and had had two illnesses come up in the last month. It was very worrying for ML and his mother. She was going to have to close the care home which she had been running for the last 25 years. She also worried about ML. He was worried about his mother's health. ML stated that his mother supported him and he supported her. He could not do this from another country. They would not be able to support each other if he lived in another country.
10. ML was asked what he would do if the Appellant had to go back to Zimbabwe. He said that his first option was to sponsor an application because he was working in the UK, but saying that and doing that were two different things. It was hard to do the job he was doing with everything here and what was going on. He was not sure how he would cope without the Appellant. It was a big responsibility driving a bus and hard to maintain concentration. It would be made worse if the Appellant was sent away. He did not know how he would be able to do his job safely. If the Appellant left for Zimbabwe to apply for entry clearance and ML could not meet the financial requirements he would have to move out to Zimbabwe and much as he loved his mother he wanted to live with the Appellant. He could not see a happy ending with what he knew of Zimbabwe.
11. ML was referred to his first statement in which he listed a number of concerns about living in Zimbabwe. He confirmed that these were still worries for him and that none of these matters had improved and, in fact, most were possibly worse. He had been looking on the internet. He was the sort of person who was a chronic worrier living in the UK and he was finally doing something now that he had met the Appellant. He stated that he was barely a success in England. He knew he 'over worries' and he was lucky that he and the Appellant were in the UK. He had provided a lot of the information on Zimbabwe in the bundle which he had found online. It was all saying the same thing. It was hard not to worry. Even if he did not have an anxiety disorder, he would be worried about relocating to Zimbabwe.
12. In cross-examination, he stated that he had always lived with his mother and their home had been converted into a residential care home. His mother had been well until recently save for ten years ago when she had had an irregular heartbeat. He was not caring for his mother as such but he was supporting her. She now got out of breath and could not walk very far and needed more support.

13. In the past, ML's work had been very haphazard. He had worked as a taxi driver but that did not suit him because it was very solitary and he did not like being his own boss. He had done 'The Knowledge' four or five years ago and enjoyed driving. He had worked as a taxi driver for two to three years after completing 'The Knowledge' in 2006. He then went through a rather bad period where he smoked weed because he did not really know where he was going. He had tried to do radiography but they had mixed up his DBS and so he could not do a placement. He was told to wait a year. However, he made a very silly decision. He had met the Appellant at that time and he could make more money driving a cab than he could in radiography. He therefore went back to working as a taxi driver. He came to realise that it did not suit him and was pleased to have become a bus driver because this was something he could do. He had done online research and was worried about the problems living in Zimbabwe as a white man and a British citizen.
14. In re-examination, he stated that he had not been taking medication, he had been offered it and looked into medication himself but it was not a magic cure and there were side effects. He stated that he could end up with different problems than the ones he already had and since he was doing a driving job and was a meticulous worrier, he did not want to have an accident because he was drowsy. If he thought the medication would cure his condition, he would take it but the medication would not significantly change his position.
15. Dr Klemperer gave evidence and Mr Hodson submitted a printout of the details on her website, which she confirmed were up-to-date and accurate. She had supplied five reports in this appeal and relied on those as evidence-in-chief. She stated that ML's symptoms had got worse since she first met him in April 2018. ML worried about making a catastrophic error and lived in fear that he would be solely responsible. He therefore makes notes if he thinks he has made an error and this has been increasing over time depending on his stress level. She was asked whether there was a cure and she confirmed that OCD was very difficult to treat as ML had stated in his evidence. Medication could reduce the intensity of the compulsions and obsessions but they very rarely went away. Medication helped to reduce the level of stress, although intrusive thoughts still continued.
16. Dr Klemperer stated that living in Zimbabwe would be incredibly worrying for ML. This was one of the key things of anxiety disorder and could increase his compulsions. ML was managing his condition because he was able to drive and had obtained a job that he was able to do notwithstanding his disorder. If he was not active, then his OCD would severely impact on his life. Medication could reduce the level of stress but, in her opinion, the situation in Zimbabwe would be too difficult for ML. He would not be living in the house he had always lived in with his mother and his OCD would become so severe that medicine would have no impact and be inconsequential. Further, OCD sufferers feared using medicine because of the side effects, some of which may disappear early on. However, it was common to suffer a lack of libido and there were other long-term side effects.

17. ML was currently able to function in the UK because he had two pillars of emotional support, his mother [RL] and the Appellant. If ML was forced to choose between the two and lose one of his pillars of support his anxiety would increase and it was likely that he would suffer low mood and depression. He had gone through a similar period earlier in his life where he had stayed in his room making obsessional notes. His OCD had become unmanageable at that time. He was unable to sleep in his bed because it was covered with bin bags full of notes. Dr Klemperer said it was likely this would happen again if his stress levels increased. He was currently able to drive, but if the Appellant returned to Zimbabwe, ML would be overwhelmed by his anxiety disorders and it is likely he would be unable to function and go to work.
18. ML is a man in his late 30s who has always lived with his mother in the same house. He had no other relationships. He had had friendships but none currently. His mother's health had been good until recently and ML was now feeling under threat which fed into his anxiety disorder. Leaving the UK was a considerable threat. If he had to go to Zimbabwe it would be very difficult for him to leave his mother. I asked if he would feel responsible if anything happened to his mother and Dr Klemperer stated that he was always in fear of catastrophe and the fear of losing his mother would have a detrimental effect. Dr Klemperer confirmed that the evidence that ML had given to the court about his OCD was accurate. In her opinion he had not been dishonest or exaggerated his symptoms. His presentation was coherent and consistent with other OCD sufferers and OCD was her specialisation.
19. In cross-examination, Dr Klemperer stated she had first seen ML in April 2018 when he had requested a report to submit in the Appellant's immigration appeal. She had not obtained notes from his GP, but had sent a letter to his GP even though she had not referred to this in her report. She did not feel it necessary to see the GP notes because the Appellant had not received any treatment. She was aware that he had seen a psychiatrist but ML could not remember his name. She did not know if the GP notes disclosed the psychiatrist's name but since ML did not want to make too much of his difficulties, because of his driving job, it may well be that he did not want treatment so he did not want any psychiatric report to be shared with his GP.
20. ML was currently storing notes which he put in bin bags. He was aware that it was irrational to do so as he would never be able to locate the relevant note in the future. In 2004, he had felt so low that he had retreated to his room and made obsessional notes. He felt that his life was not going anywhere and did not know how to take it forward. His OCD then filled this space. Staying in employment had a very positive effect on ML's OCD.
21. Dr Klemperer was asked if she would recommend medication. She stated that medication is a personal decision for the patient and with the assistance of the doctor's opinion it was necessary to balance benefit and side effects. One of the difficulties of OCD was that ML was indecisive because of his fear of consequences and making mistakes. ML found it difficult to make decisions and was in fear of consequences that he had not allowed for and for which he would be responsible. The potential threat of unpleasant side effects was enough to stop ML from taking

medication. She would have recommended medication if she felt that ML's life was too constrained by his OCD. There were a variety of medicines and it could well be appropriate to try different ones. However, medication was not a cure. She would be reluctant to recommend medication in Zimbabwe. In order to manage ML's condition, it would be necessary to go over the recommended dosages and this would require a level of monitoring which was possible in the UK. She did not know if this was possible in Zimbabwe. Exceeding the stated doses would be an additional worry for ML. She accepted that there may be some speculation on his previous history, but it was unlikely that ML would be able to cope in Zimbabwe with medication. It was fairly unlikely that the first line of treatment would have an impact on ML's OCD given his likely stress level if he went to live in Zimbabwe with the Appellant. Dr Klemperer could not compel ML to take medicine, but even if he was willing, the first line of treatment was not sufficient in his case. The second line of treatment involved a level of sedation such that he would not be able to work as a bus driver. If a patient became so overwhelmed by stress then sedatives would be required. It was difficult to reduce anxiety without being so sedated that it was still safe to drive a bus ML would have to agree to sedation which was likely to wipe away his livelihood. She had discussed medication with him and he was very wary of sedation. She would only consider it if ML was on a break from driving. ML was scared of taking medicine and this was very common given his OCD and his driving job.

22. At the present time, ML's OCD was manageable and it did not interfere with his work. When he was a taxi driver his OCD did interfere with his work because he would pull over to make notes. He would also repeat journeys to make sure he had not made an error. This was consistent with his symptoms. His OCD did not interfere with his job at the moment because his job was a repetition of the same route and had the same structure to it, of which he was notified of in advance. The severity of ML's OCD waxed and waned and was sensitive to external pressures. At the moment, for example, ML's OCD was manageable because he had a structure to his job and was engaged in activities so that his life was not empty. Any extra stress caused by separation from his wife, or worse separation from his home, was likely to result in a deterioration of his mental well-being. ML's OCD would become very severe and then it would be likely he would regress and it was difficult to do anything other than stay in his room.
23. Dr Klemperer did not know how common OCD was. She stated that it may not be as common as depression or general anxiety disorder but that may be because it remained hidden, as sufferers were ashamed of the condition and generally did not ask for help.
24. RL, ML's mother, gave evidence relying on her statements dated 8 March 2019 and 2 November 2019. She had had an appointment concerning her heart and was on the waiting list for a procedure. It was likely they would freeze the four main vessels in her heart in order to stabilise her arrhythmia. It was possible she would have to wait up to three months for the procedure. She had been offered counselling and was able to change her mind. There were some risks attached to the procedure but

medical opinion was that the procedure would be of some help because her arrhythmia would get worse as she got older and it was better to have the procedure while she was younger. She did not know if she would be hospitalised. She had also been to the respiratory specialist who was fairly certain that the cysts in her lung were not malignant, but he could not rule out cancer and wished to monitor the growths. She had another scan in three months.

25. RL stated that ML felt responsible for looking after her. Her other son was in a depressive state and all her family were in Ireland. Her late husband was an only child. There were no relatives apart from her two sons CL and ML in the UK and she relied on ML more than CL. ML was very preoccupied and worried by the Appellant's immigration appeal. The Appellant had been very calm and supportive to him and to RL. RL had used the Appellant as a confidant as she did not want to worry ML. She had to contain the news about the possibility of cancer initially and had spoken to the Appellant about it. ML would find it very difficult in Zimbabwe. He was very caring at home and went through all sorts of rituals at night, checking that the windows and doors were locked. ML would find it very distressing if he could not look after RL and she needed to support her other son. The plans to close the residential care home were going ahead. She had three residents and she was hoping to receive help until the council were able to identify alternative places for her residents.
26. In cross-examination, she stated that she relied on ML for everything. He took her to hospital; helped her with the residents in the care home and with shopping; she discussed her worries with him and would depend on him. He took her to hospital and to church. He did not need to make her meals, but she did not want him to be in another country if anything happened to her. Her mother and aunt had died suddenly. She did not want ML to be in Zimbabwe or for something catastrophic to happen to her without ML being there. She was frightened that it had been very sudden for her mother and aunt and that the same would happen to her. She did not want ML to be at the other side of the world if that happened because he was the only person she could rely on. He too would be devastated if he was not in the UK should anything happen to her.
27. ML's OCD was quite troublesome. If he printed anything, he printed a number of copies at a time, he would not accept copies with smudges or marks and the printer had to be washed. There were endless amounts of cartridges and ink and there were rooms and a shed full of bin bags of paper. The floor in his room was carpeted with paper and the Appellant was very understanding. He had two cupboards full of bags of paper. He was unable to answer the phone unless he wrote down what was said or to answer the door, so the Appellant and RL would do those things to prevent him having to write everything down. ML had a cold at the moment and did not want RL to get it so he did not disinfect the kitchen, the Appellant did it. Everything had to be disinfected because ML did not want RL to catch his cold. He took things to the extreme. He had broken two door handles on the car because he checked them five or six times every night before he came into the house after work. She had to check

oxygen levels on one of her residents and she would find him writing down on paper what had happened in the day before he went to bed.

28. RL described her life caring for ML and setting up the care home. This was very distressing for her and she had gone to a lot of effort to support ML and provide for him while he was growing up. She had set up a care home in 2003 and it was an 'all or nothing' job. She could not rest. She believed she was given difficult residents because she was a trained nurse. She currently had a very needy wheelchair user who suffered from epilepsy and asthma.
29. SK, the Appellant's mother, gave evidence relying on her statement of 13 February 2019. There was no cross-examination.

Submissions

30. Mr Kotas submitted that the issue was straightforward and there was no dispute on the facts. The Appellant had to demonstrate insurmountable obstacles to family life continuing in Zimbabwe. The threshold test was a high one and, although I had heard a lot of emotional evidence, the threshold was not met in this case. The Appellant and ML would be starting again as a couple and it would not cause very serious hardship should they relocate to Zimbabwe. The Appellant could not satisfy paragraph EX.1.
31. If I found this to be the case then it would be harder to satisfy Article 8 because there would be no unjustifiably harsh consequences and the precarious nature of the relationship formed by two adults late in the day meant that the Appellant's family life could not outweigh the public interest. The principle in Chikwamba was not material in this case. The Appellant could not show that she satisfied all of the requirements of the Immigration Rules save for entry clearance and the expert had in some respect speculated in relation to the use of medication and the effect of any lack of medication.
32. Mr Hodson submitted that ML had a deep-seated lifelong condition for which there was no cure and limited treatment. He had the support of his mother who provided emotional security to enable him to function on a daily basis. He also had productive work which suited him and he was managing his OCD. ML also supported his mother. On the facts, his family life with his mother and his mental wellbeing would be jeopardised if he went to Zimbabwe.
33. Mr Hodson relied on his skeleton argument and submitted that there were insurmountable obstacles in this case and the Appellant satisfied paragraph EX.1 of Appendix FM of the Immigration Rules. In any event, the consequences of a return to Zimbabwe would be unjustifiably harsh. ML's mother should be included in the assessment of family life because there were more than normal emotional ties in this case. The Appellant's overstaying was outweighed by her family and private life in the UK. She had been here for nearly twenty years and, while she had remained

without leave, she had not absconded and the Respondent had not attempted to remove her.

Conclusions and reasons

34. I found the Appellant, ML, RL and SK to be credible witnesses and it was rightly conceded by Mr Kotas that there was no dispute on the facts. I attach significant weight to Dr Klemperer's evidence. She is clearly an expert in this field and her opinion was based on the undisputed facts as disclosed by all of the witnesses. ML had not exaggerated his condition and Dr Klemperer's opinion was based on a consistent and coherent history of OCD. The Respondent did not dispute that ML suffered from OCD. The issue was whether ML's OCD and his separation from his mother would give rise to insurmountable obstacles.
35. On the totality of the evidence, I find that ML suffers from OCD, which is currently manageable because he has a secure job which in his own words 'suits him'. He is able to manage his OCD because his job as a bus driver involves repetition of the same route and a routine which is notified to him well in advance, therefore minimising any stress caused by unknown factors or consequences. It is clear from the evidence that ML constantly worries about the consequences of his actions, is in permanent fear of making a mistake and compulsively writes down what he had done during the day in order to minimise the risk of making a mistake or feeling responsible for the consequences of any mistake. His condition is deep rooted and he has suffered with it all of his life.
36. ML has not taken medication for his condition because it may affect his ability to work. His condition means that he is reluctant to take medication because of the side effects and his fear that it will affect his diving. I find that it is unlikely that ML's OCD can be controlled by medication in any event. ML's condition is best controlled by productive activity. His employment as a bus driver has had a very positive effect on him and he is able to manage his OCD. Medication would be detrimental to ML's ability to maintain suitable employment.
37. RL gave very emotional evidence about how she managed ML's condition as he was growing up and it is clear that this has led to a very close bond between RL and ML. ML is also providing support for RL. She is currently receiving treatment for her heart and having some investigations into growths in her lungs. This is very worrying for her and ML. RL is closing the care home she has been running for 25 years. ML has lived with RL all his life. I find that there are more than normal emotional ties between RL and ML such that family life still exists between them. The Appellant's removal to Zimbabwe would interfere with ML's family life with RL because it is likely he would go to Zimbabwe to be with the Appellant.
38. I am persuaded by the opinion of Dr Klemperer that ML has two pillars of support, RL and the Appellant. It would have serious consequences for ML's mental health and his ability to manage his OCD if he had to choose between the two of them. If he

remained in the UK with his mother, the increased stress level of living without the Appellant is likely to exacerbate his OCD such that he may well lose his way, as he has done in the past, to the point that he is unable to go out and remains in his room. If that were the case then he would lose his job and his OCD would escalate further. I accept the opinion of Dr Klemperer that ML's OCD fills the space in his life caused by lack of activity.

39. The issue under the Immigration Rules is whether family life can continue outside the UK. I am satisfied that the high threshold of insurmountable obstacles has been met in this case. The situation in Zimbabwe is such that it would be very difficult for the Appellant to obtain a job which he could maintain because he was able to manage his OCD. He has found it very difficult in the UK to find a job that does not cause him too much stress so that his OCD becomes out of control. He has been working as a bus driver since July 2019 and managing his OCD. He would have very limited job prospects in Zimbabwe given the high rate of unemployment. He would not be able to stay at home if the Appellant went out to work because this too would increase his stress levels and, as Dr Klemperer opined, his OCD would fill the space created by his inactivity and his condition would worsen.
40. I am satisfied, on all the evidence before me, that ML's OCD is likely to worsen in Zimbabwe to the extent that his family life with the Appellant could not continue. The Appellant has shown insurmountable obstacles to family life continuing outside the UK. She has satisfied paragraph EX.1 of the Immigration Rules.
41. I find that the Appellant satisfies the Immigration Rules and her removal to Zimbabwe would be disproportionate. Alternatively, the Appellant's removal would result in unduly harsh consequences, such that the Appellant's, ML's and RL's family and private life outweigh the Appellant's period of overstaying.
42. Accordingly, I find that there are insurmountable obstacles to family life continuing outside the UK. The Appellant has satisfied paragraph EX.1 of the Immigration Rules and the appeal is allowed on human rights grounds on that basis. The Appellant's removal to Zimbabwe, on the particular facts of this case, would breach Article 8. I allow the appeal.

Notice of Decision

Appeal allowed.

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.

J Frances

Signed

Date: 25 November 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid.

J Frances

Signed

Date: 25 November 2019

Upper Tribunal Judge Frances