IAC-FH-LW-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/23390/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 February 2020	**On 2 March 2020**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MP
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms R. Bassi, Home Office Presenting Officer
For the Respondent: Ms A. Childs, instructed by Greystone Solicitors

DECISION AND REASONS

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 him or any member of his 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._

1. The Appellant is a citizen of Zimbabwe. Her date of birth is 24 September 1999. She entered the UK in 2014. On 24 August 2015 she was granted discretionary leave for a period of 30 months until 23 February 2018. This was granted on the basis that she was then 15 years old and there was no-one who could be traced in Zimbabwe to whom she could return. On 18 January 2018 she applied for leave to remain on human rights grounds. She was aged 18 by this time and had resided in the UK for a period of three years and seven months. The Secretary of State refused the application in a decision that was received by the Appellant on 6 November 2018.

2. I have made a direction anonymising the Appellant in accordance with the Upper Tribunal Guidance Note 2013 No 1: Anonymity Orders and Rule 14 (7) of The Tribunal Procedure (Upper Tribunal) Rules 2008.

3. The Appellant's appeal was dismissed by the First-tier Tribunal. I found the judge made a material error of law. I set aside the decision of the First-tier Tribunal. The error of law decision reads as follows:-

> "**Error of Law**
>
> 10. I conclude that the judge materially erred in the assessment of family life. He attached significant weight to the Appellant's age at the date of the hearing (she was then aged 19) without consideration of other material factors which were capable of establishing additional elements of dependency sufficient to establish family life between the Appellant and her father.
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> 11. I have sympathy with the challenge to the judge's assessment of the evidence of abuse. There is reference in the Appellant's witness statement to her having been abused which is contrary to what the judge stated at paragraph 12. The findings reached by the judge about abuse are not sustainable.
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> 12. In the light of the above errors, I set aside the decision of the judge to dismiss the Appellant's appeal.
>
> **Family Life**
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> 13. No further evidence was served in compliance with the directions of the Upper Tribunal. I went on to consider family life. The Appellant came to the UK aged 15. She has lived with her father since then. At the date of the hearing she was aged 19. The evidence before the Tribunal established that she was a student and dependent on her father. Having heard submissions from both parties, I am in no doubt that in this case the evidence before the First-tier Tribunal establishes that there is something more than normal emotional ties between a parent and adult child. I accept that the Appellant is dependent on her father financially and emotionally. She has only just reached adulthood and is in education. I communicated my decision to the parties.
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> 14. Ms Child's requested an adjournment on the basis that the Appellant wished to produce further evidence. I was concerned about the failure by the Appellant's solicitors to comply with the directions of the Tribunal relating to the filing and service of

> further evidence. Ms Childs asked for time to make contact with those instructing her. Accordingly, I put the matter back to the end of the list. When the hearing resumed Ms Childs was not able to explain the failure of those instructing her to comply with directions. She indicated that the Appellant and her father were in attendance at the hearing and would not be able to give up-to-date oral evidence. Mr Lindsay indicated that he did not have a file. He said that, in any event, he would prefer there to be witness statements from the Appellant and her father before they gave oral evidence. I reluctantly adjourned the matter to enable the Appellant to file and serve further evidence.
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> 15. First-tier Tribunal Judge Grimmett did not consider the appeal under the Immigration Rules. This is not something raised in the grounds of appeal. The Appellant did not advance her case before the First-tier Tribunal on the basis that she meets the requirements of the Immigration Rules (276ADE or Appendix FM). The UT will adopt a properly structured approach to the proportionality assessment.
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> 16. I make the following directions."

4. The hearing was resumed to 4 February 2019 for the Tribunal to consider proportionality having found that there is family life between the Appellant and her father in the Kugathas sense (Kugathas v SSHD [2003] EWCA Civ 31).

The Evidence

5. Following my directions, the Appellant's solicitors made an application pursuant to Rule 15(2A) to adduce further evidence. The application was made on 15 January 2020. The evidence consists of a supplementary bundle which contains 50 pages and includes further witness statements and letters in support of the Appellant. In addition, the Appellant relies on the preliminary observations of the United Nations Special Rapporteur on the right to food, following the author's, Ms Hilal Elva, visit to Zimbabwe from 18 to 28 November 2019. This evidence postdates the Appellant's appeal before the First-tier Tribunal. At the hearing Ms Child's indicated that the Appellant had not been able to obtain a report from the counsellor. However, she submitted evidence of an appointment for a telephone consultation on 24 January 2020 for the Appellant to speak with someone who can assess her suitability for treatment from Bedfordshire Wellbeing Services. There was evidence relating to the Appellant's grandmother's health. There was no objection to the further evidence being admitted in support of the Appellant's appeal.

The Appellant's evidence

6. The Appellant's supplementary statement is dated 14 January 2020. Her evidence is that she left Zimbabwe because of the abuse of her stepfather. She felt at the time that Zimbabwe was not safe for her. Her father in the UK was not aware of the extent of the abuse until the Appellant told her grandmother who in turn told her father.

7. The Appellant has close family here. She has made friends at school, college, church and within the community. In oral evidence she said that she is studying and will complete a BTEC this year. She hopes to become a physiotherapist. This has helped her to forget about the negative experiences in Zimbabwe. She is very close to her grandmother here who she considers a mentor. However, sadly her grandmother is now very unwell having suffered a severe stroke. The family is united. Since her grandmother was admitted to hospital in January 2019 the Appellant has "relapsed" because of the stress. Her father has helped her to seek medical attention and counselling. She is currently taking a drug called Propranolol which has been prescribed by her GP and which helps her feel calm and focus on life. She has had counselling sessions and is awaiting a report.

8. The Appellant is integrated here. She attends a youth day programme at the church and visits elderly people who live alone and helps to feed homeless people. The Appellant believes that return to Zimbabwe will impact negatively on her health.

9. In oral evidence the Appellant said that she had not lived with her father before coming to the UK. She lived with her mother, abusive step- father, sister and brother. She was the youngest child. One day her mother left. She has not seen her since. Her aunt came and took her away. The aunt returned to collect her siblings. She became tearful when explaining that she did not know why her mother left. The last time she spoke with her was the day before she disappeared.

The Evidence of SP

10. SP is the Appellant's father. His supplementary statement is dated 14 January 2020. His evidence can be summarised.

11. At the time SP made a statement on 6 October 2015 which was referred to by the First-tier Tribunal Judge he was not aware of the extent of the abuse against the Appellant. However, he is aware that the Appellant suffered serious abuse, verbal and physical at the hands of her stepfather in Zimbabwe. He found out about this through his mother (the Appellant's grandmother).

12. Sadly, his mother suffered a severe stroke on 12 January 2019. She was to give evidence at the Appellant's appeal before the First-tier Tribunal but unfortunately was unable to because of her health. The Appellant is very upset about her grandmother's condition. The Appellant is taking medication and she has registered with a counsellor. She cannot cope at times. She had to take time off school. She has been assessed by the Wellbeing Health Services and is waiting for the result and a report to be prepared. The Appellant's removal would affect her and the entire family here. The Appellant is integrated into society. He has lost two siblings who committed suicide and cannot contemplate seeing the Appellant going through the same ordeal. Should the Appellant return to Zimbabwe

she would suffer abuse from her stepfather and not have any support. Furthermore, she would not have any opportunities because of the situation there. She would not be able to live or survive in Zimbabwe. It would be unjust to put her life at risk.

13. In oral evidence he said that he cannot contemplate being separated from the Appellant. He described her as fragile and vulnerable. She is depressed and needs her family here. The Appellant's brother is in the UK. He has made a claim for asylum which is pending. Her sister made a claim which is also pending.

Other evidence

14. There is evidence in the bundle relating to the Appellant's grandmother's admission into hospital. There is evidence from London Central Seventh Day Adventist Church confirming that the Appellant and her sister have "a good reputation in our community as hardworking and conscientious people whom I would recommend becoming UK citizens".

15. There is a letter from the Appellant's sister, Polite, of 27 November 2019. Polite is the Appellant's older sister. She describes their close relationship and that the Appellant is currently studying a BTEC in sport at Central Bedfordshire College and intends to be a physiotherapist.

16. There is a letter from SM of 29 November 2019. She is the Appellant's stepmother and a social worker. In her view the Appellant's absence is likely to have a negative impact on her own daughter, A. She and the Appellant have a "good strong sister relationship". The Appellant has taken the role of older sister.

17. There is a letter from the Appellant's aunt, S, of 27 November 2009. She describes sending the Appellant back to Zimbabwe as being "very suicidal". Not only will it affect the Appellant, but it will also affect her own children's emotional and mental wellbeing.

18. There is a letter from Rushell Gayle of 24 November 2018. He is a teacher and a British citizen. However, the letter concerns the Appellant's sister P and not the Appellant herself. Ms Child's at the start of the hearing before me, gave me the correct letter from Mr Gayle which concerns the Appellant. There are a couple of letters from friends in the supplementary bundle.

Background evidence

19. The Appellant relied on a report, "Preliminary observations of the United Nations Special Rapporteur on the right to food, (Ms Hilal Elva, on her official visit to Zimbabwe from 18-28 November 2019). The content of the report can be summarised.

20. Ms Elva visited Harare, Mwenezi and Masvingo Province. She describes a food insecurity crisis in the country saying that she "cannot stress enough

the urgency of the situation in Zimbabwe". According to Ms Elva 60% of Zimbabwe's population of 14 million is considered food insecure. There is widespread poverty, limited employment opportunities, liquidity challenges, pervasive corruption, economic instability, mismanagement of funds, natural disasters, recurrent droughts and economic sanctions and conditionalities by the US and the EU all contribute to Zimbabwe's current crisis. 38% of the rural population is currently facing food insecurity which is the impact of, amongst other things, adverse weather conditions. The number of food insecure people is expected to almost double in 2020 compared to the same period in 2019. In addition to severe drought conditions that affected the 2018-2019 agricultural season the country was struck by tropical cyclone Idai which caused a flood induced disaster in greater part of the eastern highlands and some areas in the southern part of the country destroying most of the expected harvest.

21. She describes an international humanitarian response system as essential in reducing the negative effects of the cyclone and repeated droughts on food security. There is also urban food insecurity as a result of the currency crisis, a heavy tax system due to the imposition of austerity measures, unpredictable inflation rates, high levels of unemployment and low wages. Economic inequalities are on the rise. She spoke to many people in Harare who told her they could only afford one meal a day. She experienced consequences of the disastrous economic crisis on the streets of Harare. Most of the poor who have travelled to the cities have ended up living in informal settlements that are multiplying in the suburbs of Harare. She describes the squalid conditions in these settlements, describes the failing health system and identifies the elderly children and women as being the most vulnerable segments of society. They are forced to rely on coping mechanisms such as school drop-out, early marriage and the sex trade in order to obtain food. She described increasing malnutrition and partisan distribution of food favouring those who support the ruling party.

Submissions

22. Ms Bassi relied on the case of Rajendran (s117B)- Family life) [2016] UKUT 138 to support a submission that the Appellant's family and private life should be afforded little weight because of her precarious status. The Appellant could return with her siblings which would provide a support group. The Appellant would be able to build a private life within a reasonable period of time. The evidence is that the Appellant's father supported his family in Zimbabwe, and he can carry on doing this. There is nothing stopping her father from visiting the Appellant in Zimbabwe. The Appellant's course come to an end this year. There was no evidence that she would not be able to integrate in Zimbabwe. There is no evidence of very significant obstacles to integration. There are no compelling circumstances. The situation has moved on from when the Appellant came here. She is now an adult and has gained qualifications and skills. Family life can continue in Zimbabwe, as it did before she came here.

23. Ms Child's relied on her skeleton argument. In respect of the siblings returning together she drew my attention to the Appellant's brother having claimed asylum. None of the siblings live independently. The Appellant is the youngest. They are financially supported by their father. However, his means are limited. He would not be able to maintain them in Zimbabwe. The cost of living there is high. There has been no improvement in the economy. Ms Child relied in oral submission on the Country Policy and Information Note Zimbabwe: Women fearing gender-based harm or violence October 2018 ("the CPIN"). She drew my attention to what is said therein about gender violence. She drew my attention to Rhuppiah v SSHD [2016] Civ 803 and said that this was an appropriate case where flexibility should apply because of the circumstances in which the Appellant came here.

The Law

24. The Appellant's case is that the decision breaches her rights under Article 8 ECHR. She relies on Paragraph 276ADE (1) of the Immigration Rules. The relevant part of the Rule reads as follows:-

> "**Requirements to be met by an applicant for leave to remain on the grounds of private life**
>
> 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

25. The Appellant relies on SSHD v Kamara [2016] EWCA Civ 813 when the Court of Appeal considered what is meant by very significant obstacles in the context of paragraph 276ADE (1). At paragraph 14 Sales LJ said as follows:-

> "In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable

time a variety of human relationships to give substance to the individual's private or family life".

26. The Appellant's case is that even if she cannot succeed under the Rules, the decision to remove her breaches her right to family life under Article 8.

27. Relevant to the tribunal's decision-making is Part 5A (sections 117A- 117D) of the Nationality, Immigration and Asylum Act 2002 (inserted by the Immigration Act 2014). As provided by section 117A (1), Part 5A applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches article 8 and as a result would be unlawful under section 6 of the Human Rights Act 1998. Section 117A (2) requires the court or tribunal, in considering whether an interference with a person's right to respect for private and family life is justified under article 8(2), to have regard in all cases to the considerations listed in section 117B.

28. Section 117B states as follows: -

"**Article 8: public interest considerations applicable in all cases**

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom."

29. There have been a number of cases concerning proportionality and s.117B of the 2002 Act since the UT decision in Rajendran and Rhuppiah v Secretary of State for the Home Department [2016] EWCA Civ 803. I assume the parties were aware of this, but for one reason or another did not rely on or bring them to my attention. I have set out the relevant caselaw in some detail below.

30. In respect of the impact of s.117B, Rhuppiah v Secretary of State for the Home Department, the Court of Appeal examined the interaction of section 117A(2) and section 117C. Sales LJ observed:-

> "*It is possible to conceive of cases falling within section 117B(4) (unlawful presence in the UK) or section 117B(5) (precarious immigration status in the UK) in which private or family life (as appropriate) of an especially strong kind has been established in the host country such that it should be accorded great weight for the purpose of analysis under Article 8 : Jeunesse v Netherlands is a prime example.*"

31. In CL v SSHD [2019] EWCA Civ 1925, the Court of Appeal again considered the interplay between s. 117B (4) and (5). The following is salient:-

> "53. Mr Malik submits that this is what the Court of Appeal held in *TZ (Pakistan) v Secretary of State for the Home Department* [2018] EWCA Civ 1109. At para 25 of the judgment in that case the Senior President of Tribunals (with whom Moylan and Longmore LJJ agreed) said:
>
> > 'The settled jurisprudence of the [European Court of Human Rights] is that it is likely to be only in an exceptional case that article 8 will necessitate a grant of leave to remain where a non-settled migrant has commenced family life in the UK at a time when his or her immigration status is precarious … That general principle applies to any consideration of the Rules which involves engaging with a requirement or requirements that possess an article 8 element … and to the consideration of article 8 outside the Rules.'
>
> 54. Mr Malik also relies on a reported decision of the Upper Tribunal (Immigration and Asylum Chamber) in *Rajendran (s117B - family life)* [2016] UKUT 138 (IAC), which indicated that, although section 117B(5) of the 2002 Act is confined to "private life" established by a person at a time when their immigration status is precarious, the considerations set out in sections 117A-D are not exhaustive and it is still relevant for a court or tribunal when considering the public interest to have regard to 'precarious family life' criteria set out in established article 8 jurisprudence.

55. The established jurisprudence to which reference is made in these cases was summarised as follows by the Grand Chamber of the European Court in *Jeunesse v The Netherlands* (2014) 60 EHRR 17, para 108:-

> 'Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious. It is the Court's well-established case-law that, where this is the case, it is likely only to be in exceptional circumstances that the removal of the non-national family member will constitute a violation of article 8.'

56. This passage, however, and the European Court's case law, cannot reasonably be read as establishing that, in determining the weight to be given to a couple's right to respect for their family life, any relationship formed when one partner did not (or did not to the other's knowledge) have a right of permanent residence in the country should be given little weight; nor that for this purpose all persons who do not have settled status should be viewed identically, regardless of their particular immigration status and history. To the contrary, the European Court has made it clear that, in striking the balance between the right to respect for family life and the state's interest in controlling immigration, it is necessary to consider the particular circumstances of the individuals involved, including their immigration status and history. Thus, in the paragraph of its judgment immediately preceding the passage quoted above (para 107), the Court said that:-

> 'in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest. Factors to be taken into account in this context are the extent to which family life would effectively be ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of the alien concerned and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion …'

57. Earlier in the judgment (at para 102) the Court contrasted the position of the applicant in the *Jeunesse* case, who (apart from a tourist visa valid for 45 days) had never had permission to reside in the Netherlands, with that of someone who had been granted permission to settle in the country. Clearly there are degrees of precariousness in a person's situation ranging from, at one extreme, someone who is in the country in breach of immigration laws and is liable to removal through to someone who has been present lawfully in the country for some years and is on a pathway to settled status (such as the five or ten year partner

route in the UK) but does not yet have indefinite leave to remain. It would be unreasonable to attach equal weight to family relationships established by individuals in such different legal situations and there is no "settled jurisprudence" which requires this. Rather, the *Jeunesse* case makes clear that a person's immigration status may greatly affect the weight to be given to their right to respect for family life: see also *R (Ali) v Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 WLR 4799; para 32; *GM (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1630, para 33. It is also worth noting that in the *Jeunesse* case the Court concluded that on the facts refusing the applicant residence in the Netherlands had been a violation of her right to respect for her family life as protected by article 8.

58. In *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58; [2018] 1 WLR 5536, para 39, the Supreme Court recognised that the word ‘precarious’ has been applied both by the European Court of Human Rights and by UK courts to refer to a variety of situations including that of a person unlawfully present as well as the status of a person lawfully present for a limited period. The Supreme Court held that in the context of section 117(B) of the 2002 Act, however, the word "precarious" should be given a bright-line interpretation which excludes anyone present in the UK unlawfully and includes everyone who, not being a UK citizen, is lawfully present but does not have indefinite leave to remain: see paras 43-46.

59. We noted earlier what Lord Reed in the *Agyarko* case (at para 46) called the ‘real and important’ margin of appreciation afforded to national authorities in relation to immigration, and that in the UK the authorities with constitutional responsibility for determining policy in this area are Parliament and the Secretary of State. As recognised in the *Rhuppiah* case (at para 37), it is clear that in section 117(B)(5) of the 2002 Act Parliament has deliberately distinguished between an applicant's private life, to which little weight should be given in so far as it was established at a time when a person's immigration status is precarious, and his or her family life, which is not the subject of such a requirement. That leaves it open to courts and tribunals in cases where a relationship with a qualifying partner is established at a time when a person is lawfully present in the UK but does not have indefinite leave to remain to give such weight to the relationship as is appropriate in the circumstances of the particular case.

32. In GM Sri Lanka v SSHD EWCA Civ 1630, the Court of Appeal made the following “six preliminary observations” about the test to be applied.

> First, the IR and section 117B must be construed to ensure consistency with Article 8. This accords with ordinary principles of legality whereby Parliament is assumed to intend to make legislation which is lawful (see for example *R v SSHD ex p. Simms* 2 AC 115 at page 131; and *Bennion on Statutory Interpretation* (7th Edition) at page 718 – there is "*a high threshold for rebutting this presumption*"). Were it otherwise

then domestic legislation could become inconsistent with the HRA 1998 and the ECHR and be at risk of a declaration of incompatibility.

Second, national authorities have a margin of appreciation when setting the weighting to be applied to various factors in the proportionality assessment: *Agyarko* (ibid) paragraph [46]. That margin of appreciation is not unlimited but is nonetheless real and important (ibid). Immigration control is an intensely political matter and "*within limits*" it can accommodate different approaches adopted by different national authorities. A court must accord "*considerable weight*" to the policy of the Secretary of State at a "*general level*": *Agyarko* paragraph [47] and paragraphs [56] - [57]; and see also *Ali* paragraphs [44] - [46], [50] and [53]. This includes the policy weightings set out in Section 117B. To ensure consistency with the HRA 1998 and the ECHR, section 117B must, however, have injected into it a limited degree of flexibility so that the application of the statutory provisions would always lead to an end result consistent with Article 8: *Rhuppiah* (ibid) paragraphs [36] and [49].

Third, the test for an assessment outside the IR is whether a "*fair balance*" is struck between competing public and private interests. This is a proportionality test: *Agyarko* (ibid) paragraphs [41] and [60]; see also *Ali* paragraphs [32], [47] - [49]. In order to ensure that references in the IR and in policy to a case having to be "*exceptional*" before leave to remain can be granted, are consistent with Article 8, they must be construed as not imposing any incremental requirement over and above that arising out of the application of an Article 8 proportionality test, for instance that there be "*some highly unusual*" *or* "*unique*" factor or feature: *Agyarko* (ibid) paragraphs [56] and [60].

Fourth, the proportionality test is to be applied on the "*circumstances of the individual case*": *Agyarko* (ibid) paragraphs [47] and [60]. The facts must be evaluated in a "*real world*" sense: *EV (Philippines) v SSHD* [2014] EWCA Civ 874 at paragraph [58] ("*EV Philippines*").

Fifth, there is a requirement for proper evidence. Mere assertion by an applicant as to his/her personal circumstances and as to the evidence will not however necessarily be accepted as adequate: In *Mudibo v SSHD* [2017] EWCA Civ 1949 at paragraph [31] the applicant did not give oral evidence during the appeal hearing and relied upon assertions unsupported by documentary evidence which were neither self-evident nor necessarily logical in the context of other evidence. The FTT and the Court of Appeal rejected the evidence as mere "*assertion*".

Sixth, the list of relevant factors to be considered in a proportionality assessment is "*not closed*". There is in principle no limit to the factors which might, in a given case, be relevant to an evaluation under Article 8, which is a fact sensitive exercise. This obvious point was recognised by the Supreme Court in *Ali* (ibid) at paragraphs [115ff]] and by the Court of Appeal in *TZ (Pakistan) and PG (India) v SSHD* [2018] EWCA Civ 1109 ("*TZ*") at paragraph [29]. Nonetheless, there is in practice a relatively well trodden list of factors which tend to arise in the cases. We address those of relevance to this appeal below. But others exist, identified in Strasbourg and domestic case law, such as the personal conduct of an applicant or family member in relation to immigration control eg. breach of immigration rules or criminal law, or public order

considerations; the extent of social and economic ties to the UK; and the existence of prolonged delay in removing the applicant during which time the individual develops strong family and social ties: See generally *Ali* paragraph [28] citing with approval *Jeunesse v The Netherlands* (2014) 60 EHRR 17 ("*Jeunesse*").

Conclusions

33. I found that the Appellant and her father were credible witnesses. The Appellant came here aged 15. She was at that time an unaccompanied minor. This was accepted by the Respondent. I accept that she was abused in Zimbabwe by her step- father. I accept that she is depressed and seeking counselling. Her mother effectively disappeared without trace leaving the Appellant and her siblings in the hands of an abusive step-father. Her father is separated from his wife, with whom he has a child A. However, Appellant and her mother support the Appellant's appeal. Appellant and the Appellant have a normal sibling relationship.

34. The Appellant's aunt was able to bring the Appellant to the UK and to remove her from harm, following the Appellant's mother's disappearance. Her two siblings followed. Since this time the Appellant has lived with her father. She is not living independently. She is financially and emotionally dependant on him. I had the benefit of hearing oral evidence and I accepted that the relationship is very close and that that the Appellant is very dependant, on her father. He is the only parent with whom she has contact. The evidence about Zimbabwe establishes that the Appellant would face very real difficulties on return. It would be difficult for her to find work and to support herself, particularly as a lone female. However, the difficulties do not amount to very significant obstacles to integration, applying the test in Kamara. She has not been here for a significant period of time. She is a citizen of Zimbabwe. She would have some financial support from her father albeit not very significant. Life would be extremely challenging for her, but not to the extent that there would be very significant obstacles to integration as defined by Sales LJ in Kamara.

35. The Appellant relies on her family and private life to argue that the Respondent's decision breaches her rights under Article 8. The Appellant cannot meet the Rules concerning private life. She cannot meet the Rules relating to family life. The maintenance of effective immigration controls is in the public interest.

36. I find that the Appellant has significant family life here with her father which is akin to that between a father and child. It is significant in this case that the Appellant joined her father lawfully having been recognised by the Secretary of State as an unaccompanied minor. It is not suggested by the Secretary of State that she could return to her abusive step - father. It is the Respondent's case that she can return to Zimbabwe alone or with her siblings.

37. The Appellant had a relationship with her father before she came here. It was not created when she was here precariously. It cannot sensibly be

suggested that the Appellant (who was a child when she came here) or her father had any choice other than to develop and strengthen their pre-existing relationship. It cannot reasonably be suggested that the circumstances are analogous to that of a precarious family life scenario involving partners or spouses. Considering the circumstances of this case, I attach significance to the Appellant's family life here albeit strengthened when her stay here was precarious. In this case any other approach would not be consistent with Article 8.

38. It was not suggested by the Respondent that the Appellant's father could return to Zimbabwe with her to continue family life. This is probably explained by the fact that he has a 12 -year old daughter her who is a British citizen (A). Whilst it may be reasonable to expect a couple, one of whom does not have leave to remain here, to return to a country to support each other, it is not so straight forward in the case of adult siblings. The family life on which the Appellant relies is with her father and not her siblings. There was no evidence that she has family life with her siblings in the UK which would engage Article 8. Siblings are not responsible for each other in the same way as a parent is for a child. Siblings are not committed to live together like adults in a relationship. The strength of the Appellant case rests in the particular relationship that she has with her father. In this respect I take into account the impact of separation not only on the Appellant but on her father too. He would be heartbroken to have to endure being separated from his vulnerable daughter.

39. There is no bright line between childhood and adulthood. I find that there has been no significant change as a result of this Appellant having recently reached adulthood. The Appellant is vulnerable following her negative experiences in Zimbabwe. It would be extremely difficult for her to return to Zimbabwe as a lone female. I cannot speculate about whether she could live with her siblings in Zimbabwe. If so, this may make her life there easier and she would have a degree of family life; however, she would not be able to enjoy a real, meaningful and supportive relationship with her father in the UK. It is the relationship with her father on which she relies to establish that the decision breaches her rights under Article 8 and this could not continue in Zimbabwe. It is this relationship which I find to be significant. I attach significance to the meaningful relationships that the Appellant has here with A and her grandmother. I take account of the CPIN. Women in Zimbabwe experience discrimination and remain disadvantaged in society. The Appellant has been the victim of a form of domestic abuse. Violence against women generally is relatively common there. There is no specific risk to this Appellant, but it is a factor that may make life in Zimbabwe even more difficult for her especially when she has already been abused. Similarly, it is a factor that she would be returning to a country where there are very severe economic problems.

40. In the circumstances of this case, I conclude that the decision breaches the Appellant's rights under Article 8.

Notice of Decision

The appeal is allowed under Article 8.

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 him or any member of his 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 Joanna McWilliam Date 25 February 2020

Upper Tribunal Judge McWilliam