Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/06778/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7th March 2018	**On 4th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MR PANASHE CHIMHINA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Swain, Counsel instructed by Tann Law Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge S D Lloyd sitting at Birmingham on 12th January 2017. The decision was promulgated on 5th September 2017. The Appellant had sought entry clearance to join his mother here in the United Kingdom. She is Alice Chimhina. The grant of permission in this case was by First-tier Tribunal Judge C A Parker dated 29th December 2017. It is said within that grant of permission as follows:-

> "The appeal is on human rights grounds. The Judge concluded that there were no 'compelling circumstances' warranting a grant of entry clearance outside of the rules to the appellant under the Respondent's policy, to the dependent child of a sponsor present with discretionary leave. However, the Judge did not then go on to consider Article 8 outside of the rules, following the steps set out in **Razgar**. The Judge referred to the social work report at paras 19 and 20 but made no reference to the social worker's opinion that it would be in the appellant's best interests to join his mother nor did the Judge himself reach a finding on that issue. The Judge referred to s117B considerations but did not set these out and factor them into a proportionality exercise."

2. The grounds of appeal were drafted by the Appellant's solicitors and it is right to observe that they are not in the clearest of terms, but Mr Swain of Counsel who appears on behalf of the Appellant (now instructed by Tann Law Solicitors) has greatly assisted me to explain the grounds of appeal within the constraints of the way in which they were drafted.

3. Insofar as ground 1 is concerned, Mr Swain says is that there was an independent social worker's report and that had set out various details following a specific visit to the Appellant and his living arrangements in Zimbabwe and that the failure to consider the independent social worker's report in the correct form lead to a material error of law.

4. More specifically, it is said that whereas at paragraph 20 the judge had said the following, it was an incorrect finding because the independent social worker's report had said the opposite. The judge had said:-

> "The report does not go into detail regarding the accommodation nor does it set out the detail of why the Sponsor states that the accommodation would now be overcrowded, or in what way the aunt is specifically limited any more so than she had been in the past."

5. In fact, at various places the Independent Social Worker's report, for example at A32 of the Appellant's bundle at paragraph 19 dealt with these matters, and then where it is said, for example, "There is a significant risk of instability and disruption of Panashe's life at time he need support (sic) as he is still in education and at a critical point of transition into adulthood", and then A34 said more.

6. At paragraph 20 at A33 the report said as follows:-

> "Panashe has expressed his worry about the uncertainty over his future which is why it is important that he be reunited with his mother in the UK where [he] hopes to relaunch himself. Panashe's mother ... has had some regular contact with him throughout his minority years via telephone as well as sending him presents on birthdays and Christmas. This enabled a strong bond and attachment to develop

between Panashe and his mother who is now settled in the United Kingdom."

7. I then turn to the next ground of appeal. Again, not clearly drafted but it states in effect that the independent social worker's report which had dealt with the Appellant's best interests had not been properly or adequately dealt with by the judge and the references here are in particular to A34 of the bundle where the expert said as follows:-

> "She is also concerned that Panashe will not cope if he was to live on his own and that will affect his further studies since he passed his A' (sic) levels. It is my considered view that it is in Panashe's best interest that he is assisted and allowed to join his mother's (sic) in the UK where his needs are most likely to be met. In fact – this should have happened a while ago, as Panashe has no family in Zimbabwe."

8. Then turning to the next ground that can be summarised to read that the judge failed to deal with the reasons why the Sponsor took so long to seek to have her son come and join her here in the United Kingdom. It was clear that there were three aspects which caused the delay: Firstly, that the Sponsor herself was going through as the judge called it "a very traumatic period in her life here in the United Kingdom". That, without going into too much of the detail, refers to difficulties that she went through with her partner here in the United Kingdom. Secondly, there was a serious issue in relation to her own proceedings for another child here in the United Kingdom (half-sibling of the Appellant). Thirdly, being able to obtain the appropriate evidence and to make the ultimate application which included the independent social worker's report and the obtaining of other evidence.

9. In my judgment even if the judge was going to reject these reasons, he needed to set them out and then to explain why they were going to be rejected. In reality, there is very little reference to the difficulties which were caused in making the appropriate application.

10. When permission was granted it is said that there was no reference to the five stage test expounded by the House of Lords in **Razgar** and that insofar as Section 117B is concerned there was really no more than a passing one-line reference to that. In my judgement, insofar as the **Razgar** issue does raise a significant point, and in my judgment if the judge had evaluated the evidence which was before him he may well have come to a different conclusion if he had undertaken the five stage **Razgar** test and he may have been assisted by going through the Section 117B considerations.

11. In the circumstances I conclude cumulatively that there is a material error of law in the decision of the judge. It means that the decision has to be set aside, there will have to be a rehearing on all issues and that rehearing will take place at the First-tier Tribunal. For the avoidance of doubt the "all issues" relates to Article 8 only. This is not a case that can succeed under the Immigration Rules, and indeed that was conceded at the First-

tier and there was no permission to appeal in respect of the Immigration Rules.

12. There was also a concession by the Secretary of State that the Appellant is indeed the son of the Sponsor because there was DNA evidence. I see no reason to go behind that concession either, therefore the rehearing will be on Article 8 issues as between the Appellant and his mother. The First-tier Tribunal will give such further directions as appear appropriate, but it does not appear necessary for there to be an interpreter for the hearing.

13. No anonymity direction is made.

Signed: Abid Mahmood Date: 7th March 2018

Deputy Upper Tribunal Judge Mahmood