Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/22378/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18th November 2019	**On 04th December 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

HIREN SURESHCHANDRA RAJPUT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Acharyas, Acharyas Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Zimbabwe born on 4 May 1979. He appeals against the decision of First-tier Tribunal Judge Birk promulgated on 20 June 2019 dismissing his appeal against the Respondent's refusal of leave to remain on Article 8 grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge E M Simpson on 23 September 2019 on the grounds it was arguable the judge had failed to thoroughly assess the country information concerning the socio-political economy of the country, save in the briefest of terms, when concluding that the employment situation was 'not very good' and the

Appellant would 'encounter a level of difficulty' in finding work. Judge Simpson was of the view that the judge's findings concerning the Appellant's lack of family life in the UK were open to the judge on the evidence before her, but that the decision otherwise disclosed a lack of reasoning.

Submissions

3. Mr Acharyas submitted that the issue in this case was whether the judge had considered the test of 'very significant obstacles to integration'. It was clear from paragraph 34 of the decision that the Appellant had no family in Zimbabwe. He had heart problems and was not in a position to engage in employment since he had no accommodation in Zimbabwe and no family members or other form of support. The judge had erred in law in not considering relevant objective evidence of the economic situation in Zimbabwe. The judge acknowledged that the level of unemployment was 95% but had failed to refer to or consider the other objective evidence at pages 230 to 317 of the bundle. This showed that the Appellant would not be able to reintegrate in Zimbabwe because he would be unable to find employment and accommodation.

4. The judge's finding that the Appellant could receive support from those who supported him in the UK was irrational. There was credible evidence from the Appellant's witness that he could not support the Appellant on return to Zimbabwe. The Appellant would be unable to establish human relationships without family or other support. He had no accommodation and no prospect of employment. He had been in the UK in excess of 16 years. Applying Kamara v SSHD [2016] EWCA Civ 813, there were very significant obstacles to integration and the judge's conclusions were irrational.

5. Further, there was sufficient evidence to show that the support the Appellant received from his uncle and family was real, committed and effective such that family life existed. The judge failed to consider the impact on family members in particular the relationship the Appellant had with his cousin who was like a sister to him. The Appellant's medical history, requiring regular check-ups with his GP, and the dire employment prospects was sufficient to show significant obstacles to reintegration. Mr Acharyas accepted the Appellant's circumstances did not reach the high threshold of Article 3.

6. Mr Kotas submitted that the Appellant's claim to have family life in the UK was unarguable. The Appellant had an uncle and cousins in the UK but he did not live with them and he was not directly related to them. His cousin, whom he considered to be a sister, was not emotionally or financially dependent on the Appellant. The judge's finding at paragraph 41 that the Appellant had failed to establish family life in the UK was the only conclusion the judge could reach on the evidence before him. The judge

dealt with the Appellant's medical condition at paragraph 32. The GP's letter did not state that the Appellant was unable to care for himself or unable to obtain employment or that there was any risk of a health problem in the future. Accordingly, the health facilities in Zimbabwe were not likely to be material.

7. The Appellant was focusing on his employment position in Zimbabwe. It was submitted that the judge failed to refer to the other articles in the Appellant's bundle but this did not really add to the position which the judge considered in any event. The articles in the bundle were repetitious and whether there were very significant obstacles to integration was not confined to whether the Appellant could get a job. The judge properly directed herself applying Kamara at paragraph 22 and found that the Appellant would find it difficult to get a job. However, the level of difficulty was not such that he could not obtain employment within a reasonable time. Mr Acharyas submitted the judge should have found that the Appellant could not get a job. However, this was not the only conclusion open to the judge on the evidence before her. Even if the Appellant could not get a job, the judge found that he would not be destitute. She rejected the evidence that all the support in the UK would be suddenly cut off. Further, the Appellant could take advantage of the voluntary returns service for financial assistance on return.

8. Mr Kotas submitted the judge had considered the objective material, the Appellant's circumstances on return to Zimbabwe and the likelihood of support from those here in the UK. The judge's findings were open to her on the evidence before her. Although the level of unemployment was high and the economic situation in Zimbabwe was poor, the Appellant would be enough of an insider to be able to integrate. He would be in no worse position than any other Zimbabwean. The fact that the Appellant would be returning without family members or other support in Zimbabwe did not mean he could not integrate. The judge had applied a broad evaluative assessment to integration consistent with Kamara. The Appellant would have a reasonable opportunity of obtaining employment within a reasonable time. Lack of employment opportunities was not enough to reach the elevated threshold of 'very significant obstacles to integration' and the judge had properly dealt with that test. The Appellant came to the UK as a young adult and the judge considered all relevant factors. Her conclusions were open to her on the evidence before her.

9. Mr Acharyas submitted that the Appellant had no support from anyone in Zimbabwe. He required check-ups for his medical condition and the medical system in Zimbabwe had collapsed. The Appellant would be unable to participate in normal life. He had been away for a significant amount of time and could not support himself because there were no jobs available. Looking at the evidence in the round, the judge had not considered all the objective evidence. There were over 1 million people on food aid and someone like the Appellant arriving with no support would not be able to build up relationships within a reasonable amount of time.

10. The judge's conclusion at paragraph 34 that he could obtain employment did not take into account the change in circumstances since the Appellant left Zimbabwe. It was not about the level of difficulty in obtaining employment because it was more or less impossible to obtain such employment. The Appellant would not be able to support himself or engage in a normal lifestyle. The judge had failed to look at all the circumstances in the round.

Conclusions and reasons

11. The Appellant came to the UK on 27 March 2003 as a working holidaymaker and was subsequently granted leave to remain as a student. He has remained in the UK without leave since May 2009. His subsequent asylum application was refused and his appeal dismissed in August 2009. His further submissions were refused as a fresh claim in 2014. The Appellant applied on 30 October 2017 for leave to remain on the basis of family and private life which was refused on 17 October 2018.

12. It is the Appellant's case that he is supported by his uncle in the UK and has a strong bond with his uncle and his family. There are also numerous other family members and friends in the UK who have provided him with financial support. The Appellant has become fully integrated into life in the UK. He has no friends or family in Zimbabwe and would face very significant obstacles to integration because he has only spent six years of his adult life in Zimbabwe. The situation in Zimbabwe is extremely poor. He may face harassment as an MDC supporter and he was very concerned about the impact of the economic state of the country. There was a shortage of jobs, medicines, food and accommodation. The Appellant had heart surgery in June 2018 and his health would suffer if he returned.

13. The Appellant was diagnosed with an acute myocardial infarction and underwent coronary surgery and had a cardiac stent placement on 26 June 2018. He was discharged from the hospital and is now seen by his GP. He required regular reviews for health checks and blood tests, monitoring and medication but there were no forthcoming appointments referred to in the GP's letter.

14. I am satisfied that the judge properly directed herself in law and applied the correct test following Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813. At paragraph 22 the judge quotes from Kamara stating:

> "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 and 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."

15. In summary, the judge found the Appellant had been in the UK since March 2003, which was insufficient to meet paragraph 276ADE(vi). He came to the UK as a young adult and therefore was familiar with the lifestyle, culture, language, religion, politics and society of Zimbabwe. His sixteen-year residence in the UK did not diminish his knowledge of Zimbabwe given his evidence that he took an interest in the news and mixed with family members and friends of Zimbabwean descent. He remained aware of the culture and social aspects of his country and his length of time in the UK would not be a barrier to his integration.

16. The Appellant was able to speak English, which is widely spoken in Zimbabwe, and there were no issues regarding his ability to communicate with people. Although he had no family or friends to return to in Zimbabwe, he had the ability to make new friends and develop support networks. His medical condition required medication but he had failed to establish that it would not be available in Zimbabwe. The Appellant did not require on going treatment for his heart condition and was currently under the care of his GP. He had failed to show that he would not be able to obtain access health reviews upon return. The GP letter did not state that the Appellant was unable to care for himself or seek employment.

17. At paragraph 34 the judge stated:

> "I take into account the employment situation in Zimbabwe is not very good. I take into account the media report at page 317 of the Appellant's bundle, which states that the unemployment rate was reported to be 95% in May 2017. I find that the Appellant does have employment prospects because he speaks English, he is physically and mentally able to work, he was educated in Zimbabwe and he has a good level of education, and he has previous experience of being in employment. Although he would struggle to find a significant job which is highly paid, his oral evidence was that he could only do a general type of job. I find that although he would have to search and apply for jobs and that he would encounter a level of difficulty in doing so, that he has not established that he would be able to secure some form of employment in a reasonable period of time. This would give him the means to accommodate and provide for himself."

18. At paragraph 35, the judge found:

> "I have considered the written evidence of his family members and friends especially that of Mr Dayi (sic). I do not find at all credible that they would all fail to assist him financially on his return. This is because Mr Daya has been making financial contributions towards the Appellant's upkeep for many years, as have a number of his different

> family members and friends and to suddenly stop this just because he has left the country means that I cannot place any weight on the depth of support that they say that they have individually provided for him over the years. It does not make any logical sense that they would withdraw their help and support and I found Mr Daya's evidence on that point wholly unconvincing."

19. The judge went on to find that each person in the UK would contribute according to their ability to do so which would potentially add up to a significant amount. But in any event, there was no reason why the Appellant could not access the voluntary returns service for financial assistance and therefore he would have sufficient funds to help him until he found employment. The judge placed little weight on the letter from the Appellant's father who had moved to the USA in 2006 and found that he was not an active supporter of the MDC. The judge concluded that the factors referred to in the above paragraphs did not reach the high threshold of 'very significant obstacles to reintegration'.

20. I am of the view that this finding was open to the judge on the evidence before her. The Appellant accepted in re-examination that he would be able "to do general employment". He had the assistance of family and friends in the UK or through the voluntary returns service. He had spent six years of his adult life in Zimbabwe before coming to the UK where he had maintained his cultural links. His heart condition did not prevent him for working and he did not require further treatment. On the evidence before the judge, the Appellant was able to operate on a day-to-day basis and to build up within a reasonable time a variety of human relationships to give substance to his private life in Zimbabwe.

21. Mr Acharyas referred to articles in the Appellant's bundle and stated that the judge failed to take these into account. However, looking at the totality of that objective evidence, it did not alter the position the judge considered. The judge was well aware that the situation in Zimbabwe was economically poor and that the unemployment rate was very high. However, it was not the case that the Appellant would not be able to find a job at all. There was no error of law in the judge's conclusion that the Appellant had failed to show 'very significant obstacles to integration'.

22. There was no error of law in the judge's finding that the Appellant had not established family life in the UK. He did not live with his uncle or his uncle's family. His uncle's children were adults and the level of support did not go beyond normal emotional ties.

23. Even if Article 8 is engaged, the judge properly considered proportionality. The Appellant has remained in the UK illegally for over nine years. The weight to be attached to the public interest is significant. The judge's conclusion that the Appellant's family and private life could not outweigh the public interest was open to him on the evidence before him.

24. Accordingly, I find that there is no error of law in the decision promulgated on 20 June 2019 and I dismiss the Appellant’s appeal.

Notice of decision

Appeal dismissed

No anonymity direction is made.

J Frances

Signed Date: 29 November 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed Date: 29 November 2019
Upper Tribunal Judge Frances