



**Upper Tribunal  
(Immigration and Asylum Chamber)**      Appeal Number: HU/12130/2019 (P)

**THE IMMIGRATION ACTS**

**Decided under rule 34  
On 3<sup>rd</sup> July 2020**

**Decision & Reasons Promulgated  
On 15<sup>th</sup> July 2020**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**LOIS [B]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

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

Respondent

**DECISION AND REASONS**

1. Directions were issued by Upper Tribunal Judge Keith on 30 April 2020 indicating the provisional view, in light of the need to take precautions against the spread of Covid-19 and the overriding objective, that this case was suitable to determine whether there was an error of law in the First-tier Tribunal's decision and if so, whether that decision should be set aside, on the papers without an oral hearing.
2. The Appellant opposes the determination of these issues on the papers on the basis that a hearing is required to adequately deal with the issues, particularly given the matter involves a child. No detailed reasons are given beyond that as to why oral submissions over and above detailed written submissions are required as a matter of fairness or otherwise.
3. The Respondent has made no submissions as to whether the error of law stage of this appeal could or should be determined on the papers, such

that there has been no objection in proceeding with the provisional view of Judge Keith.

4. In my view, this is a case in which it is suitable for the issues of whether the First-tier Tribunal's decision materially erred in law and if so, whether the decision should be set aside, to be determined on the papers on the basis of the written submissions made. This is in light of the unprecedented circumstances surrounding Covid-19 and the need to take precautions to prevent the spread of the disease; is in accordance with the overriding objective for the Upper Tribunal to deal with cases fairly and justly in rule 2(1), (2) and (4) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and in circumstances where on the facts; there are comprehensive written submissions from both parties covering all of the relevant issues. This decision has therefore been made under rule 34.
5. The Appellant appeals with permission against the decision of First-tier Tribunal Judges O'Brien and Clarke promulgated on 11 November 2019, in which the Appellant's appeal against the Respondent's decision to refuse her human rights claim in the context of deportation dated 4 July 2019 was dismissed.
6. The Appellant is a national of Zambia, born on 27 January 1985 who first entered the United Kingdom as a dependent of her mother on 27 August 1999 and who was granted indefinite leave to remain in 2003. The Appellant had a daughter on 13 December 2013, who is a British citizen through her father, whom the Appellant married on 5 September 2015.
7. On 4 April 2019, the Appellant was convicted of theft from her employer and on 25 April 2019, sentenced to 12 months' imprisonment. In light of that conviction, the Respondent decided to make a deportation order against the Appellant on 13 May 2019, subsequent to which she made a human rights claim.
8. The Respondent refused the application the basis that it was not accepted that the Appellant had a genuine and subsisting relationship with her daughter and in any event it would not be unduly harsh either for them to relocate to Zambia together or for the Appellant's daughter to remain in the United Kingdom without her. Nor was it accepted that the Appellant had a genuine and subsisting relationship with her husband; or that in any event it would be unduly harsh for him to relocate to Zambia or remain in the United Kingdom without the Appellant. The Respondent also found that the Appellant did not meet the private life exception to deportation, although it was accepted that she had been lawfully resident in the United Kingdom for most of her life, it was not accepted that she was socially and culturally integrated here because of her conviction nor that she could not reintegrate on return to Zambia. Finally, no very compelling circumstances were found to outweigh the public interest in deportation.
9. Judges O'Brien and Clarke dismissed the appeal in a decision promulgated on 11 November 2019 on all grounds. Whilst the First-tier Tribunal

accepted that the Appellant was in a genuine and subsisting relationship with both her husband and daughter, it was not accepted that it would be unduly harsh for either to relocate to Zambia with the Appellant nor that it would be unduly harsh for them to remain in the United Kingdom without the Appellant. As such neither of the family life exceptions to deportation were met. The First-tier Tribunal found that the Appellant had lived most of her life in the United Kingdom and was socially and culturally integrated here; but did not find that there were any very significant obstacles to her reintegration in Zambia such that she did not meet the private life exception to deportation. Finally, there were no exceptional circumstances to outweigh the public interest in deportation.

### **The appeal**

10. The written grounds of appeal to the Upper Tribunal accompanying the application for permission made on 14 January 2020 were that the First-tier Tribunal materially erred in law in its assessment of the Appellant's daughter's best interests and whether the impact of deportation on her would be unduly harsh. Specifically, the Appellant highlighted the letter from the Appellant's daughter's school about the significant adverse impact of the Appellant's imprisonment, from which it can be expected that the Appellant's deportation and therefore permanent removal from the family home would adversely affect her daughter. The Appellant states that the First-tier Tribunal erred in law in failing to give sufficient weight to this piece of evidence undermining its assessment of her best interests and thereby undermining the Article 8 assessment.
11. In the final paragraph of the grounds it is said that there is a duty to give reasons which has not been followed by First-tier Tribunal Judge Hatton, with reference to the failure to give weight to the evidence before him. It is not clear if this is a typographical or copy and paste error in relation to the name of the Judge, but in any event, there is no further particularisation of this ground which appears to add little of substance to the primary point.
12. The original grounds of appeal to the First-tier Tribunal submitted on 19 November 2019 were different. In that application, three grounds were identified that the First-tier Tribunal materially erred in law in (i) its assessment of whether the Appellant's deportation would be unduly harsh on her daughter; (ii) failing to adequately engage with the assessment of the best interests of the Appellant's daughter, and (iii) failing to give adequate reasons for rejecting the Appellant's claim to have no family in Zambia to assist her with reintegration.
13. The first ground is essentially the same as the main ground in the application to the Upper Tribunal. The second ground in essence is that the First-tier Tribunal failed to identify what the best interests of the Appellant's daughter were and engage with the potential consequences of relocating to Zambia away from substantial family ties in the United Kingdom or remain here without her mother. The third ground is said to

undermine the findings that the Appellant would face no very significant obstacles to reintegration in Zambia as it was not inherently implausible that she would have not family support there which is said to be fundamental when seeking to re-establish herself there.

14. Although there was only a single ground of appeal before the Upper Tribunal (subject to the reasons point in the final paragraph) permission appears to have been granted by the Upper Tribunal on the basis of the earlier three grounds of appeal to the First-tier Tribunal; with specific reference to it being arguable that the First-tier Tribunal failed to properly carry out an assessment of the child's best interests and failed to give adequate reasons for finding no very significant obstacles to reintegration.
15. The written submissions made on behalf of the Appellant in response to the directions issued on 30 April 2014 repeat in substance the matters raised in the first application for permission to appeal to the First-tier Tribunal with the addition of a conclusion about the means by which the Upper Tribunal proceeds with the error of law issues.
16. In her written submissions, the Respondent opposes the appeal and submits that the Appellant's written submissions go wider than the grounds upon which permission to appeal was sought to include a novel ground three. Although technically correct, as set out above, the application for permission to appeal to the Upper Tribunal was made on much more limited grounds, it would appear that the Upper Tribunal has granted permission more widely by reference to the grounds submitted to the First-tier Tribunal and I do not therefore exclude reliance on this ground by the Appellant; to which the Respondent has made submissions on the substance in any event.
17. In relation to the first and second grounds of appeal, the Respondent submits that the Appellant accepts that all relevant material has been taken into account about the Appellant's daughter, with express reference to the letter from the school. There is nothing to suggest that the First-tier Tribunal applied the wrong standard of proof and it reached conclusions which were open to it on the evidence available. There was sufficient consideration of the best interests of the Appellant's daughter and without more was not dispositive of the appeal due to the need for the effects of deportation to be unduly harsh.
18. In relation to the third ground of appeal, the Respondent submits that the way the ground is formulated shows that the Appellant accepts that reasons have been given by the First-tier Tribunal for finding that the Appellant will not face very significant obstacles to reintegration on return and the challenge is therefore essentially put on the basis of alleged perversity or unreasonableness. The Appellant's claim in relation to reintegration relies wholly on her unsupported claim that she has no wider family there, but, in the context of her propensity to dishonesty (shown by her conviction), the First-tier Tribunal were entitled to consider that the Appellant had not established that she met all of the requirements of the

private life exception. In any event, the Respondent submits that the absence of family in Zambia is not alone sufficient to demonstrate very significant obstacles to integration such that any error could not be material.

### **Findings and reasons**

19. I consider together the first and second grounds of appeal in relation to the best interests of the Appellant's daughter and whether the deportation of the Appellant would be unduly harsh on her, either by relocation to Zambia or by remaining in the United Kingdom without her as they are strongly linked. At the outset it is important to note that the Appellant would have to establish that both options would be unduly harsh to meet the exception and it is also noted that there is no challenge to the findings of the First-tier Tribunal that it would not be unduly harsh on the Appellant's husband to relocate with her or to remain in the United Kingdom without the Appellant.
20. The First-tier Tribunal correctly sets out the test for unduly harsh in paragraph 39 of the decision and then goes on to consider the evidence in relation to the Appellant's husband and daughter, with evidence and findings in relation to the latter primarily from paragraphs 46 to 54 and the conclusion in paragraph 55 that on the whole, the deportation of the Appellant would not result in a degree of harshness going beyond what would necessarily be involved for any partner or child facing deportation of a family member.
21. Whilst the First-tier Tribunal state in paragraph 51 that it has considered the best interests of the Appellant's daughter as a primary consideration and in isolation without reference to any wider public interest factors in removal; there is no express statement or conclusion as to what those best interests are. However, in substance, it is clear that the First-tier Tribunal has taken into account all relevant evidence in relation to the Appellant's daughter, including her education (paragraph 48); difficulties arising from the sudden separation from the Appellant caused by the Appellant's imprisonment and support for this (paragraph 49 and 52); her medical condition and healthcare (paragraph 50); her British citizenship (paragraph 43); and her strong wider family support network in the United Kingdom (paragraph 54).
22. In the grounds of appeal, the Appellant focuses in particular on the weight attached by the First-tier Tribunal to the letter from the school about the impact of the Appellant's imprisonment on her daughter. The letter is relatively brief, without specific details of support and without further evidence by way of an expert report. It is clear from the decision that that evidence was expressly considered and taken into account, with sufficient weight being attached to it and a finding made about the emotional trauma suffered. The weight to be attached to such evidence is primarily a matter for the First-tier Tribunal and there is no perversity in its approach to this evidence.

23. It is common ground in almost every case that a child's best interests are to remain with both parents in the same country, particularly for a younger child, and often the case that a British citizen child who is in the United Kingdom's best interests would be to maintain the status quo and access the benefits of their citizenship and there is nothing on the facts of this case to suggest otherwise. Although it would have been preferable to have stated this expressly having considered the detail in relation to this child (as set out above), I do not find that the failure to do so, in the context of a detailed assessment of the Appellant's daughter's circumstances, is a material error of law in the First-tier Tribunal's decision. This is because even taking the Appellant's daughter's best interests at their absolute highest, to remain in the United Kingdom with both parents; there was no evidence that could establish that the impact of the Appellant's deportation would in any event be unduly harsh on her, either by relocating to Zambia or remaining in the United Kingdom without her.
24. There was no evidence before the First-tier Tribunal nor relied upon in the grounds of appeal or written submissions that the Appellant's daughter would not have access to education or healthcare in Zambia and a finding that her parents could assist her settling in to a new life in Zambia. The evidence from the school about the impact of separation from her mother would only be relevant to circumstances in which the Appellant's daughter would remain in the United Kingdom without her (and not whether relocation to Zambia with her mother would be unduly harsh) and in any event is brief and does not give details of anything other than the usual consequences on a child of a sudden separation from their primary carer. That evidence is not on any rational view capable of demonstrating unduly harsh consequences on the Appellant's daughter for the purposes of this family life exception to deportation. No other specific matters were relied upon by the Appellant before the First-tier Tribunal nor in the grounds of appeal.
25. Overall, the evidence before the First-tier Tribunal did not identify any impact on the Appellant's daughter, either from relocation or remaining in the United Kingdom without her, that would demonstrate any adverse impact beyond what can normally be expected by the separation of a family member from deportation. That is not to underestimate the likely detrimental impact on children in particular, of relocation or separation from a parent, but a recognition which has been reiterated in numerous cases that a detrimental impact is an accepted consequence of deportation.
26. In relation to the final ground of appeal, the First-tier Tribunal made findings as to the Appellant's education and work experience, including her volunteering role; which taken together with English being an official language in Zambia; it was found that the Appellant had transferable skills that she could utilise to find work and support herself and her family in Zambia. The First-tier Tribunal recognised that the Appellant left Zambia at the age of 11 but that she and her family remain close and she would

not be returning to a country with an unfamiliar language or culture. In paragraphs 33 and 34 the First-tier Tribunal went on to find:

*“33. The Appellant’s mother and siblings continue to live in the United Kingdom and the United States. We note that other members of the family, some now deceased continued to live in Zambia after the family left, first for South Africa and then for the United Kingdom. We find it implausible that there would be no wider family in Zambia to assist the Appellant on relocation.*

*34. Taking all these matters into account we are unable to find that there would be very significant obstacles to the Appellant’s integration into Zambia.”*

27. The Appellant challenges the lack of adequate reasons given for the finding that there would be no wider family in Zambia to support her reintegration which is described as fundamental. However, the grounds of appeal and written submissions refer to a lack of family support network and the Appellant’s evidence that the entirety of her immediate family are outside of Zambia. That is not the same as there being no wider family in Zambia, which is the finding made by the First-tier Tribunal; with reference to other family members having remained in Zambia when the Appellant and her immediate family left (although some are now deceased). The finding made is not necessarily or by implication a rejection of the Appellant’s evidence about the whereabouts of her immediate family but makes a finding on wider family. In these circumstances, there are adequate reasons for the First-tier Tribunal finding that it is implausible that there are no wider family members left to assist the Appellant on reintegration.
28. In any event, the Appellant has not identified any basis upon which a family support network would be ‘fundamental’ to her reintegration nor that the absence of it alone; in the context of unchallenged findings of transferable skills, employment and familiarity with language and culture in Zambia; would amount to a very significant obstacle to reintegration. Even if there were insufficient reasons for the finding of wider family in Zambia, these could not be material to the outcome of the appeal for these reasons.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed G Jackson

Date 3<sup>rd</sup> July 2020

Upper Tribunal Judge Jackson