Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/30759/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 June 2017	**On 6 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LAZARUS JERE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Armstrong, Home Office Presenting Officer
For the Respondent: Ms A Muzira of Counsel instructed by Solomon Solicitors

DECISION AND REASONS

1. This is the appeal by the Secretary of State against a decision of First-tier Tribunal Judge Griffith, who in a decision promulgated on 9 November 2016 allowed the appeal by the Claimant who is a national of Zimbabwe, born on 8 September 1958. The appeal focused on whether or not the

Appellant met the requirements of paragraph 276ADE(1)(vi) i.e. that there would be very significant obstacles to his integration in Zimbabwe.

2. The Claimant arrived in the United Kingdom in July 1999 as a visitor and subsequently obtained leave to remain as a student until 31 January 2002. He then made no further applications until July 2009 and thereafter made further applications until he was given the right of appeal with the refusal dated 15 April 2015. The judge heard evidence from the Claimant and submissions on his behalf and on behalf of the Secretary of State. The judge found the Claimant to be credible at [29] and at [31] and stated, "*as the Appellant has not lived continuously in the UK for twenty years he needs to show that there would be very significant obstacles to his integration into his home country*." The judge then went on at [32] through to [35] to consider that aspect of the case in some detail and concluded the appeal should be allowed.

3. The Secretary of State made an application for permission to appeal to the Upper Tribunal in time, on the basis that the judge had erred materially in failing to appreciate the nature of the test under paragraph 276ADE(1)(vi) which was about being able to return to the person's country of nationality and enjoy a private life there. Reference was made to the Home Office guidance in that respect and it was asserted that the judge had made her findings on the basis that the Claimant had no one to support him in Zimbabwe and no one who could send remittances from the UK.

4. Permission to appeal was granted by First-tier Tribunal Judge Andrew in a decision dated 26 April 2017 on the following basis:

> "*I am satisfied there is an arguable error of law in the Decision in that the Judge found there was no one to support the Appellant in Zimbabwe or send remittances from the UK and that this was sufficient to meet the very significant obstacles test*."

5. A response which is in effect a Rule 24 response was submitted on the Claimant's behalf on 8 June 2017 and at the hearing before me both parties sought to rely on the Immigration Directorate Instruction on Family Migration at 8.2.3.4.

Hearing

6. I heard submissions from Mr Armstrong first on behalf of the Home Office who sought to rely on the grounds of appeal. He submitted that it was necessary in order to succeed under paragraph 276ADE(vi) that the Applicant distinguish himself from somebody else of the same age living in Zimbabwe and that the Claimant had failed to do this. He further submitted that the guidance made clear that the test was not met.

7. In her response, Ms Muzira for the Claimant sought to rely on her response of 8 June 2017. She submitted that the grounds sought to oversimplify matters and that the Secretary of State had referred only to the last three

lines of paragraph 35 of the decision. She submitted that the judge was acutely aware of the test she had to apply at [31]. The Home Office guidance was not before her and was not relied on by the Presenting Officer but even if she had been required to take the guidance into account she appreciated the nature of the test that she had to apply. She drew my attention to [32] to [35] of the decision and submitted that the issue was not merely about whether he could obtain employment in Zimbabwe or had family there but the judge looked at the background evidence and took into account the fact he had spent a significant time in the United Kingdom. It is the case that the judge found that the Claimant's son was in Zimbabwe but at [33] found that he was dependent on his aunt for accommodation and that neither were in employment. She submitted that it is clear that the Claimant would be seriously inhibited from reintegrating into Zimbabwe and that this would entail very serious hardship for him within the meaning of the guidance and the test under paragraph 276ADE(vi).

8. In his reply, Mr Armstrong submitted that the Claimant has relatives in Zimbabwe in the form of a son and a sister-in-law and that the onus was upon him to show that he could not re-establish himself in Zimbabwe. He submitted that the factors set out in the Home Office guidance, i.e. cultural, background, family, friends and social network and the ability of financial support from the UK meant that he could not succeed and could not distinguish himself from an equivalent man in Zimbabwe and that the judge had materially erred in failing to address this.

Decision and reasons

9. I find no material error of law in the decision of First-tier Tribunal Judge Griffith and I announced my decision at the hearing. I now give my reasons.

10. I consider that the application for permission to appeal was misconceived and somewhat misleading. It is clear from the judge's decision that she took into account a number of factors in concluding ultimately that there would be very significant obstacles to the Claimant's integration in Zimbabwe under paragraph 276ADE(vi). Those factors are as follows.

    (i) Firstly, at [32] the background evidence which showed that at various times during the Claimant's residence in the UK the Secretary of State recognised that it was not safe to return failed asylum seekers forcibly to Zimbabwe because of the serious deterioration in the country situation particularly associated with political issues and human rights abuses.

    (ii) Secondly, the judge took account of the fact that the background evidence showed in respect of 2016, an unemployment rate of 80%, a shrinking economy and parts of the country suffering the effects of drought.

(iii) At [33] the judge found that whilst the Claimant has a daughter in the United Kingdom that she is able to provide him with very little financial support owing to her own circumstances and "*there is no evidence therefore that the Appellant has family members in the UK who are able and willing to provide the level of financial support to maintain him in Zimbabwe*."

(iv) The Claimant's son in Zimbabwe is dependent on his aunt for accommodation and neither his son nor his sister-in-law are in employment.

(v) At [34] whilst the Claimant had previously worked as a clerk before coming to the United Kingdom "*given the objective evidence about the general economic circumstances of the country and the level of employment in particular I consider a 58 year old man with no recent employment history would find it difficult to secure employment or employment at a level such that he could be self-supporting".*

(vi) The judge's decision concludes as follows at [35]:

> "*I have taken into account the Appellant's long residence in the UK albeit that he has been here without leave since 2002, his age, education and employment history, the country situation in Zimbabwe, in particular the worsening economic situation and the likely means of support that would be available to him (or the lack of them). As I consider it unlikely the Appellant would be able to find work because I cannot be satisfied that he would be adequately supported from family in the UK or family in Zimbabwe I find on a balance of probabilities that despite having lived in Zimbabwe for 40 years his current circumstances and the country situation cumulatively mean that he would face very significant obstacles to integration in his home country. I therefore find he satisfies paragraph 276ADE(1)(vi)*."

11. I have considered, whilst this was not pleaded as a material error of law in the Secretary of State's grounds of appeal, whether if the judge had been taken to the Home Office guidance referred to above it would have made any material difference to her decision. I have concluded that it would not. I was taken to and have had regard to paragraph 8.2.3.4 assessing whether there are "*very significant obstacles to integration into*" the country of return. The guidance provides at page 42:

> "*A very significant obstacle to integration means something which would prevent or seriously inhibit the applicant from integrating into the country of return... Very significant obstacles will exist where the applicant demonstrates that they will be unable to establish a private life in the country of return or where establishing a private life in the country of return would entail very serious hardship for the applicant*."

Further down the same page:

> "*The decision maker must consider all the reasons put forward by the applicant as to why there would be obstacles to their integration in the country of return. These reasons must be considered individually and cumulatively to assess whether there are very significant obstacles to integration. In considering whether there are very significant obstacles to integration the decision maker should consider whether the applicant has the ability to form an adequate private life by the standards of the country of return – not by UK standards. The decision maker will need to consider whether the applicant will be able to establish a private life in respect of all its essential elements... the decision maker must consider all relevant factors in the person's background and the conditions they are likely to face in the country of return in making their decision as to whether there are very significant obstacles to integration*."

12. I consider when taken as a whole that the judge gave consideration to the factors material on the particular facts of this Claimant's case and that her decision is properly in line with the Home Office guidance cited above. For these reasons I find no material error of law in the decision of First-tier Tribunal Judge Griffith and I uphold that decision.

Fee Award

13. I also uphold the decision to make a fee award on the basis that the appeal was allowed. The judge says as follows: *"I do not consider the Respondent gave adequate consideration in the refusal letter to the Appellant's circumstances when considering the requirements of paragraph 276ADE(1)(vi).* I uphold that decision.

14. No anonymity direction was made.

Signed Rebecca Chapman Date 5.7.17

Deputy Upper Tribunal Judge Chapman