Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/16430/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 November 2017	**07 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

J D W M
(ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: H C, the brother of the sponsor
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

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 her or any member of her 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.

DECISION AND DIRECTIONS

1. The appellant is a citizen of Zimbabwe born on 23 December 1997 who appeals, with permission against a decision of Judge of the First-tier Tribunal Davey, who in a decision promulgated on 26 August 2016 dismissed her appeal against the refusal of entry clearance made by the Entry Clearance Officer, Pretoria, on 4 November 2014.

She was refused under the provisions of paragraph 319X of the Immigration Rules and on human rights grounds.

2. The appellant's appeal had originally been heard in the First-tier by Judge of the First-tier Tribunal Jones on 20 August 2015. She determined the appeal on the papers before her. After further submissions on behalf of the sponsor her judgment was set aside and the appeal was heard by Judge of the First-tier Tribunal Davey on 24 June 2016.

3. The grounds of appeal did not appear to argue that the decision was in breach of the appellant's rights under the Immigration Rules but merely argued that the judge had erred in his consideration of her rights under Article 8 of the ECHR. Before Judge Davey the appellant was represented, and Judge Davey did consider the provisions of paragraph 319X(i) and accepted that the appellant met the provisions of paragraph 319X(i). Moreover, in paragraph 2 of the determination he stated:

> "I am also satisfied that the circumstances in which the appellant was living were serious and compelling and were circumstances which made exclusion undesirable."

He then went on the comment on the adequacy of maintenance and accommodation. He appears to conclude that the appellant would not meet the requirements under paragraph 319X(vi) and (vii), in that is that the appellant could not be accommodated adequately by the relative the child was seeking to join without recourse to public funds or be maintained adequately by the relative without recourse to public funds.

4. There appears to be evidence before me which would indicate that at the time of the application there may well have been accommodation and sufficient maintenance available for the appellant to join her aunt in Britain. And I note that he had accepted that she would be joining her aunt and her aunt's two younger children who had lived with the appellant in Zimbabwe. He noted statements not only from the sponsor but also from the appellant's other aunt, I, and her uncle, HC, who represented her before me. He noted further submissions made in various statements by other members of the family and stated he recognised they all wished the appellant to join the family in the United Kingdom for various reasons. However, he then stated that none of those seemed to meet a threshold of exceptional circumstances. In paragraph 7 he stated:-

> "One person's view of exceptional circumstances may be different from another but I do not find the circumstances as described in which the appellant was living at the material time disclosed such circumstances. They were not serious and compelling family or other considerations and the threshold requirement of paragraph 391[319X](ii) was not met",

He therefore found that Article 8 was not engaged.

5. At the hearing before me Mr C spoke eloquently on his niece's behalf. He referred to a large number of documents which had been submitted. Largely, however, these did not relate to the appellant. There were a very considerable number of documents

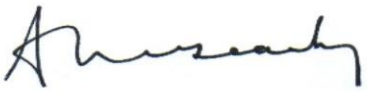
from prominent members of society here who expressed support for the appellant and for other members of her family as well as expressing sympathy to the sponsor for the death of her sister. These, however, do not help in assessing the appellant's circumstances at the date of the decision. What they do show is the considerable support that the family have been able to muster in support of the appellant's claim. The further documents indicated that Mr C had had an award as a "carer of the year" from Lambeth Council and there were numerous birth and death certificates relating to members of the family. There is also a large bundle of documents relating to F C, the appellant's uncle, who has very considerable mental health issues. It was argued before me that the fact that the appellant was not here exacerbated his mental illness but it is not clear why that is the case although it appeared to be put forward that he felt responsible for the appellant. Given the terms of the various medical reports it is unlikely to be the case that he himself would be able to give any support to his niece.

6. I consider that there are material errors of law in the determination. There is clearly conflict in what the judge wrote in paragraphs 2 and 7 which I have quoted above and the fact that that conflict is not resolved amounts to a material error of law. Moreover, there is no structured approach to the issue of the rights of the appellant under Article 8 of the ECHR. Such an approach requires findings on the appellant's family life at the date of decision, with whom she had lived including her aunt and her cousins, as well as a consideration of the issues of accommodation and maintenance at the date of decision and clear findings of fact should be made.

7. For these reasons, having found that there is a material error of law I set aside the decision of the judge in the First-tier and remit the appeal for a hearing afresh in the First-tier. I would emphasise that the appellant's representatives must produce a coherent schedule of evidence regarding accommodation and maintenance and ability to support.

Notice of Decision

The appeal is remitted for a hearing afresh in the First-tier.

Signed  Date: 29 November 2017

Deputy Upper Tribunal Judge McGeachy