Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14834/2018

**THE IMMIGRATION ACTS**

Heard at Manchester
On 18th February 2019

Decision and Reasons Promulgated
On 22nd February 2019

**Before**

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

**Between**

LINDA [T]
(NO ANONYMITY DIRECTION MADE)

**Appellant**

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

Representation:
For the appellant: Miss Patel, Counsel, instructed by Sabz Solicitors
For the respondent: Mr Bates, Senior Presenting Officer

**DECISION AND REASONS**

Introduction

1. The appellant is a South African born on 9 November 1955. She has 2 adult children in the United Kingdom who have been granted indefinite leave to remain. She was granted entry clearance as a visitor valid until 20 October 2017.

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2. She entered the United Kingdom on 2 May 2017 and now does not want to return to South Africa. The claim being made is that she only intended coming here on a temporary basis but because of a series of unfortunate events the situation in her entry clearance application no longer applies and she cannot return to her home country.

3. On 28 September 2017 she made an application for leave to remain on the basis of Article 8 rights. In support of her application she refers to the relationship with her children and grandchildren in the United Kingdom in addition to various other considerations such as her health, accommodation issues and finance.

4. This was refused on 28 June 2018. Her appeal was heard by First-tier Tribunal Judge O R Williams at Manchester 6 September 2018. In a decision promulgated on 8 October 2018 the appeal was dismissed.

5. For the appeal the judge was presented with a bundle of 89 documents on behalf of the appellant. This included a statement from her in which she claims her original intention in coming to the United Kingdom was to visit her children and grandchildren. In particular, her daughter [T], born on 20 March 1985 suffered a miscarriage. She states her daughter has poor mental health. She then became pregnant again and the appellant decided to remain as she had suffered from miscarriages in the past. Her baby was born on 7 April 2018. There is a statement from her daughter indicating her husband is in full-time employment and has a net income of just over £2000 per month. They have an older child, born on 21 June 2014.

6. She also suggests considerable difficulties returning to South Africa. There is a letter dated 5 September 2018 from a company in South Africa stating that the appellant had been employed as a trade intelligence specialist and took early retirement for health reasons in April 2017. Her visit Visa application was made on 3 April 2017 at which stage she indicated she was in employment. There are various medical reports which indicate she suffers from severe generalised osteoarthritis particularly affecting her neck.

7. There is a letter from her daughter in South Africa, [CJ] who states that the appellant gave up her furnished accommodation shortly before coming to the United Kingdom. Her daughter states that the appellant does not enjoy a good relationship with her husband and they cannot accommodate her because of this because they have limited space. In any event she states are moving to the United States of America. She also suggests she could not financially contribute towards her mother’s expenses.

8. Various other reasons were advanced as to why the appellant could not return to South Africa.it was also suggested that the appellant would be at risk as a single white female. There was also evidence to suggest the

appellant's son in the United Kingdom has health issues and the appellant helped him.

The First tier Tribunal

9. Although the appeal was limited to human rights grounds the judge correctly pointed out that the starting point was to see if the applicable immigration rule was met. In this regard reference was made to appendix FM 276 ADE(1)(vi) and whether there would be very significant obstacles to her integration into South Africa.

10. The judge concluded this was not the case. The judge had regard to her health and found she still had adequate function to carry out most activities of daily living. The judge pointed out her conditions had been present for a number of years and had been treated in South Africa.

11. Regarding accommodation, the judge referred to the evidence that she was no longer able to reside with her daughter in South Africa. However the judge took the view that financial support would be available from her family in South Africa and here so she could obtain accommodation. The judge also had regard to the situation of her daughter here but pointed out that her daughter had now given birth, her pregnancy being advanced of the underlying reason for her remaining. Her daughter can access health services here and would have the assistance of other family members. Regarding her son, the judge referred to the National Health Service and support from other family members.

12. The judge then looked at matters outside the rules and accepted that family life existed as well as private life. However, the judge concluded the decision was proportionate, referring to the earlier reasons and that family members here could visit her. The judge also pointed out that she and her family should not have had any reasonable expectation she would be able to remain.

The Upper Tribunal

13. Permission to appeal was granted on the basis that the judge had not explained adequately the conclusion at paragraph 8 of the decision that her family in both countries could support her. It was considered arguable that the judge failed to assess the evidence about the position in relation to her various children.

14. Permission was also granted on the basis it was unclear from paragraph 21 of the decision if the judge was referring to her family life with her daughter in South Africa or her daughter here.

15. A further argument was whether the judge correctly considered her situation to be precarious within the meaning of section 117B.

16. At hearing it was indicated by both representatives that they were in agreement that the grounds disclosed a material error of law. There was reference to the appellant being estranged from her daughter in South Africa albeit the letter on file suggests the difficulty relates to that daughter's husband. Although there was no presenting officer in attendance at the First-tier Tribunal it was said there was evidence given in respect of this. I have considered the record of proceedings but cannot find anything on this.in summary, the common argument was that the judge failed to adequately assess the evidence and make appropriate findings on the claimed estrangement from her family in South Africa as well as the viability of financial support from her family in the United Kingdom.

Consideration

17. I found the presenting officer's concession generous as this was a clear, focused decision. The judge correctly identified the issues and made key findings.

18. Whilst I did have reservations about accepting a material error demonstrated on balance a slightly more detailed analysis of the evidence would have strengthened the decision. For instance, the judge does not make a specific finding as to whether or not it is accepted the appellant is estranged from her daughter in South Africa and whether she needed financial support to resume life in South Africa. The judge did not set out the financial details of her family here or make a specific finding as to whether or not it was accepted her family here could support her financially on return to South Africa.

19. The judge did find family life within the meaning of Article 8 existed. This was premised upon emotional dependency albeit I found this a generous finding in the circumstance. As the intention is that there will be a de novo hearing the appellant's representative should be aware that this finding is not being preserved.

Decision

The decision of First-tier Tribunal Judge O R Williams materially errs in law and is set aside. The matter is remitted for a de novo rehearing in the First-tier Tribunal before a different judge.

Francis J Farrelly
Deputy Upper Tribunal Judge.

Directions.

1. Relist for a de novo hearing in the First-tier Tribunal in Manchester excluding First-tier Tribunal Judge O R Williams.

2. There will be no need for an interpreter unless the appellant's representative indicates to the contrary.

3. The hearing should take no more than 2 hours.

4. A presenting officer should attend.

5. The appellant's representative should prepare relevant evidence for the First tier Judge to assess and make findings on. The respondent should consider any country information which may be of relevance. The following appear relevant:

   (i) A focus upon whether the evidence would indicate insurmountable obstacles to the appellant returning to South Africa. A relevant consideration would whether she could nevertheless re-establish herself in the absence of support from family members either here or in South Africa.

   (ii) Her state of health.

   (iii) Her employment prospects.

   (iv) Her finances.

   (v) The cost of living.

   (vi) Any safety considerations.

   (vii) The possibility of financial and practical support from family members in South Africa and in the United Kingdom or from the South African State.

6. An issue arising is whether family life within the meaning of Article 8 exists in the circumstance. The parties should be in a position to address this.

7. Regard should be had to the meaning of precariousness in section 117B and in light of the decision of Rhuppiah (Appellant) v Secretary of State for the Home Department (Respondent) [2018] UKSC 58.

8. A hearing time of 2 hours is anticipated.

Francis J Farrelly
Deputy Upper Tribunal Judge Dated 18 February 2019