Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06750/2019

THE IMMIGRATION ACTS

At Field House, London	**Decision & Reasons Promulgated**
On 21st January 2020	**On 16th March 2020**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

JS
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Oshunrinade, Samuel & Co**
For the Respondent: **Ms Jones, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Zimbabwe born in 1977. He appeals with permission against the decision of the First-tier Tribunal (Judge N. Minhas) to dismiss his protection and human rights claims.

Background and Matters in Issue

2. The Appellant has been in the United Kingdom since September 1999. He came initially as a student, but by 2003 was an overstayer. In 2009 he sought asylum. That claim was refused, and his subsequent appeal against that decision dismissed. Further submissions were

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rejected in 2013. In March 2019 the Appellant made further representations which were refused, but the Respondent did agree to treat them as a 'fresh claim' under paragraph 353 of the Immigration Rules. This generated the right of appeal which brought the Appellant before Judge Minhas.

3. His case before the First-tier Tribunal fell into two parts:

   i) The Appellant asserted a well-founded fear of persecution in Zimbabwe arising from his *sur place* political activity in the United Kingdom, in particular, his social media activity contra the ZANU-PF government in Harare;

   ii) He submitted that the refusal to grant him leave was a violation of his Article 8 right to family and private life. In particular the Appellant relied on his relationships with his British wife and her son.

4. The Tribunal found as follows:

   i) That the Appellant had no reasonable likelihood of facing persecution in Zimbabwe. Directing himself to the *Devaseelan* findings of the Tribunal in 2009, the Judge noted that the Appellant had no political profile or involvement prior to leaving Zimbabwe. Against that background the Judge found that anti-ZANU sentiments expressed by the Appellant in an online blog and via 'Twitter' were cynical ploys to bolster his asylum claim. It was not accepted that he would present as someone with significant MDC profile upon return to Zimbabwe;

   ii) That the Appellant has genuine and subsisting relationships with his wife and step-son, and that his length of residence in the United Kingdom engages the private life limb of Article 8. There would be an interference with those Article 8 rights should the Appellant be refused leave to remain. That interference would nevertheless be justified and proportionate.

   The appeal was thereby dismissed.

5. The Appellant now appeals the decision in respect of limb (ii): human rights grounds only. It is submitted that in reaching its decision on proportionality the First-tier Tribunal erred in law in assuming that it would be reasonable for the Appellant's step-son to relocate from the United Kingdom to Zimbabwe with his mother and step-father. In particular reliance is placed on the fact that the child is British.

Discussion and Findings

6. The First-tier Tribunal expressly accepted that the Appellant enjoys a genuine and subsisting parental relationship with his step-son, a British national now aged 11. That being the case, the next question was whether it would be ‘reasonable’ to expect that child to leave the United Kingdom: s117B(6) Nationality, Immigration and Asylum Act 2002.

7. In its answer to that question I can discern in the Tribunal decision no consideration of the child’s private life in the United Kingdom. Nor is there any consideration of the weight to be attached to his nationality. That was a matter of clear relevance given the Home Office guidance on the matter describes nationality as “particularly important” and says this:

   > The starting point is that we would not normally expect a qualifying child to leave the UK. It is normally in a child’s best interest for the whole family to remain together, which means if the child is not expected to leave, then the parent or parents or primary carer of the child will also not be expected to leave the UK.

   Family Policy Family life (as a partner or parent), private life and exceptional circumstances (10th December 2019).

8. I am satisfied that this omission was a significant one which renders the proportionality exercise incomplete. I therefore find the grounds to be made out. I set the decision of the First-tier Tribunal, insofar as it relates to the human rights aspect of the appeal.

9. The First-tier Tribunal found that the Appellant arrived in the United Kingdom in September 1999. There is nothing before me to indicate that he has ever left the United Kingdom, and it is his evidence, apparently accepted by the First-tier Tribunal that he has constantly remained here since the day that he arrived. There was nothing before me to indicate that there are any ‘suitability’ reasons why the Appellant should be refused leave to remain. On balance I am satisfied that as of today’s date he meets the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules:

   > 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
   >
   > (i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and

(ii) has made a valid application for leave to remain on the grounds of private life in the UK; and

(iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or

10. I bear in mind that this is an Article 8 appeal. This rule relating to private life, 276ADE(1), has been specifically approved by parliament to strike a fair balance between the rights of the individual and the rights of the state to control its own borders. Since the Appellant today meets the requirements of that rule it follows that the Secretary of State would hold it to be disproportionate to refuse leave. I therefore find that the decision is unlawful pursuant to s6 of the Human Rights Act 1998 and the appeal must be allowed.

Decisions

11. The decision of the First-tier Tribunal in respect of protection is upheld. The decision of the First-tier Tribunal in respect of human rights is flawed for error of law and is set aside.

12. The decision in the appeal is remade as follows: the appeal is allowed on human rights grounds.

13. This is an appeal involving a British child. Having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders* and Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* I am concerned that identification of the Appellant could lead to identification of the child, and that this would be contrary to that child's best interests. Accordingly I consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellants and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Upper Tribunal Judge Bruce
21st January 2020