



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/16235/2010

THE IMMIGRATION ACTS

**Heard at Sheldon Court, Birmingham
On 11th June 2013**

**Determination Sent
On 14th June 2013**

Before

**Upper Tribunal Judge Southern
Deputy Upper Tribunal Judge French**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TAONA LOICE DIYA

Respondent

Representation:

For the Appellant: Mr S. Vokes instructed by Bake & Co
For the Respondent: Mr J. Singh, Home Office Presenting Officer

DETERMINATION AND REASONS

1. As it is common ground and agreed between the parties that this appeal to the Upper Tribunal is one that falls to be dismissed, it is necessary for us only briefly to explain why we agree that the parties are correct to agree on that disposal.
2. The respondent, who is a citizen of Zimbabwe, was born on 24th September 1983. She arrived in the United Kingdom in April 2006 and

was admitted as a student. That leave was subsequently extended in that capacity until October 2010 but only after she had successfully appealed against a refusal to vary her leave by way of the grant of further leave. She claimed asylum shortly before her leave expired.

3. Her appeal against the removal decision that accompanied refusal of her asylum claim was allowed by Immigration Judge Cox following a hearing on 4th January 2011. The judge reached that conclusion because, unlike the Secretary of State who disbelieved her account of being at risk on return to Zimbabwe, the judge found her to be a credible witness who had given a truthful and accurate account of all that was advanced.
4. The Secretary of State secured permission to appeal against that decision. The result was a hearing before Deputy Upper Tribunal Judge Parkes on 2nd June 2011 following which the deputy judge found that the Immigration Judge had failed to give proper or adequate consideration to the evidence so that the determination disclosed an error of law such as to require it to be set aside. In short, he found that the decision was one that was not reasonably open to the immigration judge. He went on to explain why, unlike the Immigration Judge who had allowed the appeal, he disbelieved the respondent and so substituted a fresh decision to dismiss her appeal.
5. The matter now comes before us as a result of an order of the Court of Appeal, made by consent of both parties on 22nd February 2013. The effect of that order is to quash the decision of the deputy judge and to remit the appeal to the Upper Tribunal for re-determination of the appeal by a different judge of the Upper Tribunal. The agreement of the parties is reflected in the Statement of Reasons in which it is said that:

“The respondent (i.e. the Secretary of State for the Home Department) accepts that Deputy Upper Tribunal Parkes gave insufficient reasoning in his decision that Immigration Judge Cox had erred in his assessment of the Appellant’s credibility; in particular the respondent accepts that he failed to make an explicit finding of irrationality or perversity in relation thereto.”

6. Thus, we now find ourselves in the position that the deputy judge was in considering the challenge to the determination of Judge Cox. In the face of the consensus referred to above we need say only that we can find no error of law in the determination of Judge Cox. It is clear to us that he directed himself correctly in law, had careful regard to all the evidence the parties chose to put before him and reached well reasoned conclusions that were plainly open to him on the evidence.
7. The effect of that is that his determination is unassailable.

Summary of decision:

8. Immigration Judge Cox made no error of law and his determination, promulgated following the hearing on 4th January 2011, shall stand.
9. The appeal to the Upper Tribunal is dismissed.

Signed

Date

Judge of the Upper Tribunal