



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

Appeal Number: HU/01196/2015

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 15th August 2018**

**Decision & Reasons
Promulgated
On 25th September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MISS RURAMAI MANGUWO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: Mrs U Sood (Counsel)

For the Respondent: Mrs H Aboni (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge James, promulgated on 28th April 2017, following a hearing at Birmingham Sheldon Court on 31st March 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Zimbabwe, and was born on 14th May 1997. She applied for entry clearance to settle with her sponsoring mother, Rosina Manguwo under paragraph 352B(i) of the Immigration Rules. This was a second application by her being dated March 2015. In the refusal letter, dated 28th March 2015, the relationship had been conceded.

Submissions

3. At the hearing before me on 15th August 2018, there was consensus between Mrs Sood, for the Appellant, and Mrs Aboni, for the Respondent, that there was confusion in the decision regarding the date of the decision under appeal. Judge James, as Mrs Aboni made clear, had treated the challenge decision dated 28th January 2015 (see paragraph 1 of the determination), with the judge stating that “the Appellant appeals against that decision”. However, the actual decision that is under challenge is “undated”, but Mrs Aboni was able to elicit and ascertain from her documents that it was dated 20th May 2015.
4. Mrs Sood pointed out that in that case, this was an old Section 82 appeal, which was not limited to human rights arguments, and was receptive to all manner of argument. Mrs Sood stated that the judge had overlooked this fact and having found that the Appellant had satisfied the Rules, stated that the Appellant could not appeal.
5. Mrs Sood submitted that where in Article 8 human rights argument is raised, then the third limb of the **Razgar** test, which specifies that an Article 8 decision must be in accordance with the law, allows an appeal where the Secretary of State’s decision is not in accordance with the law.
6. It was agreed by both parties that this was the case and that the appeal could not be limited to a decision that is unlawful under Section 6 of the Human Rights Act 1998. The full rights of appeal under the points-based system were ended on 2nd March 2015, and for all other cases on 6th April 2015. This was a decision dated 20th May 2015.

Error of Law

7. In the circumstances, I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge James on the correct legal premise.

Notice of Decision

8. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal pursuant to Practice Statement 7.2(a).
9. No anonymity direction is made.
10. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

22nd September 2018