



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

Appeal Number: IA/18771/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> September 2014**

**Determination  
Promulgated  
On 10<sup>th</sup> September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**MS LIZA STUART**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Muzenda, Solicitor, Longfellow Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Zimbabwe who applied for indefinite leave to remain on 8<sup>th</sup> September 2013 outside the Immigration Rules in reliance upon Article 8 ECHR. Her application was refused and her subsequent

appeal allowed by First-tier Tribunal Judge Boyes in a determination promulgated on 27<sup>th</sup> May 2014. Grounds of application were lodged on the basis that the judge did not consider the guidance in the case of **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640** namely, if there were arguably good grounds for granting leave to remain outside the Rules is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules.

2. It was said that the judge had not made any case specific findings addressing the issue of arguably good grounds and compelling circumstances not sufficiently recognised under the Rules. The judge had simply noted that there was no provision within the Rules that would apply to the Appellant.
3. Permission to appeal was granted and it was said that it was not clear what factors weighed in the judge's mind when she decided that the Appellant's removal would be unjustifiably harsh. It was said it was arguable that the judge misdirected herself as to the law and Article 8 with reference to **Gulshan**.
4. Thus the matter came before me on the above date.
5. Ms Everett relied on her grounds of application and the grant of permission. Mr Muzenda said that the decision was a reasoned one. There had been a recognition of the decisive issues and the relevant factors. Compelling reasons had been given from paragraph 28 onwards in the determination. The failure per se to mention **Gulshan** was not fatal to the determination. Mention had been made of medical complications and the loneliness suffered by the Appellant and the fact that there were no family connections in Zimbabwe. Compelling reasons had been given. I was asked to uphold the decision.
6. I reserved my decision.

### **Conclusions**

7. The judge referred to well-known case law before going on to consider the case under Article 8 ECHR including mention of **R v SSHD (on the application of Nagre) [2013] EWCA Civ 720 (Admin)**. Given the mention of **Nagre** it is fair to say she appreciated that it was only if there were arguably good grounds for granting leave to go outside the Rules was it necessary for Article 8 purposes to go on to consider whether there were compelling circumstances not sufficiently recognised under them. She identified that there was no provision in Appendix FM or elsewhere in the Rules for an elderly dependant relative who was already here and living with their family to make an application for further leave to remain. She bore in mind the Appellant's claimed health problems and considered there was an arguable case for grant of leave outside the Rules. She then applied **Razgar v SSHD [2004] UKHL 27**. She considered two medical

reports put forward by the Appellant (paragraphs 35 and 36). She was satisfied that the Appellant met the substantive requirements of E-ECDR.2.4 and E-ECDR.2.5. She found the Sponsor to be an entirely credible witness (paragraph 37).

8. She did not consider that the Appellant would, even with the practical and financial help of the Sponsor, be able to obtain the required level of care that she needs in Zimbabwe and she identified sound reasons for that.
9. She accepted evidence from the Appellant and Sponsor that the Appellant's former home was dilapidated.
10. In paragraph 43 it seemed to the judge likely that if the Appellant were to return to Zimbabwe to make an application for entry clearance that she would meet the requirements to be admitted as an adult dependent relative. She noted that the Appellant was 80 years old, frail, and had health problems and in all the circumstances did not consider that it would be justified and proportionate to expect her to return to Zimbabwe to make an application for entry clearance.
11. It has to be said that the judge has given entirely clear and coherent reasons for coming to her decision. I agree with Mr Muzenda that the fact that she did not mention the case of **Gulshan** is nowhere near fatal to the determination - the question is not whether the judge mentioned a particular case but whether she applied the correct legal principles. In a very good determination the judge adopted the correct approach, and gave detailed reasons for her findings and decision. There is no possible error of law in this determination.

### **Decision**

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
13. I do not set aside the decision.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald