



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07496/2018**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On July 18, 2019**

**Decision & Reasons Promulgated
On August 07, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**SHUVA [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On August 22, 2014 the appellant lodged a Tier 4 (Student) visa application and she entered the United Kingdom on 4 September 2014 with a visa valid until 26 August 2015.
2. Her visa expired and she claimed asylum on 5 December 2017 but the respondent refused her application on May 31, 2018.
3. On 14 June 2018 the appellant appealed this decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

4. Her appeal came before Judge of the First-tier Tribunal Dhaliwal on 13 July 2018 and in a decision promulgated on 24 July 2018, the Judge allowed her appeal on protection and article 3 ECHR grounds.
5. The respondent appealed this decision on 4 August 2018 arguing the Judge had materially erred by making contradictory findings in paragraphs 37 and 38 of her decision. Permission was granted by Judge of the First-tier Tribunal Lambert and the matter came before me originally on 3 April 2019.
6. Having found the Judge had found her involvement with the MDC was low level and did not have a significant profile within the MDC, she had been able to travel back and forth to Zimbabwe in both 2013 and 2015 without incident, she had been able to leave Zimbabwe on her passport to travel to the United Kingdom and her involvement and her own father's involvement with the MDC was sixteen years ago I concluded the Judge had erred in subsequently finding the appellant was at risk or persecution and serious harm as she had failed to correctly apply the decisions of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC) and SSHD v MM (Zimbabwe) [2017] EWCA Civ 797.
7. On the last occasion, I had intended to proceed to remake the decision but was noted the Judge had not considered her article 8 claim in circumstances where she has a daughter in the United Kingdom who held a British passport. The appellant produced her passport and stated her daughter lived with her although the child's father saw the child regularly.
8. Mr Howells, the respondent's representative at that previous hearing, indicated his office would need to review this evidence and any further evidence on this issue against their well-stated policy.
9. I adjourned the matter to enable the appellant to provide a statement setting out her circumstances and those of her daughter and, if possible, to obtain a statement from the child's father (she told me they were on friendly terms) as well as a letter from her doctors confirming the registration of the child and other pertinent details. The appellant served this evidence on the respondent.
10. At today's hearing, Mrs Aboni acknowledged that the appellant had a genuine and subsisting relationship with a British child for whom she was the primary carer and she satisfied the requirements of section 117B(6) of the 2002 Act. She invited the Tribunal to allow the appeal under article 8 ECHR.
11. In light of this concession the appellant indicated she did not intend to pursue her protection or article 3 ECHR claim.

12. I was satisfied the appellant was not at risk of persecution or serious harm for the reasons set out in the FTT Judge's decision and I dismissed these grounds of appeal.
13. No anonymity direction is made.

NOTICE OF DECISION

14. There was an error in law.
15. I set aside the Judge's decision and remake the decision as follows:
 - (a) I dismiss the protection claim.
 - (b) I dismiss her claim under article 3 ECHR.
 - (c) I allow her appeal under article 8 ECHR

Signed

Date 23/07/2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as I have allowed the appeal based on information that has come to light since the appeal was lodged.

Signed

Date 23/07/2019



Deputy Upper Tribunal Judge Alis