



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04999/2013

**THE IMMIGRATION ACTS**

Heard at : Field House  
On : 30 October 2013

Determination Sent

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AM  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr D Jones, instructed by Cavendish Legal Group  
For the Respondent: Ms E Martin, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This matter comes before me following a grant of permission to the appellant to appeal against the decision of First-tier Tribunal Swaniker dismissing his appeal against the respondent's decision to remove him from the United Kingdom.

2. The appellant is a citizen of Zimbabwe born in November 1970. He claims to have arrived in the UK on 31 August 2000, having previously come here as a visitor for one month in July 1998. He applied for asylum on 24 March 2009. His claim was refused on 12 May 2009 and his appeal against that decision dismissed on 27 June 2009. Following an order for reconsideration, the appeal was reconsidered by the Upper Tribunal on 5 March 2010 but was again dismissed and the appellant's appeal rights were exhausted on 30 March 2010. On 23 August 2011 he submitted further representations, but these were rejected on 29 September 2011. Following the appellant's assertion that the representations amounted to a fresh claim, a further decision was made by the respondent on 9 May 2013 and was accompanied by a decision to remove him from the United Kingdom, giving rise to an appeal which was then heard before the First-tier Tribunal on 25 June 2013. That appeal was in turn dismissed and it is against that decision that the appellant sought, and was granted, permission to appeal to the Upper Tribunal.

### **The Appellant's initial claim**

3. The basis of the appellant's claim, made in March 2009, was that he was at risk of persecution in Zimbabwe as a result of his former role as a record company marketing manager. He provided various differing accounts which were summarised by the Upper Tribunal in its decision of 16 March 2010 and which I summarise again as follows. The appellant claimed to have been an MDC supporter. He worked in Zimbabwe for the Zimbabwe Music Corporation, also known as Spin Along, a privately owned music distribution company. His responsibility was marketing and as such he authorised music for distribution and radio airplay. The music included pieces by banned musicians. The appellant initially claimed to have experienced no difficulties with the Zimbabwean authorities and to have come to the United Kingdom for the purposes of education. However he also gave an account of his colleagues in the company having been arrested and tortured in 1999 but being released when someone else took the blame, at which time he escaped from the country (a claim which he later denied having made). He undertook studies in the United Kingdom with funding from the company, but the funds ceased either in 2000 or November 2002 and he discovered that his former colleagues had gone missing. He was told that the authorities were looking for him and his family warned him not to return to Zimbabwe.

4. The First-tier Tribunal made some adverse credibility findings against the appellant and found that there was no reason why he would be of adverse interest to the Zimbabwean authorities on return to that country. That decision was, however, set aside by the Upper Tribunal on the grounds that it was unclear which elements of the appellant's claim the judge had accepted and which he had not and that both his fact-finding and risk assessment were incomplete and inadequate.

5. Having reconsidered the appeal and heard from the appellant, his claimed partner and a witness, Designated Judge Manuell, in the Upper Tribunal, made adverse credibility findings and dismissed the appeal. He found the appellant to be a "fluent liar, willing to say anything which served his perceived advantage" and considered that he had been dishonest in seeking to dissociate himself from the record of his screening interview and a

draft statement which had set out varying accounts of his claim. He found the witnesses to be equally lacking in credibility. The judge found that the appellant was a former employee of a Zimbabwean music company who became an overstayer after his sponsorship ran out and made a fictitious asylum claim at the last moment possible. He noted that on the appellant's own case he was not a member of the MDC and that the only branch of the MDC he claimed to support, namely the Southend branch, was not currently recognised by the MDC itself. The judge found that the appellant was unknown to the Zimbabwean authorities and that, having regard to the country guidance at that time, RN (Returnees) Zimbabwe CG [2008] UKAIT 00083 there was no risk that he would be persecuted on return. The appeal was accordingly dismissed on asylum, humanitarian protection and human rights grounds.

### **The Appellant's current claim**

6. The appellant's new claim was set out in representations from his representatives dated 4 August 2011, and was on the basis of his sur place activities for the Southend branch of the MDC in the United Kingdom. It was claimed that he was the web designer and administrator of the branch's website and also administered the website of the MDC-UK and Ireland South East district.

7. The respondent, in their initial consideration of the claim on 29 September 2011, noted the adverse credibility findings made by the Upper Tribunal and also took account of the documents produced for the new claim, consisting of numerous copies of photographs of the appellant at meetings and demonstrations in the United Kingdom, from which it was considered that the appellant had failed to demonstrate how the CIO or the Zimbabwean authorities would be able to identify him as an individual. With regard to newspaper reports produced by the appellant, the respondent considered that those were of a general nature and not specific to him. Regard was had to two letters purporting to confirm the appellant's high ranking membership of the MDC and receipt of "hate emails" which were not accorded weight. The respondent noted, from minutes that had been produced of MDC meetings, that the appellant was not recorded as having taken any active part and considered his involvement in the local branch of the party to be self-serving. It was not considered that he would be at risk on return to Zimbabwe.

8. Further and more detailed consideration was given by the respondent to the representations and documents in their subsequent letter of 9 May 2013. The respondent accepted that the appellant had attended some MDC meetings in the United Kingdom and that he had an involvement in the blog and distribution to members but considered that that was simply an attempt to bolster an otherwise weak claim. The respondent noted, from a general internet search in the appellant's name, that he was mostly connected with social networking and photographic/media work and it was not accepted that the Zimbabwean authorities would have knowledge of his claimed activities within the MDC in the United Kingdom. The respondent did not accept that the appellant was a committed political activist and, in line with the country guidance in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59, considered that he would be of no adverse interest to the authorities and at no risk on return to Zimbabwe. The respondent noted

further that the appellant had not raised family life in his further submissions, but nevertheless considered his relationship with his partner, whom he claimed to have traditionally married in December 1999, and concluded that family life had not been established on that basis. It was not accepted that his removal from the United Kingdom would breach Article 8 of the ECHR.

### **Appeal before the First-tier Tribunal**

9. In the First-tier Tribunal, Judge Swaniker heard from the appellant and his partner and found neither to be credible witnesses. She found little further credible evidence to point to the appellant's position being materially different to that before Designated Judge Manuell. She noted the appellant's claim to have been elected in February 2011 to the post of executive member of the MDC in the United Kingdom. She considered two letters, dated 25 July 2011, from the branch secretary of the MDC UK & Ireland Southend-on-Sea branch and from the MDC- UK South East District Secretary, but attached little weight to them. She considered that the appellant, when questioned about his election to executive member of the MDC, was making up his evidence as he went along, and that he had used his skills in information technology to create the documents he had submitted and to manipulate the internet items. She did not accept that the appellant had any real commitment to the MDC, noting his lack of regular attendance at meetings, and concluded that his involvement with the party had been for the purpose of creating and supporting an asylum claim. She found that even if taken at its highest, the appellant had not engaged in activities that would have brought him to the attention of the Zimbabwean authorities.

10. The judge noted the appellant's attempt, at the hearing, to google the MDC UK websites to find evidence in support of his claim that there were internet records revealing his involvement with the MDC and found that his inability to find such evidence with ease was indicative of the inability of the Zimbabwean authorities to access such records. She noted that the appellant's partner's asylum claim had been accepted by the Tribunal and that she had been granted refugee status, but she did not find that that detracted from the adverse credibility findings made about the appellant himself. The judge did not accept that the appellant and his partner were in a genuine relationship and accordingly did not find that her successful claim took his case any further forward. She did not accept that he would be at risk on return to Zimbabwe and found that his removal would not breach Article 8.

11. Permission to appeal to the Upper Tribunal was sought on the grounds that the judge had misdirected herself as to the test to be applied in human rights appeals and had wrongly taken account of the appellant's ability to lie about his political opinions in assessing whether he would be at risk on return; that her conclusion that the documentary evidence was forged was unfair and irrational; that she had failed to consider a number of witness statements; that she had failed to give any weight to the relevant findings of the Tribunal in the appeal of his wife; that her approach to the appellant's evidence as to the extent of his involvement in and commitment to the MDC failed to take account of all relevant evidence; and that her conclusions as to the inability of the CIO at Harare airport to access details of the appellant from internet searches was unreasonable.

12. Permission to appeal was granted on all grounds.

### **Appeal hearing**

13. The appeal came before me on 30 October 2013 and I heard submissions on the error of law.

14. Mr Jones expanded upon the grounds of appeal, submitting that the judge had taken the wrong approach in expecting the appellant to lie on arrival to Harare airport; that her approach to the documentary evidence was unfair, irrational and inconsistent; that she had erred in her approach to the Upper Tribunal decision in his partner's appeal; that she had failed to give adequate consideration to the statements from the witnesses; and that her findings, that the records of the appellant's involvement with the MDC could not be accessed with ease, were wrong.

15. Ms Martin submitted that the judge had not erred in law. She was entitled to find as she did about the appellant's lack of profile and involvement with the MDC; she was entitled to place no weight upon the evidence of the authors of the statements in the light of their absence from the hearing; she did not need to go on to consider the findings of fact in the decision in his partner's appeal because she did not accept that he was involved with the Southend branch of the MDC; and she was entitled to find that the appellant was not easily identifiable through a search of the internet.

16. I advised the parties that in my view the judge had made material errors of law in her decision such that it had to be set aside in its entirety and re-made. My reasons for so concluding are as follows.

### **Consideration and Findings**

17. I find particular merit in Mr Jones' second ground of appeal and am in agreement with his submission that the judge's approach to the evidence, in particular the documentary evidence, was flawed. At paragraph 17 of her determination she made the following finding on the documentary evidence "*I note from the evidence before me that he is skilled in information technology and I consider that he has created these documents and concocted or manipulated the internet items and 'records' for the purposes of his latest asylum claim/ appeal.*" It appears that, contrary to my initial reading of that finding, the judge was referring to all the documentary evidence before her, and not merely the two documents referred to at paragraph 16. It also appears to me from the wording she used that, contrary to the suggestion in the respondent's Rule 24 response, the judge was making an actual finding of forgery with respect to the documents. Yet that was inconsistent with the respondent's own view of the documents, as set out at paragraphs 20 to 26 of the refusal letter of 9 May 2013, whereby it was considered that the documents added little weight to the appellant's claim to be of adverse interest to the Zimbabwean authorities, but no suggestion of forgery was made. It was also inconsistent with her own findings whereby she accepted, on the basis of the documentary evidence, that the appellant had attended MDC meetings.

Indeed, other than the findings of the previous Tribunal in regard to the appellant's overall lack of credibility with respect to his earlier claim, the judge failed to identify any evidential basis upon which she reached the conclusion that the documents he had produced had been manipulated and fabricated.

18. It seems to me that the judge's approach to the documentary evidence was material to her decision in that it formed a significant part of her overall adverse credibility findings. Furthermore, a reading of that evidence would suggest that the appellant's role within the MDC included website design, marketing and publicity for his local branch, and accordingly if the judge had accepted some of the documentary evidence, as she appeared to do at paragraph 20 despite her adverse findings at paragraph 17, it is reasonable to assume that, absent other reasons, she would have accepted that he had held such a role. Yet she did not give any such reasons or make any findings in that regard and, whilst she found that the appellant did not hold any political profile within the MDC and that his involvement with the organisation was at a low level, she did not make any clear findings as to what his profile was. In that respect, therefore, her conclusion as to the appellant's low level of involvement in the MDC was not an adequately reasoned one and her assessment of risk on return did not take account of all relevant factors and was thus incomplete.

19. For these reasons I find that the judge materially erred in law in her decision and that her findings cannot stand and her decision has to be set aside in its entirety. As such there is no need for me to go on and consider the other grounds of appeal.

20. Both parties agreed that, in such circumstances, it was appropriate for the appeal to be remitted to the First-tier Tribunal.

## **DECISION**

21. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Swaniker, Designated Judge Manuell and Judge Brown. No findings are preserved.

### **Anonymity**

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed  
Upper Tribunal Judge Kebede

Date 1<sup>st</sup> November 2013