Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05182/2009

THE IMMIGRATION ACTS

Heard at : Sheldon Court	**Determination Promulgated**
On : 30th July 2013	**On : 7th August 2013**

Before

Upper Tribunal Judge McKee

Between

FAITH KADYAMARUNGA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr Jag Singh of the Specialist Appeals Team

DETERMINATION AND REASONS

1. This appeal has had a long and convoluted history. In June 2009 Mrs Kadyamarunga's asylum claim was rejected, and a decision was taken to remove her as an overstayer. An appeal to the Asylum and Immigration Tribunal came before Judge Hawden-Beal that same month, and was dismissed. An application for reconsideration was refused in August 2009 by Senior Immigration Judge Chalkley,

but an application for a 'statutory review' succeeded. In January 2010 Mr C.M.G. Ockelton, sitting as a deputy judge of the High Court, ordered the AIT to reconsider its decision on the appeal, because he considered paragraph 15 of the renewed grounds to be arguable. The appeal duly came before what was now the Upper Tribunal in March 2010, when Designated Judge O'Malley found that Judge Hawden-Beal had not made an error of law. Permission was now sought to appeal to the Court of Appeal. After being refused 'on the papers' both by a Senior Immigration Judge and by Lord Justice Gross, the application was granted by Lord Justice Jackson, but was then struck out by Deputy Master Meacher because of failure by the solicitors to file Appeal Questionnaires. The striking-out order was set aside, however, and eventually – in June 2011 – a Consent Order was drawn up. The determination of Designated Judge O'Malley was quashed, and the matter was remitted to the Upper Tribunal.

2. After all these vicissitudes, what was the Upper Tribunal to do with the appeal? On 9th August 2012 the case came before Judge Eshun, who agreed with Mr J. Howard of Blakemores that the respondent should not withdraw her decision and reconsider the appellant's case in the light of *RT (Zimbabwe)* [2012] UKSC 3, but that the Upper Tribunal sitting in Manchester (*sic* : no doubt Birmingham was intended) should now decide whether Judge Hawden-Beal had erred in law, as had been considered arguable by Mr Ockelton in January 2010.

3. When the case came before me today, there was no appearance by or on behalf of the appellant. Notice of today's hearing was sent by first class post both to the appellant and to Blakemores on 25th June. Blakemores has actually gone out of business, and we have not been notified of any alternative representation. But I am satisfied that there has been good service on the appellant herself. The notice was sent to the same address as all previous correspondence for the last four years, and it has not been returned undelivered. In accordance with rule 38 of the Upper Tribunal Procedure Rules 2008, I considered it in the interests of justice to proceed with the hearing in the absence of a party, and I heard submissions from Mr Singh on the question whether Judge Hawden-Beal had made an error of law.

4. Mr Singh reminded me that paragraph 15 of the Grounds for Statutory Review, which had caused Mr Ockelton to order reconsideration, complained that the judge had not properly considered "*the period of time that the Appellant has spent in the UK and what effect that will have upon her ability to demonstrate loyalty upon return to Zimbabwe.*" Mr Singh then took me to the first-instance determination itself, in which there are references at numerous points to the fact that the appellant has been in this country since 2003. I agree with him that the judge had the appellant's long absence from Zimbabwe well in mind. But what of Mrs Kadyamarunga's ability to demonstrate loyalty to the ZANU-PF regime? This, in my view, is sufficiently addressed at paragraph 93 of the judge's determination, where she is satisfied that "*with a mother and sister still in Harare, the appellant will be able to obtain sufficient information from them to be able to demonstrate loyalty to the Zanu PF regime*." At the time when this determination was promulgated, the current country guidance was *RN (Zimbabwe)*, which famously advised that it was no longer just activists and high-profile opponents who were at risk on return, but anyone who was unable to demonstrate loyalty to the Mugabe regime if challenged to do so by War Veterans, Green Bombers and other ZANU-PF thugs. The country guidance did not say that

returnees who did not entertain any loyalty towards the regime should not be expected to pretend that they did. That came much later, with the Supreme Court judgment in *RT (Zimbabwe).* As held in *R (Iran)* [2005] EWCA Civ 982, it is not an error of law for an immigration judge to fail to apply country guidance which was not in existence when she promulgated her determination.

5. I agree with Mr Singh that Judge Hawden-Beal gave a number of cogent reasons for concluding that the appellant would not be at risk on return ~ see, for example, paragraphs 91 and 94-96 of her determination. I am unable to identify an error of law in any other part of the determination, having already found that the judge did not err in respect of the appellant's length of residence in the United Kingdom. It follows that her determination must stand.

6. Four years have now elapsed since that determination was promulgated, and it may be that Mrs Kadyamarunga's current circumstances are such that she would wish to make further representations to the Secretary of State. But the protracted litigation subsequent to the 'immigration decision' of 8th June 2009 must surely now have come to an end.

DECISION

The appeal is dismissed.

Richard McKee
Judge of the Upper Tribunal

30th July 2013