



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07131/2012

THE IMMIGRATION ACTS

Heard at North Shields
On 20th August, 2013

Determination sent
On 27th September, 2013

Before

Upper Tribunal Judge Chalkley

Between

MR TAPIWA MASON MUSIIWA
(No anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Selway, Solicitor with Selway Reeves Solicitors
For the Respondent: Mr J Kingham, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Zimbabwe who was born on 29th October, 1979.

Immigration History

2. The appellant's immigration history is unclear. He either left Zimbabwe on 26th April, 1997 and travelled to the United Kingdom with his father, arriving at Gatwick Airport the following day, travelling on his own passport (at the time Zimbabwean citizens did not need a visa to enter the United Kingdom, or alternatively, having previously visited the United Kingdom between February and March 1997, to visit his sister, he then applied for a student visa which was granted, between 1999 and 2000. He had no valid leave to remain in the United Kingdom when his leave expired.
3. The appellant applied for indefinite leave to remain in the United Kingdom under the Long Residency Concession in January 2003, but this application was refused with no right of appeal in November 2003.
4. He applied for an EEA residence card in January 2007; however this was refused on 21st March, 2007. The appellant claimed to have lost his passport and his Zimbabwean identity card in either 2008 or 2010. The appellant reported his loss to the police in the United Kingdom. He made an appointment to claim asylum on 17th April, 2012 and claimed asylum on 1st June, 2012. On the same day he was served with IS151A as he had failed to regularise his stay in the United Kingdom since submitting his application for an EEA residence card in 2007.
5. The respondent considered the appellant's claim but refused it. On 26th July 2012 the respondent decided to remove the appellant as an illegal entrant. It was against that decision that the appellant appealed to the First-tier Tribunal.
6. The appellant's appeal was heard by First-tier Tribunal Judge Balloch who, in a determination promulgated on 18th September, 2012, dismissed his asylum and humanitarian protection appeals and his human rights appeal.
7. On 12th December 2012 Upper Tribunal Judge Perkins granted permission to appeal for the following reasons:-

“Although I give permission to argue each ground of appeal my concern here is that the First-tier Tribunal has not addressed the risks associated with the need to show loyalty. Although the decision in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083 is old it is the appropriate country guidance case to consider when an appellant is a citizen of Zimbabwe and it should be followed. Clearly the First-tier Tribunal has tried to give proper reasons for reaching a conclusion contrary to that suggested by RN but, arguably, the reasons given are based on speculation rather than evidence.”

8. In addressing me Mr Selway, very properly in my view, stated that the decision of the Tribunal in *CM (EM country guidance; disclosure) Zimbabwe CG [2003] UKUT 00059* had rather overtaken matters. Paragraph 3 of the grounds assert that the judge erred by looking at the number of followers of his 'Facebook' pages, rather than the number of visitors to the pages. Mr Selway suggested that the appellant may be in difficulty

with that challenge, because there had only been 28 visitors to the website. So far as the fifth challenge is occurred, Mr Selway suggested that it was not the case that credibility is not in issue. He acknowledged that there was very little in the documents on the appellant's *Facebook* page which could be said to put Mugabe in a bad light, since the documents are already in the public domain and are taken from other published sources. The principal challenge, Mr Selway suggested, was that failure to consider whether or not the appellant could demonstrate loyalty to the regime as per *RN (Returnees) Zimbabwe CG [2008] UKAIT 00083*.

9. He confirmed that the appellant lived in Warren Park, a suburb of Harare, which the appellant confirmed, is a high density populated area.
10. I indicated to Mr Kingham that I did not need him to address me.
11. In *CM (EM country guidance; disclosure) Zimbabwe CG [2003] UKUT 00059* the Tribunal said:

215. It is therefore convenient at this point to set out (i) the Country Guidance in *EM*, as so modified; and (ii) a summary of the country information on Zimbabwe as at October 2012.

(i) Country Guidance in EM, as modified

(1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.

(2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).

(3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.

(4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.

(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.

(6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.

(7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.

(8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.

(9) The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.

(10) As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.

(11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN ... and remains valid.

(ii) Summary of the country information on Zimbabwe as at October 2012

216. We reiterate that what we have to say in this regard is not Country Guidance. The picture presented by the fresh evidence as to the general position of Zimbabwe as at October 2012

does not differ in any material respect from the Country Guidance in EM. Elections are due to be held in 2013; but it is unclear when. In the light of the evidence regarding the activities of Chipangano, judicial-fact finders may need to pay particular regard to whether a person, who is reasonably likely to go to Mbare or a neighbouring high density area of Harare, will come to the adverse attention of that group; in particular, if he or she is reasonably likely to have to find employment of a kind that Chipangano seeks to control or otherwise exploit for economic, rather than political, reasons. The fresh evidence regarding the position at the point of return does not indicate any increase in risk since the Country Guidance was given in HS. On the contrary, the absence of reliable evidence of risk at Harare Airport means that there is no justification for extending the scope of who might be regarded by the CIO as an MDC activist.”

12. The decision in *CM* postdates the judge’s determination and reflects the changed situation in Zimbabwe since *RN* was decided.
13. The grounds assert that the judge erred in departing from *RN* and in considering the risks caused by the appellant's website incorrectly. It was suggested in paragraph 3 that at paragraph 80 of the judge’s determination the judge considered the number of followers on the appellant's *Facebook*, rather than the number of views it had. The challenge suggested that the number of views and how the page can be viewed or found is material and not simply the number of followers or friends. It was asserted that the judge failed to give weight to a material issue.
14. At paragraph 80 what the judge actually said was that the appellant appeared to have, “had few visitors to his page”. Mr Selway confirmed that there 28 visitors to the appellant's *Facebook* page. The judge went on to suggest that the documentation provided by the appellant on his *Facebook* page demonstrated very little response to what the appellant had posted. There was no evidence of any response or attention from anybody in Zimbabwe and as Mr Selway correctly indicated, there was very little documentation which puts President Mugabe in a bad light. The judge indicates that the situation in Zimbabwe has been well documented and highlighted over the years. Links on the *Facebook* page to videos are videos made by other people or are a recycling of news reports.
15. I do not accept that the judge failed to give weight to a material issue. She considered the evidence and properly assessed the risk, finding that there was no real risk to the appellant. The fourth challenge suggested that it was immaterial whether the Zimbabwean authorities had responded to comments posted on the *Facebook* page. The issue was whether the appellant would face persecution in Zimbabwe. However, the judge did not simply say that there had been no response from the authorities in Zimbabwe; she made it clear that there had been no response from anybody in Zimbabwe and very few visitors to his *Facebook* page. She was correct to assess the risk to the appellant as not being a serious or real one. The fifth challenge appears to criticise a First-tier Tribunal Judge who refused permission to appeal to the Upper Tribunal and makes no criticism of the determination and the sixth challenge again suggests that the Tribunal failed to consider whether the appellant can demonstrate loyalty to the regime as per *RN*.

16. The judge examined the objective evidence before her and concluded that the current situation in Zimbabwe did not demonstrate the same level of violence and harassment as had been the position in 2008 when was *RN* decided. That decision merely reflects the change in situation in Zimbabwe which is reflected also in *CM*. Given that the appellant is actually from a suburb of Harare, I have concluded that there is no real risk that this appellant will have to demonstrate loyalty. He will be of no interest to the Zimbabwean authorities on his return to Zimbabwe at the airport and if he returns to live in Harare, where his home was, he is not at any real risk of being asked to demonstrate loyalty to the ZANU-PF, or the current regime in Zimbabwe. For all these reasons I have concluded that the judge did not err in her determination and it is **upheld**. The appellant's refugee appeal, humanitarian appeal and human rights appeal are all dismissed.

Upper Tribunal Judge Chalkley