Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09696/2008

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent	**Date sent**
On 8th August 2013	**On 12th August 2013**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR MATHEW MOYO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Rutherford (instructed by CAB, Stoke-on-Trent))
For the Respondent: Mrs K Heath (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Zimbabwe, born on 30th August 1966, who entered the UK on 25th December 2007 and claimed asylum. On 10th November 2008 a decision was made to refuse his application and to refuse him leave to enter the United Kingdom.
2. The Appellant appealed and his appeal came before the AIT, as it then was, (Immigration Judge Chambers) at Stoke-on-Trent on 18th December 2008. In a

determination promulgated on 6th January 2009 Judge Chambers dismissed the appeal on all grounds. In his determination he found the Appellant's claims to have been involved with the MDC in Zimbabwe to be without credibility. In particular at paragraph 51 of the determination he said:-

> "According to the Appellant there was no final incident causing him to flee. He got fed up hiding and decided to leave Zimbabwe. I do not accept despite the low standard of proof upon him in these proceedings that he was a member of the MDC or involved in local politics in his area. I do not accept the Appellant's account. I find he is not telling the truth".

3. At paragraph 52 Judge Chambers found the Appellant was HIV positive but otherwise in good health and his condition stable. He noted that he was receiving medicine and that his condition was not life-threatening and did not give rise to a claim under Article 3 or 8 of the ECHR.

4. The Appellant sought reconsideration which was refused by a Senior Immigration Judge on 21st January 2009. A renewed application to the High Court was granted by Mr Justice Mitting on 14th May 2009. In ordering reconsideration Mitting J said this:-

> "The Immigration Judge's findings of fact and disbelief of the Applicant's account are unimpeachable, as is his summary of the country guidance given in RN; but he did not then address the issue of safety on return in his factual findings. It was an error of law not to do so: GM and YT (Eritrea) v SSHD [2008] EWCA Civ 833 paragraph 31. It is possible that the Tribunal, on reconsideration, would conclude that it was not safe to return the applicant to Zimbabwe in current circumstances".

5. The reconsideration hearing came before Designated Immigration Judge Garrett at Stoke on 21st September 2009. In a determination promulgated on 9th October 2009 Judge Garrett dismissed the appeal on all grounds. Judge Garrett in his findings noted evidence that the Appellant had produced about his membership of the MDC in the UK and in particular the Stoke and Crewe branch. He found, based on numerous evidential inconsistencies that the Appellant had not been involved with the MDC since early 2008 and that he had not adopted any significant political profile either in Zimbabwe as found by the previous Judge, or in the UK.

6. Judge Garrett noted that when the Appellant had been interviewed about his asylum claim in November 2008 he was specifically asked whether or not he was a member of the MDC in the UK and he said that he was not. However in front of him he claimed to have been a member since early 2008.

7. Judge Garrett also noted that he claimed to have attended many rallies and meetings, the first one being early in 2008 and in fact claimed to have joined in March 2008. This did not fit with his interview responses in November 2008. There was also inconsistent evidence about his MDC membership card that he produced which although he said it was issued to him in January 2009 and had started paying subscriptions in December 2008, showed subscriptions starting in March 2008. This led the Designated Immigration Judge to conclude that the Appellant was seeking to

give the impression that he been a member of the MDC in the UK since early 2008, forgetting that he had denied membership at interview.

8. Judge Garrett noted that a letter had been produced purporting to be from the Secretary of the MDC in the UK and Ireland and also photographs to support his claims of MDC support and activism. He reminded himself of the guidance of Tanveer Ahmed [2002] IAT 00439.

9. Judge Garrett noted that the letter referred to the Appellant as being a registered and fully subscribed member of the MDC in the UK and was dated 4th August 2009 yet that could not be correct because the Appellant's membership card did not show any subscriptions beyond March 2009. The same letter indicated the Appellant's membership had been registered in March 2008 but made no mention of the fact that he paid no subscriptions until December 2008. As a result the Designated Immigration Judge found it to be a self-serving letter written to document the Appellant's claims rather than because it reflected independently verifiable records maintained by the MDC to authenticate membership.

10. As to the photographs, Judge Garrett noted, taking into account the same background on the photographs, that they showed nothing more than that the Appellant had his photograph taken with other people in one location and was unable to find that they supported his claim to be have been actively involved in rallies and meetings.

11. The Designated Immigration Judge referred to partial copies of what were claimed to be minutes of two meetings of the Stoke and subsequently Stoke and Crewe branch of the MDC for 2008 and 2009. In both cases the Appellant was named as an attendee but not shown as holding any office. In the absence of full signed copies of the minutes and supporting evidence from a responsible branch official the Designated Immigration Judge found those documents were not reliable evidence of the Appellant's claims. He also noted that such documents, being word processed documents would be easy to produce.

12. The Designated Immigration Judge noted that no official from the Stoke and Crewe branch of the MDC attended to support the Appellant's claims.

13. At paragraph 36 the Designated Immigration Judge summarised his conclusions by saying:-

> "In summary, whilst I am satisfied that the Appellant has posed for photographs designed to show that he is involved in supporting the MDC in the United Kingdom I am not satisfied that he is a full member of the MDC in this country or has attended any rallies or meetings which might attract public attention. He has not shown that he is a conscientious supporter of the MDC."

14. Having lost his appeal on reconsideration the Appellant then made an application to the Court of Appeal. The Court of Appeal sealed a Consent Order on 20th June 2010 ordering that the matter should be remitted to the Upper Tribunal (Immigration and

Asylum Chamber) for the reconsideration hearing to be relisted before a Tribunal other than one consisting of Designated Immigration Judge Chambers (that is a typing error and should read Designated Immigration Judge Garrett).

15. Accompanying the Consent Order is a Statement of Reasons and at paragraph 2 it states that the appeal challenges the second stage reconsideration determination of the AIT, by Designated Immigration Judge Garrett promulgated on 9th October 2009. Reference is made to the order of Lord Justice Pill granting permission to appeal who said:-

> "The relevant country guidance case is still RN (Returnees) Zimbabwe CG [2008] UKAIT 00083. Mitting J ordered a reconsideration in the present case for failure to address the issue of safety on return considered in RN. The Tribunal does not appear to have addressed paragraphs 237 and 238 of RN. The finding that the applicant has not adopted "a significant opposition profile" in the UK (a finding the Tribunal was entitled to make) does not necessarily resolve the issue against him, given the other findings of fact and RN".

16. The Statement of Reasons goes on to indicate that the Secretary of State agreed that Designated Immigration Judge Garrett had not adequately assessed the impact of the Appellant's sur place activities in the UK on his risk profile on return to Zimbabwe within the context of the country guidance of RN and that further the Secretary of State agreed that the Designated Immigration Judge had not applied the correct test to assess risk on return when finding that the Appellant was not "a conscientious supporter of the MDC."

17. The Statement of Reasons goes on to indicate that the Secretary of State also agreed that as stated in the order of Pill LJ the AIT had failed to make full or adequate findings on the application of RN to the Appellant's case, in particular with respect to the possible risks posed to the Appellant by the various non state actors described in paragraphs 237 and 238 of the determination in RN.

18. That is, after a regrettable delay, how the matter came before me.

19. It is clear that the factual findings made by Immigration Judge Chambers in 2009 as to the Appellant's activities in Zimbabwe and the factual findings of Designated Immigration Judge Garrett as to his activities in the UK have not been set aside. Such was agreed by both representatives. What I am tasked to do is to look again at whether this Appellant's profile, as found by the two previous Judges, would place him at risk on return to Zimbabwe on the basis of the current country guidance case.

20. Matters in Zimbabwe have moved on since RN and indeed the current country guidance case is CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC). In that case the Upper Tribunal held that 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 Zanu PF. 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 an MDC member or supporter. The Tribunal went on to say however that an Appellant may 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. 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 with or 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. 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.

21. The new country guidance case places the Appellant in considerable difficulty. He is from Plumtree, an area on the border between Matabeleland North and Matabeleland South. He also has some links with Bulawayo. On the basis of current country guidance he would not be at risk in either place even if he was an MDC member or supporter which he has been found not to be.

22. On the Appellant's behalf Miss Rutherford did draw to my attention a document which shows some of the recent election results in Zimbabwe to indicate that Matabeleland is not in fact an MDC stronghold. However, that document is incomplete and only shows the results from certain areas. For example it shows results for Matabeleland South but not Matabeleland North. While the Matabeleland South results show Zanu PF victories they also show a considerable number of votes for MDC indicating a considerable level of support for the MDC in those areas. Based on that incomplete information I am not able to find that the power base in Matabeleland has shifted such that the Appellant will be placed at risk by not being a member of Zanu PF. Miss Rutherford, in fairness, acknowledged that the most recent elections in any event have not been marred by the violence of those in the past. Therefore the evidence that I have is insufficient for me to depart from the findings of the country guidance case of CM which clearly indicates that this Appellant would not be at risk.

23. The Appellant has submitted up-to-date evidence with regard to his sur place activities and membership of the Stoke and Crewe branch of the MDC. However, the documents have the same difficulties as the documents produced to Designated Immigration Judge Garrett and despite his comments that no officials had attended to support the Appellant and give evidence none were before me either.

24. In any event the current country guidance shows that even if the Appellant had been a member of the MDC in the UK, not one of high prominence, he would not be at risk in his home area of Matabeleland or in Bulawayo where has links.

25. I was provided with up-to-date medical evidence concerning the Appellant's HIV status which shows that he remains as he was in 2009, well, stable and maintained on medication.

26. No evidence has been produced with regard to Article 8 in terms of a private or family life and it is the case that his close family members are not in the UK. There is no evidence that there is any family life in the UK a breach of which would render removal disproportionate. Any private life he has built up since he has been in the UK has been while he had no legitimate reason to be here. He came to the UK unlawfully and made a bogus asylum claim, seeking international protection of which he had no need.

27. The appeal is dismissed on asylum grounds, humanitarian protection grounds and under the ECHR.

Signed Dated 9th August 2013

Upper Tribunal Judge Martin