



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/00516/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 17th September 2013**

**Determination
Promulgated
On 19th September 2013**

Before

UPPER TRIBUNAL JUDGE COKER

Between

HOWARD MUZIRA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G O'Ceallaigh, counsel, instructed by The First Law Partnership

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of First tier Tribunal Judge Colyer who dismissed his appeal against a decision dated 28th February 2013 that the appellant is subject to automatic deportation pursuant to s32(5) UK Borders Act 2007. Judge Colyer concluded that none of the exceptions provided for in the Act apply. On 1st August 2013 Upper

Tribunal Judge Chalkley granted permission to appeal the First-tier Tribunal determination on the grounds it was arguable that the judge had failed to adequately assess risk on return to Zimbabwe or internal relocation by reference to relevant country guidance. He had also granted permission on the ground that the judge had failed to take proper account of the assessment of risk of re-offending in reaching his conclusions.

2. Although the respondent submitted in her Rule 24 response that the First-tier Tribunal judge had directed himself appropriately and that the grounds amounted to no more than a disagreement with the findings made, before me Mr Bramble conceded that there did appear to be a lack of proper approach and treatment of the issues. Although the judge had quoted extensively from relevant caselaw and Immigration Rules there was a lack of engagement with the concepts and law applicable.
3. I am satisfied that this concession by Mr Bramble was reasonable and justifiable and I am satisfied that the First-tier Tribunal Judge erred in law in his assessment of risk on return to Zimbabwe and his engagement with the evidence as to risk of re-offending. I set aside the decision to be remade.
4. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
5. When a decision of the First-tier Tribunal is set aside, s.12(2) of the TCEA 2007 requires me to remit the case to the First-tier Tribunal with directions or remake it myself. After discussion with both parties I am satisfied that the extent and nature of the findings to be made as to potential risk of persecution on return to Zimbabwe and the assessment of the proportionality of the decision overall requires a substantive hearing with full findings of fact in so far as any and all of the exceptions to the 2007 Act are concerned. With the agreement of both parties I therefore conclude that the decision should be remitted to the First tier judge to determine the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I remit the appeal to the First-tier Tribunal to be remade.

Consequential Directions

The appeal shall be heard by a First-tier Tribunal judge or judges as determined by that Tribunal save that it shall not be before Judge Colyer. The hearing date to be fixed, if possible, in consultation with the appellant's solicitors.

Date 17th September 2013

Judge of the Upper Tribunal Coker