



**The Upper Tribunal
(Immigration and Asylum Chamber)
AA/09384/2013**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Field House
On March 31, 2014**

Determination Sent

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR NIGEL TINASHE MBOHWA
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bhanji, Counsel, instructed by Kesar & Co
Solicitors
For the Respondent: Mr Norton (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born April 15, 1992 is a citizen of Zimbabwe. On August 28, 2013 the appellant claimed asylum. The respondent refused this application on September 27, 2013 and took a decision to remove him the same day.
2. On October 11, 2013 he appealed under section 82(1) of the Nationality, Immigration and Asylum Act.

3. The appellant's appeal came before Judge of the First-tier Tribunal Clarke (hereinafter referred to as "the FtTJ") on January 22, 2014 and in a determination promulgated on January 27, 2014 she dismissed his appeal for asylum, humanitarian protection and under ECHR legislation.
4. The appellant appealed on February 6, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Parkes on February 21, 2014. He found it arguable there was no analysis of the appellant's mother's evidence and no reason had been given for rejecting the same. Permission to appeal was given on all grounds. A standard Rule 24 letter was filed by the respondent, dated March 5, 2014, opposing the grant of permission but this added nothing to the overall picture.
5. The matter was listed before me on the above date.

SUBMISSIONS

6. Mr Bhanji submitted:-
 - a. The primary and first ground of appeal was a failure by the FtTJ to assess her evidence. There was no evidence that her evidence had been challenged but the FtTJ failed to assess her evidence or give reasons why her evidence should not carry any weight. The FtTJ should have considered her evidence especially as it provided support for the appellant's claim. This ground displayed an error in law.
 - b. At paragraph [27] the FtTJ erred by making reference to the appellant's failure to provide corroborative evidence. In asylum appeals there was no requirement to provide corroborative evidence and again the FtTJ erred.
 - c. The FtTJ's approach to plausibility was flawed as it accepted the respondent's own assessment of how long a person can last without water rather than assessing the plausibility of his whole account. This amounted to a error in law.
 - d. The FtTJ did not challenge the appellant's mother about her trip to Zimbabwe in 2011 and consequently it was not open to him to raise credibility about her motive. Additionally, the original statement and interview were without the benefit of legal advice of what was important and therefore no adverse finding should be attached to the fact that in his most recent statement he mentioned Tendai Bitt whereas prior to this statement he had not. There was no evidence to support the finding that the appellant had found it in the

background material and whilst the FtTJ was entitled to say there was an inconsistency she should not where the evidence had not been tested.

7. Mr Norton submitted:
 - a. As regards ground one the FtTJ was fully aware of the appellant's mother's evidence but as she rejected the appellant's account and gave detailed reasons for rejecting the same she was entitled to reject the mother's evidence without making findings.
 - b. As regards ground two the FtTJ was not looking for corroboration because she believed nothing about the appellant's account.
 - c. With regard to ground three the FtTJ had to decide what she believed and what she rejected and set out in her determination what she accepted or rejected.
 - d. With regard to ground four the FtTJ was entitled to make adverse findings about the appellant's failure to mention Tendai Bitt in his original statement and interview and this ground is nothing more than a mere disagreement.
 - e. The appeal should be rejected.
8. I reserved my decision.

FINDING ON ERROR OF LAW

9. Permission to appeal had been given and in considering the application I have had regard to the file of papers, the FtTJ's determination, the grounds of appeal and the permission itself.
10. The appellant raised a number of grounds of appeal and whilst there are similarities in some of the grounds I have considered each ground separately.
11. The first ground centred on the FtTJ's approach to the appellant's mother's evidence. In oral submissions Mr Bhanji submitted that there had been no questions put to the witness at the hearing and her evidence was unchallenged. He submitted the FtTJ should have dealt with the evidence in her determination. In assessing this ground it is important to consider the determination and what the appellant's mother actually stated in her evidence. Her statement was contained in the appellant's bundle and is dated January 11, 2014 (eleven days before the hearing).

12. The FtTJ considered the appellant's claim and made findings on the core part of the claim between paragraphs [21] and [29]. The FtTJ recorded the appellant's mother gave evidence (paragraph [13]).
13. In assessing whether there has been an error in law on this first ground I have taken into account that the appellant's mother left Zimbabwe in 2001 and only returned for visits during this period. The appellant's mother's evidence added nothing to the core of the appellant's claim and she had confirmed that the appellant's father had been a Zanu PF MP.
14. The FtTJ had an opportunity to consider the appellant's account and the only area where the appellant's mother's account assisted the appellant was on the issue of how much contact her son had with his father and therefore his knowledge about his father. However, she was out of the country during the relevant period and I am satisfied that she is wholly reliant on what the appellant told her. The FtTJ rejected his account and in those circumstances the mother's limited evidence would not have assisted the appellant or the FtTJ and consequently there is no error of law on ground one.
15. Mr Bhanju submitted that the FtTJ's finding in paragraph [27] amounted to a requirement for corroboration. I accept a person claiming asylum does not need to provide corroboration but I have had regard to the following authorities as they provide guidance on the relevance of evidence:-
 - a. In I v Sweden Application no 6129-04/09 ECtHR it was held that although it was frequently necessary to give an asylum applicant the benefit of the doubt, where there were strong reasons to question veracity the individual was required to provide a satisfactory explanation. In this case the appellant had failed to present any documents or information as evidence in support of his alleged 12 years of journalistic activities which he relied on and the court accepted that he had failed to show it was plausible that he faced a real risk of ill-treatment on return to Russia in consequence.
 - b. In TK (Burundi) v SSHD (2009) EWCA Civ 40 the Court of Appeal said that where there were circumstances in which evidence corroborating the appellant's evidence was easily obtainable, the lack of such evidence must affect the assessment of the appellant's credibility. It followed that where a judge in assessing credibility relied on the fact that there was no independent supporting evidence where there should be and there was no credible account for its absence, he committed no error of law when he relied on that fact for rejecting the account of the appellant.

- c. In Gedow, Abdulkadir and Mohammed v SSHD 2006 EWCA 1342 the Immigration Judge noted that the Somali appellant claimed that an uncle had funded his journey and the Immigration Judge referred to “the absence of any corroborative evidence by letter or any other means from his paternal uncle”. The Court of Appeal said a judge was entitled to draw a conclusion from the absence of corroboration as long as he bore in mind the difficulties faced by asylum seekers in producing corroborative evidence.
16. The appellant had not produced anything to support his claim and in light of what he was claiming it would not have been difficult to produce something. Merely stating the appellant had not produced anything was not placing an onus on the appellant to corroborate his claim. I therefore do not find that the FtTJ erred in paragraph [27] of his determination.
17. With regard to the third ground the FtTJ assessed the evidence and made findings on what she felt was plausible or credible. Her findings are supported with reasons and evidence. No error is disclosed on the third ground.
18. The final ground related to the adverse findings made about the appellant’s evidence. The fact the appellant was unrepresented when he gave his first statement or at interview does not mean the FtTJ was unable to make an adverse finding on evidence that was introduced at a later stage. In this case the FtTJ made numerous adverse findings with reasons and no error of law is disclosed.

Decision

19. There is no material error of law and the original decision shall stand.



20. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No request for anonymity has been and no order is made.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I make no fee award in light of my findings.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

STAL