



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/10280/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 5 August 2013

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

CR
(ANONYMITY DIRECTION MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, instructed by Khan & Co Solicitors
For the Respondent: Mr Wardle, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, CR, claims to be a citizen of Zimbabwe. She arrived in the United Kingdom in January 2005 and claimed asylum. She appealed against a decision to remove her from the United Kingdom to First-tier Tribunal (Judge Shimmin) which dismissed her appeal in a determination promulgated on 12 April 2012. The appellant subsequently made fresh representations leading to a further decision by

the respondent, refusing her claim for asylum directing her removal, dated 25 October 2012. The appellant appealed against that decision to the First-tier Tribunal (Judge Hindson) which, in a determination dated 7 February 2013, dismissed the appeal on all grounds. The appellant now appeals to the Upper Tribunal, permission (Judge Coker) having been granted on 8 April 2013.

2. Judge Coker's grant of permission to appeal rejects several of the grounds raised by the appellant. In particular, she found that it was "incorrect" that the First-tier Tribunal Judge had considered the findings of Judge Shimmin as an "end point" rather than "a starting point" for his own analysis. I consider that Judge Coker clearly refused permission on that ground but even assuming that she did not do so, I find that the ground is without merit. There is nothing in his determination to suggest that Judge Hindson did not make his own assessment of the evidence post-dating Judge Shimmin's determination.

3. Judge Coker considered that:

"there does appear to be a paucity of reasoning in relation to the finding that the appellant is a ZANU-PF supporter. There is no requirement that a determination makes a finding on each and every element of evidence, this finding does form the core of the reasoning for dismissal of the claim. It is arguable that there was an error in the determination, although to one extent this benefits the appellant is questionable given the most recent country guidance".

4. Representing the appellant before the Upper Tribunal, Mr Pipe of Counsel submitted that there was a paucity of reasoning in the determination regarding the appellant's ZANU-PF membership. At [49], Judge Hindson wrote:

"I am not satisfied that the appellant has told the truth about her political allegiances. I find the appellant is a genuine supporter of ZANU-PF as is family in Zimbabwe. I accept that she has been in the UK for about eight years and it may well be that she is not 'up-to-date' with the current ZANU-PF slogans and songs but I am satisfied that [she] should be readily able to update herself with the help of her family prior to returning. She would return to Harare where she has many family members and will be readily able to integrate there as a genuine and active supporter of ZANU-PF."

5. I agree with Mr Pipe that it is difficult at first to see where exactly in the determination Judge Hindson gives reasons for reaching that finding. However, at [47], he noted that the appellant's sister, S, "visited Zimbabwe on a number of occasions without any difficulty" and that "the appellant's case is the family have avoided problems [in Zimbabwe] by carrying ZANU-PF membership cards and "going along with" ZANU-PF and other reason than to avoid problems. She now denies being a genuine ZANU-PF supporter and says that "it is very common in Zimbabwe for people to take this pragmatic step in order to have access to food and so on which might otherwise be denied them". I find that Judge Hindson reached his finding about the appellant's ZANU-PF links because he found that the appellant's entire account was not true [48]. It followed from that finding that the appellant's claim to have only pretended to be a member of ZANU-PF was rejected by the judge and the fact that she had possessed ZANU-PF membership cards in Zimbabwe (as had other members of her family) could be explained by reason of the

fact that they were, despite the appellant's denial, genuine supporters of that party. I consider the determination, read as a whole, supports that reasoning, though it would have been preferable if Judge Hindson had included at [49] explicit reasons for reaching his finding concerning the appellant's ZANU-PF membership. I find that Judge Hindson did not err in law in reaching the findings set out in the determination, in particular at [49], and that his reasoning is adequate.

6. Even if that finding is wrong and the judge did err in law by giving inadequate reasons to justify his findings at [49], I should decline Mr Pipe's invitation to set aside the determination. As Judge Coker noted when giving permission and as Mr Wardle has rightly noted in his Rule 24 letter of 31 July 2013, the country guidance of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC) upholding (save for the minor amendment) the country guidance of EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) is sufficient to defeat the appellant's appeal. Mr Wardle's letter quotes from CM at paragraph 234 (the appellant previously lived in the Hatfield district of Harare):

Whether Hatfield is regarded as a low or as a medium density suburb of Harare, it is certainly not a high density one and it is not a place where there is any reliable evidence of significant Chipangano activity or any other malign presence that could properly be said to give rise to a real risk of CM's facing a RN-style loyalty challenge. There is no credible evidence that CM would be forced through economic necessity to seek work outside Hatfield, so as to come into contact with Chipangano. His true economic position is unclear, as a result of his propensity to say whatever he thinks might best serve his aim of staying in the United Kingdom, come what may; but he cannot properly use that lack of clarity to his advantage. Even if he in truth lacks means, he has a property in Zimbabwe, which he has not shown to be uninhabitable. He has a means of support from his aunt, as well as the prospect of financial help from the United Kingdom government's returns programme. He has worked as a small businessman (EM [295]). Neither his age nor his health suggests that he would lack means of support.

7. I understand that the appeal against the Upper Tribunal's decision in CM has failed in the Court of Appeal where Laws LJ gave an *ex tempore* judgment dismissing the appeal; the written judgment is not available at the time of writing. Even if the appellant is only a "pretend" rather than an actual member of ZANU-PF, it is clear that she does not, in the light of EM and CM, possess a profile such as would expose her to a real risk upon return to her home area of Zimbabwe.

DECISION

8. This appeal is dismissed.

Signed

Date 31 August 2013

Upper Tribunal Judge Clive Lane