The Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: AA/04520/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On October 6, 2015	**On October 12, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MISS JEAN THOKOZILE MOYO
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant	Mr Mutebuka (Legal Representative)
Respondent	Mr Bramble (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a national of Zimbabwe. The background to this case is she twice failed to be granted permission to enter the United Kingdom in 2002 and 2004 but claimed to have entered the United Kingdom on a false passport in January 2005. She did not claim asylum until February 4, 2013 and when she did her application was rejected by the respondent on February 27, 2015.

2. The appellant appealed this refusal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and the matter came before Judge of the First-tier Tribunal Juss on June 11, 2015 and in a decision promulgated on June 17, 2015 the Tribunal dismissed her appeal on all grounds.

3. The appellant applied for permission to appeal on June 23, 2015 submitting the Tribunal had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Grant-Hutchinson on July 14, 2015 on the basis that it was arguable the Tribunal had erred by:

   a. Failing to make any findings in relation to the the appellant's evidence that she became politically active in 2011.

   b. Failing to take into account the second witness' evidence.

   c. Failing to make any findings with regard to the relationship between the appellant's child and her father simply because he did not attend to give evidence.

4. The respondent submitted a Rule 24 response dated August 4, 2015 in which she submitted the findings were open to the Tribunal.

5. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

ERROR OF LAW SUBMISSIONS

6. Mr Mutebuka adopted the grounds of appeal and submitted that the respondent's Rule 24 response did not engage with the grounds. At the original hearing the second witness, Juliet Mombeshora, was not cross-examined by the respondent and her evidence should therefore have stood unopposed. The evidence was crucial to the proceedings as it corroborated the appellant's account. Mr Mutebuka further submitted that the Tribunal had failed to properly engage with the YouTube videos. Pictures within the bundle suggested that one of the videos had been viewed by thousands rather than a mere handful of people. The evidence submitted supported his submission that the Tribunal had not properly engaged with the appellant's public profile. As regards the child there was no engagement with the father's statement or the evidence from the second witness. The second witness corroborated the level and amount of contact the child's father and the appellant had with each other and the father's statement confirmed the level of his involvement. This assessment was flawed.

7. Mr Bramble opposed the application. At paragraphs [19] and [20] the Tribunal noted the timing of her involvement with Zanu PF group but at paragraph [22] the Tribunal noted her activities began in 2011 but was concerned with her overall credibility and the findings made in paragraphs [19] and [20] that these activities were contrived to bolster her asylum claim were clearly open to it and the Tribunal was entitled to accept the presenting officer's submission on that point. Whilst there was no direct

consideration of the second witnesses' statement, Mr Bramble submitted that the statement added little to the asylum claim because it was based on what she had been told by the appellant rather than what she had witnessed first hand. The Tribunal was fully aware of the appellant's purported profile and had examined the evidence and then applied the country guidance case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 and concluded, at paragraph [23] and [24], that she had a limited profile and would not be at risk if returned to a major city such as Harare or Bulawayo. Turning to the second aspect of the appeal the Tribunal noted the child's father did not attend the hearing and they did not live together. He considered the witness statement that had been provided and he also had regard to the skeleton argument submitted by the appellant's representative at the original hearing. The Tribunal was entitled to look at the facts and make findings regarding the child's best interests. The Tribunal had no evidence that the appellant's child's father was entitled to remain here beyond September 2015 as there was a lack of information submitted about his circumstances. There was no evidence that he was now exercising treaty rights as a family member because there was no evidence he was still with his EEA wife. The Tribunal had to deal with the child's situation on the evidence available and the findings made were open to it. There was no material error.

8. Mr Mutebuka accepted that the evidence regarding the YouTube videos did not appear to have been put before the Tribunal. He accepted that neither the Tribunal's nor the respondent's bundle contained the evidence he had outlined and consequently that evidence could not form part of an error of law assessment. However, he maintained the Tribunal had made no findings about her earlier activities and this was a material error. He also accepted that the evidence about the child's father could have been better but he maintained that the Tribunal had erred as it failed to take into account the appellant's sister's or the father's statements about the child. If the evidence was to be rejected, then reasons should have been given. He invited me to remit the matter to the first-tier Tribunal for a fresh hearing.

9. I reserved my decision on both issues.

DISCUSSION

10. Mr Mutebuka's challenge relates to the Tribunal's approach to both the asylum claim and the best interests of the child. Common to both arguments was Mr Mutebuka's submission that the Tribunal failed to consider the evidence of the appellant's sister.

11. She provided a short witness statement confirming that she was the appellant's sister and that they had lived together since 2005. At paragraph [5] and [7] of her statement she set out her sister's involvement in Zimbabwean political affairs and how she supported her. At paragraph [8] of her witness statement she referred to a telephone conversation between her brother and herself in which he said the local

Zanu PF militias had visited him to warn him about his sister's the appellant. The witness statement went on to confirm that the circumstances of the child's birth and her sister's relationship with Mr McNeil.

12. This evidence forms the cornerstone of today's appeal because Mr Mutebuka has submitted the Tribunal had no regard to it. Mr Bramble accepted that the Tribunal did not deal with the evidence in any detail but submitted that most of this evidence, particularly in relation to the asylum claim, was third hand information and added nothing to the argument already advanced by the appellant and considered by the Tribunal.

13. At paragraph [6] the Tribunal listed the evidence placed before it. At paragraph [10] of the decision the Tribunal noted that the appellant's sister was called to give evidence. The Tribunal then recorded the closing submissions of both representatives and the thrust of the respondent's submissions was that the appellant had failed to demonstrate she was a human rights activist who was a thorn in the Zimbabwean government's side. At paragraph [40] the respondent's representative referred the tribunal to the country guidance case and submitted that this appellant did not fall into a risk category.

14. On her behalf the appellant's representative had pointed to the fact that the appellant had engaged in *sur place* activities and identified those matters which he submitted demonstrated she was a genuine activist.

15. The Tribunal considered all these issues between paragraphs [19] and paragraph [24] of its decision and concluded that the claim was contrived and deliberately constructed to enhance her asylum claim. The Tribunal found the appellant had created a profile seven days before her asylum application.

16. At paragraph [20] the Tribunal had regard to the fact the appellant had attended on vigils and even taking her claim that there were many photographs on the Internet of her the Tribunal noted that the amount of views these images had had was minimal. The Tribunal took into account the fact that the appellant had not undertaken any activity against the Zanu PF in Zimbabwe and had waited six years before attending a vigil. The Tribunal was not satisfied the authorities were aware of her activities.

17. Whilst Mr Bramble conceded the Tribunal did not give the appellant's sister's statement any real consideration I have to consider whether that omission amounts to a material error in light of the overall conclusions made.

18. In assessing risk to the appellant the Tribunal quite properly took into account the appellant's previous immigration history. She had on three occasions attempted to visit in the United Kingdom (refused port entry once and two refused visa applications) and that she had ultimately entered the United Kingdom in January 2005 on a false passport. When

she arrived in the United Kingdom she had no interest in Zimbabwean politics and she had never experienced any problems in Zimbabwe. The Tribunal noted that she had attended vigils in 2011 and subsequently became involved in making videos that were posted on the Internet.

19. Whilst the Tribunal did not consider in any detail the appellant's sister's statement I do take on board Mr Bramble's submissions that a lot of her statement is based on what she was told and she is a witness who has a personal interest in the appellant being allowed to remain. The witness was also fully aware the appellant was here illegally because she provided her with accommodation from the moment she arrived. Even if her claims of activities in 2011 were made out to the extent that she claimed, the fact remained she did not claim asylum until February 2013 at a time when she knew people were claiming asylum.

20. The Tribunal was entitled to form a view of the appellant's involvement and this was not a case where the Tribunal failed to consider photographic evidence that had been submitted on her behalf. The lack of interest in those photographs led the Tribunal to conclude that the appellant was a person who had no real interest for the authorities. Whether her interest began in 2011 or shortly before her asylum claim mattered little in those circumstances because in considering the risks to the appellant the Tribunal had regard to the appropriate case law and noted that even prominent supporters were capable of being returned to Zimbabwe particularly if they were returned to Harare or Bulawayo. Further evidence of more widely viewed video was raised at the hearing but there was nothing before me to suggest this evidence was adduced to the Tribunal or ever served on the respondent. There is no reference anywhere in the Tribunal's decision although there was reference to other pictures and videos.

21. Mr Mutebuka submitted that the risk to this appellant was upon arrival in the country. The relevant guidance in CM is at paragraph [215]-

> "(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.
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> ...
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> (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.
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> (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.
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> …
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> (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."

22. Although the Tribunal did not make specific findings on the appellant's sister's statement I am satisfied that the Tribunal was aware of it but having considered all the evidence concluded that this appellant was of no interest to the authorities and based that finding upon evidence submitted by the appellant on her own behalf. For these reasons I find that there is no material error in the Tribunal's approach to the appellant's asylum claim. It's core finding that she was of no interest to the Zimbabwean government meant that her claim was correctly rejected by the Tribunal.

23. The Tribunal considered the child's claim between paragraphs [25] to [28] of its decision. The Tribunal did not reject the claim that the child's father was Mr McNeil but noted that his EEA residence card expired in September 2015 and there was nothing in his witness statement to suggest what his current circumstances were in light of the fact he had fathered a child outside of marriage.

24. Although his statement was provided the day before the hearing he made no reference to what his own circumstances were and he neither identified his home address or with whom he was living. He may well have been present at the child's birth and be seeing the child but the Tribunal was entitled not to consider any EEA rights issues in circumstances where there was little evidence to support such a claim. The skeleton argument submitted by the appellant's representative did not even address this issue. As Mr Bramble accepted at today's hearing the child's interests may have to be considered further if more concrete evidence is produced concerning the child's father's legal status in the United Kingdom.

25. The only issue therefore is whether the Tribunal properly considered the article 8 claim. The Tribunal was entitled to take into account that the child's father had not attended the hearing and attach such weight as it

felt appropriate to his statement. He had stated in his witness statement at paragraph [7], "I cannot attend court to support this appeal due to unforeseen circumstances" and the statement was dated June 10, 2015. The court file confirms that notification of the hearing date was sent out on March 18, 2015 and this gave plenty of time for him to provide a statement and attend the hearing. The fact his statement was dated less that twenty-four hours before the hearing meant the Tribunal was entitled to place more weight on the father's absence.

26. The Tribunal applied section 117B of the 2002 Act and ultimately concluded the child's best interest was with her mother.

27. On the evidence presented I am satisfied there was no error in law.

28. It may well be that if further evidence is adduced about the child's and her father's position the appellant's position may have to be considered further but that is a concern for another day.

29. For the reasons set out above I find there is no material error on any of the grounds brought by the appellant and I uphold the original decision of the first Tier Tribunal.

DECISION

30. There was no material error. I uphold the original decision and dismiss this appeal.

Signed: Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as the appeal has been dismissed.

Signed: Dated:

Deputy Upper Tribunal Judge Alis