



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

Appeal Number: AA/04623/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20 January 2016**

**Decision Promulgated
On 5 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

**TEM (ZIMBABWE)
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Corban

For the Respondent: Mr P Duffy (Presenting Officer)

DECISION AND REASONS

1. This is the appeal of TEM, a citizen of Zimbabwe born 20 April 1985, against the decision to set removal directions against her as an illegal entrant under paragraphs 8-10 of the Immigration Act 1971. The appeal having been dismissed by the First-tier Tribunal, she now appeals to the Upper Tribunal with permission.
2. She arrived in the United Kingdom on 23 January 2006 as a student, and her leave to remain was extended until some time in 2007; she then returned to Zimbabwe, coming back to the United Kingdom on 22 July

2007, again as a student, extending her leave until 30 September 2011. She then overstayed until she claimed asylum on 26 June 2013.

3. Her asylum claim is as follows. She is from Rusape in Manicaland Province, Zimbabwe. She is present in the United Kingdom with her two children APV and OTV. She had no history of political activity when she was last in Zimbabwe.
4. During her residence in the United Kingdom, since August 2010, and in pursuance of her political beliefs, she has consistently protested against the Mugabe regime, involving herself with the Restoration of Human Rights group ("ROHR"), and joined the Zimbabwe Vigil in 2011. She considered that these were the only protest groups that had been steadfast in their campaign against the present government, unlike the MDC who had entered coalition government. They had been the subject of international media coverage and had been bitterly criticised in the Zimbabwean press, and accused of being puppets of Gordon Brown and Kate Hoey MP. Demonstrations are frequent and she has attended them on a weekly basis; they have concentrated specifically on topics including the disputed elections, Mugabe's birthday, and the perceived betrayal of Zimbabwean independence. ROHR activists had been murdered in Zimbabwe in 2008 and 2013.
5. She has participated in various demonstrations every Saturday afternoon since then. Her activities have included issuing leaflets, recruiting new members, and organising events; she manned the front table at demonstrations outside the Zimbabwean Embassy, seeking signatures on permission, answering questions, signing petitions and distributing fliers. She was organising secretary of ROHR's Coventry branch.
6. She has received anonymous threats stating that "you think you can say what you want, wait till you come home" and "what do you know about democracy": she does not know their origin, but assumes they are Zanu-PF CIOs. She feared that given that her political profile was in the public domain, interrogation of an internet search engine would at once reveal her political sympathies, and so she would come to light and receive adverse attention from the moment of return at Harare International Airport. Back in Manicaland she would be seen as a sell-out and might be denied access to medical help or other basic necessities controlled by Zanu-PF. She did not feel she could desist from her political activities on a return to Zimbabwe. She lacked up-to-date knowledge of that group's political slogans and songs, and so could not feign loyalty to the regime even were that acceptable to her conscience.
7. Her partner Mr V is a failed asylum seeker, whose appeal was originally dismissed on 27 April 2004 for failure to demonstrate that he was a MDC member with any record of detention or harassment by Zanu-PF; various attempts to resurrect his claim via further representations had failed. The Appellant had learned that her partner's legal representative,

who she had originally charged with progressing her own asylum claim alongside his, was not qualified, and they had complained about him.

8. Her application was refused because, whilst its detail and supporting documents impressed the Secretary of State sufficiently for her account to be accepted as true, she lacked evidence as to the source of the threats, and it was considered speculative to assume that they were from a Zanu-PF source. She had not claimed asylum for some time after first receiving the threats. An asylum seeker from Bulawayo without any significant MDC profile would not need to demonstrate loyalty to Zanu-PF on a return there; nor would they in Harare, to where she could reasonably be expected to relocate, being healthy and educated, with the advantage of her partner and father of her children returning with her as part of a family unit. There was no reason to think she could not earn the family's livelihood utilising her skills.
9. Evidence referenced by the First-tier Tribunal includes a letter from ROHR of 26 June 2013 asserting the physical and psychological abuse of their activists and stating that some had been murdered by Zanu-PF militias. Zimbabwe Vigil wrote in November 2012 that a supporter who returned to visit Zimbabwe had been arrested, beaten and tortured following his being identified as one of their supporters; within days of a newspaper report picturing one of their supporters, their family home was raided by the police.
10. The First-tier Tribunal dismissed the appeal without departing from the Home Office's favourable assessment of the underlying facts because her family had not received any adverse attention from the authorities, contrary to the cited experience of at least some of those victims of political persecution mentioned in the supporting letters. Those letters had not specified the level of activity of those who suffered political persecution in Zimbabwe. There was insufficient evidence to positively find that the Appellant's activities had come to the attention of the Zimbabwean authorities. Her father lived in Harare, her partner's home town, to where she could reasonably relocate if she did not wish to remain in her home area, given the resilience and fortitude she had shown in relocating to this country.
11. Grounds of appeal alleged the First-tier Tribunal had failed to have regard to the Country Guidelines findings relating to the presence of the security forces at Harare airport in *HS Zimbabwe* which was relevant given the Appellant's accepted profile of activities. Permission to appeal was granted on that ground by Judge Deans for the First-tier Tribunal on 6 August 2015.
12. At the hearing Mr Duffy made it clear that the Respondent accepted the asserted flaws in the decision, and he joined with Mr Corban in submitting that the appropriate disposal of the appeal would be for the Upper Tribunal to remake the decision for itself. Mr Duffy was content to rely on the refusal letter as the basis for the Secretary of State's case upon that reconsideration, whereas Mr Corban argued that the facts of

her claim as set out in the First-tier Tribunal's decision established her entitlement to refugee status once read alongside the relevant Country Guidelines.

Decision:

13. Giving its guidance in *EM and Others (Returnees) Zimbabwe CG* [2011] UKUT 98 (IAC), the Upper Tribunal essentially ruled that there was significantly less politically motivated violence in Zimbabwe than had prevailed previously. Whereas life in most rural regions outside Matabeleland might expose a returnee to political loyalty testing, that would not be the case in Matabeleland (subject to local variations where a village was under the sway of a pro-Mugabe local chief). Harare would not generally present risks of political persecution via loyalty-testing or otherwise unless someone had a significant MDC profile; and in Bulawayo there was no real chance of serious harm at the hands of Zanu-PF supporters even for people with such a profile. Accordingly those two cities were eligible sites for internal relocation: where any socio-economic difficulties would not generally render life as unduly harsh, though there was a need to assess the individual facts of each case.
14. That guidance, however, was expressly stated not to impinge on the separate question of circumstances at the airport upon which findings had been made in *SM and Others (MDC-internal flight-risk categories) CG* [2005] UKIAT 00100 (affirmed in *HS (returning asylum seekers) Zimbabwe CG* [2007] UKAIT 00094 and again in *EM Zimbabwe* at [266]):
 - “41. ... those deported to Zimbabwe from the United Kingdom will be subject to interrogation on return. In the light of the interest and comment the resumption of returns has raised in the government press in Zimbabwe it seems to us to be inevitable that this will be the case. If it is being asserted by the Zimbabwe government that returns are being used as a cloak for British agents and saboteurs to be smuggled into the country, it is likely that those returns will be carefully monitored whether for that reason or to identify and intimidate opponents to the regime. The reports in the newspapers in Zimbabwe are consistent with there being an atmosphere of suspicion to those returned.
 42. Nonetheless the Tribunal is satisfied in the light of the statements made by the Zimbabwean authorities that returnees are regarded with contempt and suspicion on return and do face a very hostile atmosphere. This by itself does not indicate that all returnees are at real risk of persecution but that returnees are liable to have their background and circumstances carefully scrutinised by the authorities. We are satisfied that those who are suspected of being politically active with the MDC would be at real risk. We agree with Professor Ranger that if the authorities have any reason to believe that someone is politically active the interrogation will be followed up. There is a reasonable degree of likelihood that this will include treatment sufficiently serious to amount to persecution.”

15. The upshot of these two cases read together is that in general there will be no real risk of serious harm once past the border, via loyalty testing or otherwise, for a returnee who lacks any significant political profile, either because they come from one of the safer areas or because they can reasonably be expected to relocate there. However, there is intelligence-based investigation into returnees at the airport, so that a person who has a significant profile that would put them at risk at that point may be in danger of interrogation including serious mistreatment at the point of entry for all that they might live safely once past the border controls.
16. As to the expectations that a decision maker should reasonably hold when making an assessment as to what information to come to light, in *YB (Eritrea)* [2008] EWCA Civ 360, Sedley LJ stated at [18]:

“Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive.”
17. Article 4(3)(d) of the Qualification Directive states that one relevant consideration in assessing the merits of an asylum claim is whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country. No challenge has been made in this case to the genuineness of the Appellant's political beliefs. I join with the Home Office and First-tier Tribunal in accepting these as established, along with the other relevant facts as set out above. The only cavil raised by the Secretary of State with her claim related to the timing of her asylum claim, but that is explained by the difficulties with the inadequate legal representative set out above, which I consider to be credible bearing in mind the fact that there are all too many non-professional advisors who prey on the unwary and given my general acceptance of her credibility.
18. As stated in *SM* and *HS* “returnees are liable to have their background and circumstances carefully scrutinised by the authorities”. It seems to me that in the modern era of information technology, social media and internet search engines would be standard reference points for security forces charged with investigating the role of a returnee in expatriate political activity. It seems highly unlikely that they would fail to

interrogate a search engine for a person's name. As shown by extracts in the Appellant's bundle, such enquiries would be likely to yield pictures such as those from the Yahoo flickr account which pictures the Appellant with a caption "Zimbabwe human rights activist ... with the coordinator of the ... Vigil ... outside the Zimbabwean Embassy."

19. Once her involvement with the Vigil came to light, that would inevitably lead to further questioning, during which she cannot be expected to lie as to her political beliefs (see generally *RT (Zimbabwe)* [2012] UKSC 38), and which in any event might place her under significant duress. She has not simply played the role of a supporter generally inclined to protest against Mugabe but has been involved in the running of the Coventry branch office of the ROHR. She has been especially prominent in staffing the table outside the Zimbabwean Embassy. These considerations place her as someone closely associated with building the capacity of the anti-regime movement.
20. Beyond this she has of course received individualised threats, and paragraph 339K of the Immigration Rules states that "The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated." One of course appreciates that these are as likely to emanate from malignant Zanu-PF supporters as they are from the security forces themselves, but they nevertheless indicate that her activities are of a nature liable to promote antagonism. These considerations taken together lead me to conclude that she would be attributed a significant political profile on a return to Zimbabwe and that she thus falls within the class still identified as at risk by the web of Country Guidelines findings cited above. She is accordingly owed refugee status as defined by the 1951 Refugee Convention.

ANONYMITY ORDER

I have found the Appellant to be a Convention refugee with family members remaining in Zimbabwe. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Decision

The appeal is allowed.

Signed

Date: 20 January 2016



Judge Symes
Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 20 January 2016



Judge Symes
Judge of the Upper Tribunal