



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

Appeal Number: AA/08288/2015

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 26 January 2016**

**Decision and Reasons  
Promulgated  
On 27 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**M NGWENYA**

Respondent

Representation:

For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer  
For the Respondent: Mr A J Bradley, of Peter G Farrell, Solicitors

**DETERMINATION AND REASONS**

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.
2. The appellant is a citizen of Zimbabwe, born on 17 August 1969. He has not asked for an anonymity order. The SSHD refused his asylum claim for reasons explained in a decision dated 12 May 2015. First-tier Tribunal Judge D'Ambrosio allowed his appeal by decision promulgated on 16 November 2015.

3. The SSHD's grounds of appeal to the Upper Tribunal are headed as "Failing to resolve conflict on a material matter", and run (somewhat repetitively) as follows. The appellant delayed his claim for 12 years after entering the UK. The judge fails to address the point that his family history is said to put him at risk, yet his parents have remained in Zimbabwe throughout the time he has been in the UK without any allegation of any difficulty. The judge says that the appellant would be detained at the airport because his relatives were and are political opponents of the regime, but no reasons are given as to how his parents are able to remain yet he is unable to return. There was evidence from a cousin of the appellant who has been recognised as a refugee and is the UK chair person of an organisation, MGBDA, which is said to be troublesome to the Mugabe government. The judge failed to consider whether the appellant's explanation for delay was reasonable in light of his cousin's influence and status in the UK. The grounds next depend on lengthy extracts from *CM CG* [2013] UKUT00059, in particular paragraphs 176 - 179 and 191 - 195. The judge is said to have failed to identify why the appellant might still be at risk on return to the airport, so long after he left, in context of his family history and the country guidance.
4. On 1 December 2015 First-tier Tribunal Judge Haynes granted permission, on the view that while it might not have been an error of law to have accepted the appellant's explanation for failing to claim asylum, the same could not be said of the failure to address the country guidance, or the fact that the appellant's family had lived in Zimbabwe without any problems from the authorities.
5. Mr Matthews submitted along the lines of the grounds of appeal.
6. Mr Bradley relied upon *EM and others* (Returnees) Zimbabwe CG [2011] UKUT 98, paragraph 266, which states that country guidance regarding risk at the airport continues to be as set out in *HS* (returning asylum seekers) Zimbabwe [2007] UKAIT 00094. He submitted that the crucial conclusions in the determination at paragraphs 52 and 53 on that issue are justified by the judge's findings on the facts and the application of *HS*.
7. Mr Bradley's submission is well founded. The broader and later country guidance leaves intact the point on which this particular appeal succeeded. The respondent's grounds disclose no error of law in the judge's ultimate conclusion.
8. The determination of the First-tier Tribunal shall stand.



Upper Tribunal Judge Macleman

26 January 2016

