Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01743/2013

THE IMMIGRATION ACTS

Heard at Stoke	**Decision promulgated**
on 4 May 2016	**On 17 May 2016**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant
and

B M
(Anonymity direction made)
Respondent

Representation:

For the Appellant: Mr McVeety Senior Home Office Presenting Officer.
For the Respondent: Miss Wilkin instructed by Paragon Law Solicitors.

DECISION AND REASONS

Background

1. This is an appeal by the Secretary of State against a decision of a panel of the First-tier Tribunal who allowed BM's appeal against the order for his deportation from the United Kingdom.
2. BM was born in April 1977 and is a national of Zimbabwe. He entered the United Kingdom on 28 October 2002 and claimed asylum. His claim was refused but allowed on appeal. Accordingly he was granted indefinite leave to remain as a

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refugee on 9 June 2003. On 25 February 2010 BM was convicted at Leicester Crown Court of sexual assault, one by penetration, for which he was sentenced to six years imprisonment concurrent and required to sign the Sex Offenders Register.

3. The Secretary of State served BM with a notice of liability to deportation on the 28 November 2011 and notification of liability to cessation of refugee status on 2 December 2012 which was reiterated on the 5 March 2013. Such a step being of importance as an exception to the deportation regime provided by the UK Borders Act applies if deportation will breach the subject's rights under the Refugee Convention (Section 33 UK Borders Act 2007 - Exception 1. (Section 32(2) which arises where deportation would breach the Refugee Convention or the ECHR).

4. The panel correctly recognised that it was for the Secretary of State to justify the cessation decision under Article 1C of the Refugee Convention.

5. The Qualification Directive is not applicable to this case in light of the date of the application for refugee status and date of the original grant.

6. Article 1C provides:

> C. This Convention shall cease to apply to any person falling under the terms of section A if:
>
> (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
> (2) Having lost his nationality, he has voluntarily re-acquired it; or
> (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
> (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
> (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
> Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
> (6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

7. In paragraph 27 of their decision the panel note that the question they were required to consider was whether it is safe enough for BM to go home so as to strip him of his refugee status. The core of the case was said to be the current country situation [30] and at [33] that BM's continuing asylum status was objected to only because there are pockets of the country where he could safely go. At paragraph 34 the panel write:

"34. The appellant has two uncles by marriage, the brothers, A and E M. The former was politically active but not well known and has found it necessary to obtain asylum here. The latter was politically active and well known as well. He has been able to remain in Zimbabwe whilst the appellant says all his relatives of his own age have had to go to work in South Africa. That could indicate that the real reason for leaving is economic. However that inference does not amount to good reason to depart from CM (see Januzi (HL) [2006], R v SSHD (2005), TM (Zimbabwe) [2010] EWCA Civ 916 (paragraph 5) and Presidents Practice Direction 18.2 (April 2005)). In this case the key factors are the correct application of Article 1C(5) with reference to the country guidance case of CM. Nobody would actually chose to have the appellant as a citizen of their country. However, on the above analysis, the respondent is not entitled to revoke his asylum status."

8. Permission to appeal to the Upper Tribunal was sought on three grounds but only granted in the following terms:

"It is nonetheless arguable, as asserted in the third ground, that the respondent had discharged the burden of proof by demonstrating that there had been a significant and non-transitory change in the circumstances now prevailing in Zimbabwe, as demonstrated by the applicable Country Guidance cases at the time when the appellant was granted asylum and when, some ten years later, the instant appeal was heard by the Tribunal. It is further arguable that it was unnecessary for the respondent to prove that it would be safe for the appellant to return to all areas of Zimbabwe in order to invoke the cessation clauses of the Refugee Convention. Permission to appeal on the third ground accordingly granted. If the First-tier Tribunal's decision is set aside on this ground, then the Upper Tribunal may consider re-opening the purely factual arguments that are contained within the first two grounds in respect of which permission to appeal has, as a matter of law, been refused."

Discussion

9. BM was previously found to have (a) been a prominent MDC activist before he left Zimbabwe; (b) been harassed at a meeting and at home; (c) been detained; (d) genuine MDC (Zimbabwe) support by letter as to risk of his return; (e) an uncle who a retired MDC MP; (f) another uncle who has a prominent position in the Welshman Ncube wing in the UK.

10. The panel refer to the country guidance case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC) in which the Tribunal held that 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. In this appeal it was noted by the panel that BM has been found to have a significant MDC profile.

11. It was also noted in headnote 2 of CM "The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to

serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe))". The panel find that BM falls within a recognised risk factor as he has been in the United Kingdom for a long time and has no Zanu-PF connection. It is recognised that there are safe areas such as Matabeleland North and South but that the expert report showed an abundance of Zanu-PF roadblocks in the way [32].

12. The panel also refer at [17] to the UNHCR 'Guidelines n International Protection: Cessation of refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of refugees (the 'Ceased Circumstances" Clauses") (10 February 2003) and to paragraph 17 thereof where it is written:

> "17. The 1951 Convention does not preclude cessation declarations for distinct sub groups of a general refugee population from a specific country, for instance, for refugees fleeing a particular regime but not for those fleeing after that regime was deposed. In contrast, changes in the refugees country of origin affecting only part of the territory should not, in principle, lead to cessation of refugee status. Refugee status can only come to an end if the basis for persecution is removed without precondition that the refugee has to return to specific safe parts of the country in order to be free of the persecution. Also, not being able to move or to establish oneself freely in the country of origin would indicate that the changes had not been fundamental."

13. The panel's rejection of the Secretary of States position that BM's continuing asylum claim is objected to because there are pockets of the country where he could safely go is in accordance with the UNHCR position and the terms of Article 1C(5) itself, which are that circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality. In this case it had not been established before the panel that such circumstances had ceased to exist in Zimbabwe in light of the findings made in relation to BM's profile.

14. The assertion in the grounds that the statement by the panel that the burden is upon the Secretary of State to prove the entire country is safe is misguided is contrary to the UNHCR position and wording of the cessation provisions. The situation in Zimbabwe may have changed since BM was granted refugee status but that is not the test. A country can change yet the real risk remain. It is the nature and duration of the changes which are the important issues. The finding of the panel is that the changes are not sufficient for BM which has not been shown to be a finding not open to them on the available evidence.

Similarly, the assertion of misdirection in the finding members of the family moving to South Africa for economic reasons was not found to warrant departing from the country guidance cases has not been shown to have arguable merit. Why other family members choose to move to South Africa is noted by the panel but this has been a feature of Zimbabwe society for a number of years and especially during the severe recession that affected that country a number of years ago. Such economic migration by others does not prove the required degree of change necessary in relation to BM.

15. Mr McVeety has failed to establish arguable legal error material to the decision to allow the appeal. As such the panel's decision must stand.

Decision

16. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

17. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated the 9 May 2016