



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

Appeal Number: PA/08420/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 20<sup>th</sup> July 2017**

**Decision & Reasons  
Promulgated  
On 20<sup>th</sup> July 2017**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

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

Appellant

**and**

**[ETINES K]  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr L Tarlow (Senior Home Office Presenting Officer)

For the Respondent: Mr W Bhebhe (DDR legal LLP)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Secretary of State against the Decision of First-tier Tribunal Judge Cooper. Following a hearing at Taylor House on 27th March 2017, in a Decision and Reasons promulgated on 10<sup>th</sup> May 2017 Judge Cooper allowed this Protection appeal.
2. For the sake of continuity and clarity I shall continue to refer to the Secretary of State as the Respondent although she is in truth the Appellant before the Upper Tribunal.

3. The Appellant, a citizen of Zimbabwe, had made a protection claim on grounds that she feared her ex-husband's family in Zimbabwe and on account of her Sur Place political activities in the UK.
4. The Appellant had a significant immigration history. She arrived, having been successful in an appeal against the Entry Clearance Officer's refusal to grant her leave to enter as a spouse, in May 2010. In 2012 she applied for leave to remain outside the Immigration Rules which was refused. In 2014 she applied for leave to remain as a stateless person which was refused. In 2015 she applied for an EEA residence card claiming a derivative right of residence which was refused and later in 2015 she applied for leave to remain on human rights grounds which was rejected as invalid.
5. Her last application, the refusal of which is the subject of this appeal, was an application in January 2016 for international protection. The application was refused on 27th July 2016.
6. In the Decision and Reasons the First-tier Tribunal rejected her claim to be at risk in Zimbabwe on account of her claimed fear of her ex-husband's family.
7. The Judge then went on to consider her Sur Place claim. In doing so the Judge came to the conclusion, at paragraph 53 of her Decision and Reasons, that it was reasonably likely that the Appellant only joined ROHR in February 2016 in order to support her protection claim. The Judge noted that she made her claim for asylum in January 2016 and joined the organisation in February 2016. She further found, at paragraph 59, that the Appellant only became involved with the Zimbabwe Vigil (ZV) as a means of enhancing an otherwise hopeless asylum claim and that her credibility was undermined by the significant inconsistencies in her various accounts.
8. The Judge was clearly unimpressed by this Appellant. The Judge noted some inconsistencies between a letter sent in support of her claim and the Appellant's own evidence. However, at paragraph 60, the Judge found that the documentary evidence before her indicated that the Appellant had, since February 2016, been participating regularly at the ZV outside the Embassy and that she had attended other demonstrations elsewhere organised by either ROHR or ZV. The Judge said that the letter from ZV confirmed that the Appellant makes new supporters welcome, sings and dances and staffs the front table thereby interacting with passers-by and fundraising. She arrives early to set up and stays to pack up at the end of the vigil. This, the Judge found, was supported in part by some of the photographs she relied upon which showed her dancing, holding banners and at the table. The Judge noted the Appellant provided a considerable degree of detail about the two demonstrations she had attended by the time of her asylum interview in July 2016 and that the details she provided were consistent with the reports of the demonstrations at the time

9. At paragraph 61 the Judge noted that the ZV's letter indicated a password was required to view the Flickr photographs but nevertheless found that it may well be, whether by infiltration or other means, Zimbabwe's intelligence services might have access to that password although she acknowledged that there was no evidence before her that that was the case. However, even without access to the photographs the Judge was satisfied that it was reasonably likely the Appellant would be perceived as being associated with ROHR and the ZV. The Judge said the Appellant is personally named in a significant number of ZV diary reports between February 2016 and February 2017. The Judge expressed herself satisfied that a simple search of the Appellant's name on Google would in all probability result in her being identified as being actively involved with the ZV. The Judge found that if the intelligence services had access to the photographs then the Appellant was clearly identifiable in a number holding placards and banners calling for the release of Itai Dzamara, against human rights abuses and challenging the presidency of Robert Mugabe.
10. The Judge properly considered case law including the leading case of Danian [2002] Imm Ar 96 and other associated case law and came to the conclusion that the Appellant would be at risk on return because it was reasonably likely that she would be identified as a person who has been active against the regime in the UK. The Judge was clearly reluctant to allow the appeal on the basis of her findings about this Appellant but on the evidence and in accordance with case law including EM (Zimbabwe) [2009] EWCA Civ 1294 that was a conclusion properly open to the Judge.
11. The Secretary of State's grounds for appeal which indicate that on return, if questioned, the Appellant would tell the truth which was that she had only made the claim to bolster a false asylum claim, I find to have no merit. The fact that her activities would become known to the authorities, which on the findings of the Judge they would, would be sufficient, bearing in mind the low standard of proof, to enable her appeal to succeed. That is what the Judge found and I cannot say that her conclusion was perverse, irrational or against the weight of evidence or case law. Accordingly, the appeal to the Upper Tribunal is dismissed.

### **Notice of Decision**

The Secretary of State's appeal to the Upper Tribunal is dismissed.

The First-tier Tribunal made an anonymity order but as the Appellant has been successful in her appeal one is no longer justified.

Signed

Date 20<sup>th</sup> July 2017

Upper Tribunal Judge Martin