



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

Appeal Number: PA/00562/2018

THE IMMIGRATION ACTS

Heard at Field House

On 17 October 2018

Determination

Promulgated

On 12 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**MR P S N
(ANONYMITY HAS BEEN DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Muzenda, Longfellow Solicitors, Beckenham

For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Zimbabwe born on 9 June 1977. He appealed the respondent's decision of 29 December 2017 refusing to grant him asylum and humanitarian protection and refusing his claim on human rights grounds. His appeal was heard by Judge of the First-Tier Tribunal Dhinji on 7 February 2018 and dismissed on all grounds in a decision promulgated on 12 March 2018.

2. An application for permission to appeal was lodged and permission was granted by Upper Tribunal Judge Chapman on 20 August 2018. The permission states that the First-Tier Tribunal Judge made an error, as having found the appellant to be bisexual she disregarded his evidence that concealment of his sexual orientation would solely be for the purpose of avoiding the insurmountable obstacles that would follow non-concealment and in misunderstanding the evidence in relation to the appellant's intention that on return he would enter into same-sex relationships. The appellant's former partner is wanted by the police in Zimbabwe and has had to relocate to South Africa but he could easily be extradited to face prosecution and the appellant would be treated as socius criminis. The permission states that the Judge also erred in her conclusion that the appellant would not face persecution on the basis of his MDC activities in light of the fact that these were accepted. She failed to consider future risk on the basis of continued MDC activities and she rejected the letter from the MDC and failed to apply the risk assessment guidelines with respect to arrival at the airport. The permission states that the Judge appeared to be fixated with the phrase 'significant MDC profile' and overlooked relevant political involvement.
3. There is no Rule 24 response.

The Hearing

4. The appellant's representative submitted that on return to Zimbabwe this appellant is likely to continue to have sexual relationships with men. He submitted that although he has made up with his wife and is going to stay with his wife he has not changed his sexuality. The only reason he went back to his wife was because of the consequences if he did not do that as his family members have threatened to report him to the police because of a relationship he states he had with Andrew in Zimbabwe. His family members did not report him because he said he was going to stay with his wife. The representative referred to Andrew having had to flee to South Africa because of the relationship and he submitted that the Judge missed the point of these consequences in her decision. He submitted that on return the appellant would have to conceal his sexuality and I was referred to the case of ***HJ (Iran)*** [2010] UKSCV31. His representative submitted that the appellant's sexuality is part of his DNA and at 7.3 of the decision the Judge accepts that he is bisexual. He submitted that the reason the appellant will have to conceal his sexuality is because he fears persecution in Zimbabwe.
5. With regard to the appellant's political activities the representative referred to the Judge accepting that the appellant has been involved with the MDC and the Judge accepts that he came to the attention of the authorities in November 2016 when he was captured and beaten. He submitted that the Judge also accepts that his MDC activities have been continued in the United Kingdom and he submitted that the Judge has failed to reach a conclusion about this, which must be an error as this would put him at additional risk on return.

6. He submitted that the Judge did not engage with the risk assessment of what would happen to the appellant at the airport on return and he submitted that this has not changed since the country guidance case of **HS (Zimbabwe)** [2007] 00094 (Civ). He submitted that every returnee to Zimbabwe is interviewed at the airport. He submitted that the COI have taken over immigration control at the airport and have a manifest so they know who is travelling to Zimbabwe and are able to identify people with a significant MDC profile. He submitted that the Judge accepts that the appellant has a political profile but states that it is low level. He submitted that the Judge has not explained what she finds a significant level would be. He submitted that as the appellant is continuing with his political activities in the United Kingdom this must make his political profile significant.
7. I was referred to the case of **HS (Zimbabwe)** [2007] UKAIT 00094 (IAC) about returning asylum seekers to Zimbabwe. He submitted that the Zanu-Pf have people in the United Kingdom infiltrating MDC groups and this must affect the appellant on return when he goes through the screening process. He submitted that it is not just the leaders who are in danger on return. I was referred to 2018 when nine people were killed by the Army in Zimbabwe.
8. The representative referred me to the case of **CM (Zimbabwe)** [2013] UKUT 00059 (IAC) which deals with the position being different for returnees who have no Zanu PF profile and he submitted that this appellant is therefore likely to be at risk on return and will certainly be at risk if he continues to carry on with his MDC activities in Zimbabwe which he states he will do.
9. The representative submitted that this is an appellant who approached the police about an attack and was detained and beaten and he will be at risk on return if his sexuality and his political opinion are considered together.
10. He submitted that on return the appellant may well be associated with his ex-boyfriend Andrew who has had to flee to South Africa. This could be a problem for him. He submitted that although the background evidence states that there are rare prosecutions of Zimbabweans because of their sexuality, this is because they hide their sexuality. They know the consequences if they do not do that.
11. He submitted that the appellant's wife has told her relatives about his sexuality and although she did not report this to the police his friend Andrew was reported and this is why he had to flee. He submitted that this increases the appellant's risk on return. The appellant was also involved with a number of pressure groups and it was after these activities that he was beaten and detained. He submitted that the Judge was wrong to state that this happened to the appellant in 2016 for reasons other than his MDC activities. He submitted that the Judge did not understand the evidence before her and this was an error. He submitted that what the appellant was doing before he was beaten was connected with his MDC activism.

12. I was asked to find that there are errors of law in the Judge's decision and allow the appeal.
13. The Presenting Officer submitted that the representative's submissions seem to be telling me I have to come to a different conclusion in this claim but he submitted that no error of law has been raised.
14. With regard to the appellant's sexuality, the Judge states that she accepts he is bisexual. She states that the case of **LZ** [2011] UKUT 00487 (IAC) makes it clear that in general Zimbabwean men are not at risk of persecution solely because of their sexuality. The Judge refers to this at 7.9 of the decision. The Presenting Officer submitted that this appellant is not openly gay, he is bisexual and will be staying with his wife. I was referred to his asylum interview at questions 205 to 210 when he was asked about his relationship with his wife and he described it as good and that since he came to the United Kingdom he has not had any relationships with men and he is trying to be faithful to his wife. He submitted that he has not joined any bisexual support groups although he admits to watching porn. It is clear from his evidence that he wants to try to be faithful to his wife and he is not saying that the reason he will stay faithful is, that if he does not, the authorities will persecute him. His intention is that he will not have any other relationships and that the authorities are not aware of his being bisexual. He submitted therefore, that this appellant on return will not be at risk because of his sexuality. He referred to the said case of **LZ** which deals with homosexuals not bisexuals. With regard to Andrew having to flee to South Africa, the Presenting Officer submitted that there would be no reason for the Zimbabwean authorities to pursue Andrew in South Africa and link the appellant to him. He submitted that the Judge has not misunderstood the evidence and the Judge has given proper reasons for the findings she has reached. Her findings are based on the evidence before her, including the objective evidence and the appellant's oral evidence.
15. With regard to the appellant's political activities, he submitted that he accepts that the said case of **HS** is the relevant country guidance case but this case was decided in 2007 and it is now 2018. He submitted that this is the country guidance case that should be followed but the CIO took over Harare Airport because of President Mugabe who is no longer in office. He submitted that the Judge has dealt with the country guidance in his decision at paragraph 5.10 and has referred to the pressure groups the appellant states he was involved in. He submitted that it is clear that it was because of his involvement in one these pressure groups that he went to Chiota and campaigned and that evening was attacked by Zanu PF youths. He submitted that it seems that his arrest and detention were not related to the MDC but was related to his political presence in a different category. There has been nothing further about this there have been no repercussions. At paragraph 7.11 of the decision the Judge deals with this incident which took place in November 2016. The police did not open an official complaint and the Judge finds that there do not appear to have been any significant difficulties because of this. The Judge finds that the appellant is not on a wanted list and the Presenting Officer submitted that

the appellant did not experience any difficulties before leaving Zimbabwe or on leaving Zimbabwe on his own passport. The Judge at paragraph 7.11 states that it is implausible that the appellant's name would appear on the list, only after he came to the United Kingdom. The Judge states that had he been on a list before he left he might well have encountered difficulties leaving.

16. The Presenting Officer submitted that the Judge has considered at 7.14 of the decision the appellant's sur place activities in the United Kingdom and the Judge notes that the appellant did not join the MDC in the United Kingdom until after he received the refusal letter. He submitted that at 7.17 of the decision the Judge deals with the appellant's extent of participation in the MDC in the United Kingdom and the Judge accepts that the CIO do send infiltrators to the UK to discover who is opposing the regime, but in the case of **HS** it is clear that all low-level activities are unlikely to be known to the authorities. The Judge states that no evidence has been produced to support the appellant's assertion that his name and photo have been published in media disseminated in Zimbabwe. He has only been attending MDC meetings in the United Kingdom for five months. He submitted that the Judge has given proper reasons for finding that this appellant will not be of interest to the authorities because of his MDC profile. He submitted that the appellant will be returning as a failed asylum seeker and the Judge has grappled with all the relevant matters in his findings. He submitted that the Judge has not mischaracterised the evidence and there is no material error of law in the decision. He submitted that the application should be dismissed. Risk on return at the airport has been considered by the Judge at 7.20 of the decision.
17. The appellant's representative submitted that the Judge is fixated on the appellant's MDC profile and whether it is significant or not and he submitted that it does not require to be significant for the appellant to have a problem on return. If the appellant goes to a rural area he will be subjected to a loyalty test, although he may be able to return to Harare with less problems.
18. He submitted that it is likely that this appellant is on a list and it is likely that he will engage in political activities on his return to Zimbabwe. He submitted that he wants to continue with his political activities and maintain his sexuality and he submitted that the Judge does not deal with these matters properly and does not apply the relevant country guidance case law. The appellant states that he will continue with these activities and there must be a material error of law in the Judge's decision.

Decision and Reasons

19. Firstly, in connection with the appellant's bisexuality the Judge has accepted that he is bisexual but has noted that the appellant has confirmed in his asylum interview that he will be continuing his relationship with his wife and he wishes to be faithful to his wife, and although he may consider himself to be bisexual the Judge does not believe that the authorities will be aware of this, particularly as, since he

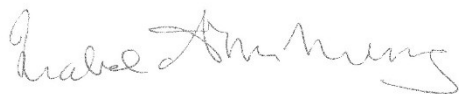
has been in the United Kingdom where being bisexual is not a problem, he has not had any sexual relationships with men or women. At interview the appellant stated that he did not think that his bisexuality would put him at risk on return to Zimbabwe. Prosecutions against gay men are rare in Zimbabwe and the Judge states that there would be no reason for the appellant to be in danger because Andrew has gone to South Africa. As I find that the authorities are unaware of the appellant's sexuality there will be no risk to the appellant on return and based on his answers at interview it is clear that he has no intention of having relationships with men or women on return to Zimbabwe. I accept that he will remain bisexual but he wants to be faithful to his wife and will do all he can to continue with this.

20. The Judge has dealt with the appellant's sexuality in the decision and has explained her findings properly. The Judge at 5.8 refers to the appellant's asylum interview where the appellant stated: "The bisexual thing isn't really anything. I was thinking of withdrawing it." Clearly any threat has subsided.
21. With regard to the appellant's political activities and his support of the MDC, the Judge finds and explains why she finds that the appellant is an extremely low-level member of the MDC in Zimbabwe and in the United Kingdom. His beating was because of the pressure groups he belonged to and the Judge noted that he only joined the MDC in the United Kingdom after his asylum application was refused. The Judge has also noted his low-level membership of the MDC in the United Kingdom and does not believe that his name would be on a list. She has explained why in her decision.
22. The Judge accepts that MDC groups in the United Kingdom are infiltrated by informers but finds that based on the evidence the appellant has no significant post or profile. The appellant will not be in danger on return to Zimbabwe because of his political opinion.
23. The Judge therefore accepts that the appellant is bisexual and accepts that he is a member of the MDC but finds that he will not be at risk on return because of either of these things and gives proper reasons for all her findings. She notes in particular that the appellant will conceal his sexuality because he wants to be faithful to his wife, not because he fears persecution. The appellant is not openly gay and his intention is not to pursue relationships with men. The appellant's evidence is that the police did not open an official complaint after he was beaten in 2016 and the Judge explains why the appellant will not be at risk on return because of his political activities.
24. I have noted the country guidance cases referred to. If this appellant returns he will go to Harare where he came from and where his wife and children live. Based on the objective evidence he is unlikely to encounter any difficulties at the airport or subsequently and this is referred to by the Judge at 7.15 of the decision.

25. I find that there is no error of law in the First-Tier Tribunal's decision promulgated on 12 March 2018 and that that decision shall stand.
26. Anonymity has been directed.

Signed
Deputy Upper Tribunal Judge IAM Murray

Date 2 November 2018

A handwritten signature in cursive script, appearing to read "Iain Murray".