



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

Appeal Number: AA/13165/2015

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 10<sup>th</sup> June 2019**

**Decision & Reasons Promulgated  
On 24<sup>th</sup> July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**SM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr C Holmes (Counsel)

For the Respondent: Miss H Aboni (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge D. Birrell promulgated on 4<sup>th</sup> August 2016, following a hearing at Manchester Piccadilly on 1<sup>st</sup> August 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a citizen of Zimbabwe and was born on 14<sup>th</sup> November 1970. She is a female. She appealed against the decision of the Respondent refusing her claim for asylum and humanitarian protection pursuant to paragraph 339C of HC 395, in a decision letter dated 4<sup>th</sup> November 2015.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that she worked for a solicitors' firm called [MLC], in Zimbabwe, for one of the senior partners by the name of [RM]. In her role she carried out usual secretarial duties of a secretary to a senior partner. The firm was instructed by Zanu PF in some criminal cases and the senior partner, Mr [RM], was an adviser to them. He attended meetings with Zanu PF officials and attended workshops in Harare. In 2014 there was in-house fighting between factions of Zanu PF before the annual congress.
4. Mr [RM] gave evidence to those Zanu PF members who received suspensions and letters of dismissal as supported someone by the name of [JN], who allegedly intended to topple Mugabe. The Appellant helped to type the responses to these allegations on behalf of those affected. She was told that the information was strictly confidential. She believed that there was a conflict of interest but she is now aware that Mr [RM] was part of [JN]'s national executive and therefore may have had his own political motivation.
5. On 19<sup>th</sup> December 2014, the Appellant applied for a family visit visa and on 22<sup>nd</sup> December 2015 she was issued with a six month valid visa until 22<sup>nd</sup> June 2015. She arrived in the UK on 1<sup>st</sup> January 2015. However, in March 2015 she received a phone call from her mother to say that she had been served with a summons to attend court on allegations that she was leaking sensitive information to the independent press. When she failed to attend a warrant for her arrest was issued. She does not know why she was summonsed to Harare which was 250 kms away from where she lived and worked. She now believes herself to be at risk if she returned. The Appellant was accused of leaking information to the press and insulting the President's family.

## **The Judge's Findings**

6. The judge approached his findings by stating that "I have compartmentalised my findings in some respects below", but that "I must emphasise the findings have only been made having taken account of the evidence as a whole" (paragraph 32). The judge then took account of the fact that the Appellant was a 45 year old citizen of Zimbabwe and had worked as a legal secretary for a prominent Zimbabwean solicitor in Masvingo and had been accused of treason for leaking confidential information and had now been subject to a summons to appear in court. The judge observed that, "I accept that she is a secretary and has worked

for a lawyer who appears to be a supporter of an opponent of Robert Mugabe” (paragraph 33). The judge then went on to say that:-

“Her account however is underpinned by a number of documents that she has produced. I take into account the section in the July 2012 COIS about Zimbabwe at paragraph 31.01 that suggests it is possible to obtain forged documents or genuine documents that can be altered ...” (paragraph 34).

7. The judge then went on to deal with various aspects of the documentary evidence which were held by the Tribunal to be lacking in credibility. These included a “top secret memo” (see paragraph 36); a “summons” (see paragraph 37); a “warrant of arrest” (paragraph 38), before the judge eventually concluded that:-

“Taking the Appellant’s evidence in the round and in particular the many concerns I have raised about the documentary evidence I find that even on allowing for the lower standard of proof required, the Appellant has failed to prove the truth of the facts upon which she relies and thus in consequence has failed to prove that she is entitled to be treated as a credible witness” (paragraph 39).

8. The appeal was dismissed.

### **Grounds of Application**

9. The grounds of application state that the judge had failed to make any adequate findings with respect to the Appellant’s oral evidence in this case. However following the case of **AK (Failure to assess witnesses’ evidence) Turkey [2004] UKIAT 00230**, this was a case where the judge has “failed to make any assessment as to credibility or otherwise of that evidence or to get any reasons for arriving at her assessment ...”.
10. Second, that making findings on the documentary evidence alone was not sufficient. This had been made clear by Forbes J in **Virjon B v Special Adjudicator [2002] EWHC 1469**, where the court has said that such an approach amounts to “putting the cart before the horse” (at paragraph 21).
11. On 28<sup>th</sup> October 2016, the Upper Tribunal granted permission to appeal.
12. On 18<sup>th</sup> April 2019 the Respondent Secretary of State furnished a Rule 24 response to the effect that the judge was entitled to conclude as he did because the appeal turned on the reliability of documentary evidence that the Appellant sought to rely upon at paragraph 36 and that the Appellant had failed to provide a credible explanation in relation to such evidence.

### **Submissions**

13. At the hearing before me on 10<sup>th</sup> June 2019, Mr Holmes, appearing on behalf of the Appellant relied upon the grounds of application. In particular, he submitted that, given that the judge had accepted the basic facts, namely, that the Appellant worked as a legal secretary for a prominent Zimbabwean solicitor in Masvingo, and had been accused of treason, because she was working “for a lawyer who appears to be a

supporter of an opponent of Robert Mugabe” (paragraph 33), it was incumbent on the judge to consider the risk factors that appertained to the Appellant’s situation. These risk factors arose particularly in relation to the question of whether the law firm had got itself into difficulties with the powers that be and whether there had been a link between them and the MDC. Simply to focus upon the documentary evidence was to develop a blind spot in relation to these considerations.

14. Mr Holmes also helpfully directed my attention to two decisions. There was the case of **Gomez-Salinas [2001] EWHC 287**, where Mr Justice Sullivan had stated that in circumstances where a judge has cast a burden on the claimant to demonstrate that a document is genuine, and then reached adverse credibility findings because the Appellant has failed to discharge that burden, would be a situation where the courts will intervene.
15. The other decision was **MT (credibility assessment flawed - Virjon B applied) Syria [2004] UKIAT 00307**, where the Vice-President of the Tribunal had expressed concerns about making findings on the oral evidence, but failing to do so on the documentary evidence (at paragraph 7), which Mr Holmes submitted, was the obverse of the situation where, as in this case, findings had been made on the documentary evidence, but not on the oral evidence.
16. For her part, Miss Aboni relied upon the Rule 24 response. She submitted that it was the Appellant herself who had put forward the documentary evidence that she wished to rely upon. That being so, the judge had dealt with the documentary evidence at paragraph 36 and at paragraph 37 and the Appellant had failed to provide any oral explanation that would have satisfied the judge as to why such documentary evidence should be believed.

### **No Error of Law**

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
18. First, this is a case where the judge is plainly aware of the entirety of the evidence that is before the Tribunal. Indeed, the judge sets out extensively the reference to the Appellant’s “written and oral evidence”, at paragraph 12 in ten sub-paragraphs, and nothing that has been said before me today indicates that such an analysis is incorrect as a factual matter as far as the Appellant is concerned.
19. Second, in making the findings of fact, the judge at the outset states that, “I am required to look at all the evidence in the round before reaching my findings” (paragraph 32). Third, and in this regard, the judge then has regard to the very evidence that the Appellant places her greatest reliance upon, namely, the top secret memo, the summons, and the arrest warrant. These are very extensively considered by the judge. It is not the case that

the judge avoids a consideration of the oral evidence in this regard. Two examples will suffice.

20. First, when considering the “top secret memo”, the judge makes it clear that:-

“The Appellant has been unable to provide any credible explanation as to why a work colleague who she has only worked with since 2013 at best would be prepared to risk her own safety by stealing a top secret memo that suggests that the Appellant has committed treason” (paragraph 36(a)).

21. What the judge is stating here is not that she rejects anything that the Appellant said or did not say. What the judge is making clear here is that the Appellant has not provided any credible explanation whatsoever.
22. Second, in relation to the summons, the judge observes how the top secret memo was dated 30<sup>th</sup> April 2015, and that if this was the case, then “This is inconsistent with the summons which is dated merely two months before ...” (see paragraph 37(a)). Once again, there is no indication whatsoever from the Appellant’s side, that an oral explanation had actually been preferred to deal with this matter which obviously troubled the judge in considering the evidence that the Appellant herself had put forward.
23. In short, it was for the Appellant to explain in court why the summons predated the top secret memo by two months. It was for the Appellant to explain why other aspects of her evidence sat uneasily with the fact that the Appellant lived in Masvingo but was summoned to appear in Harare over 250 kms away (see paragraph 37(c)). Moreover, there were a number of spelling mistakes (see paragraph 37(e)) in the documentation provided which troubled the judge. The fact that the judge had made it clear that, “for convenience, I have compartmentalised my findings in some respects below” (paragraph 32) indicates that the judge was taking a structured approach to the evidence before her. There can be no criticism of the decision. It is clear and it is comprehensive.

### **Notice of Decision**

24. The decision of the First-tier Tribunal Judge did not involve the making of an error of law. The decision shall stand.
25. An anonymity direction is made.
26. The appeal is dismissed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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.

Signed

Date

Deputy Upper Tribunal Judge Juss

12<sup>th</sup> July 2019