



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03403/2019

THE IMMIGRATION ACTS

Heard at: Bradford
On: 16th September 2019

Decision & Reason Promulgated
On: 27th September 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Mosley Nyasha Randa
(no anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Ell, Counsel instructed by Bankfield Heath Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Zimbabwe born in 1990. He appeals with permission against the decision of the First-tier Tribunal (Judge McAll) to dismiss his human rights and protection appeal.
2. The basis of the Appellant's claim was that he faced a well-founded fear of persecution in Zimbabwe for reasons of his political opinion (member of MDC-T). At the hearing the Respondent accepted that the Appellant was in

fact a member of the MDC, but put in issue his contention that this would place him at risk in Zimbabwe today.

3. The First-tier Tribunal accepted the Respondent's concession that the Appellant was a member of the MDC whilst in Zimbabwe [§33] but it did not accept his account of joining the organisation in 2009 because he had witnessed human rights abuses being committed by Zanu-PF activists [§36-39]. Nor did it believe that he had been very active in recent years, in particular that he organised "roughly 16" rallies and meetings in 2018 [§41], that he had been detained and ill-treated in 2016 [§42] or that there was now a warrant out for his arrest following his failure to attend a Magistrates' court hearing in July 2018 [§44-46]. Letters purportedly from the MDC, attesting to the Appellant's persecution, are found to be unreliable [§4-49]. A medical report confirms that he has an injury to his tooth but nothing more [§51]; a print out of the Appellant's Facebook page is consistent with him being member of the MDC [§50]. The determination then refers to CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 and finds, with reference to that guidance that the Appellant is an ordinary member of the MDC who will be returning to Harare where he has family and social ties. The Tribunal concludes that there is no risk of harm made out and the appeal is dismissed.
4. The Appellant now appeals on the grounds that the First-tier Tribunal made the following errors of law:
 - i) Failing to weigh in the balance the accepted fact that the Appellant is a member of the MDC;
 - ii) Failing to weigh evidence in the round. It is submitted that the Judge made negative credibility findings and then went on to dismiss otherwise credible evidence on the basis of the negative findings he had already reached, contrary to established principle: see for instance Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367.

Discussion and Findings

5. The country guidance on Zimbabwe remains CM. Although a lot has happened in that country since that decision was promulgated the parties are in agreement that it remains relevant. The test is therefore whether the Appellant has demonstrated that he has a well-founded fear of persecution as an individual with a "significant MDC profile".
6. The HOPO on the day of the hearing before the First-tier Tribunal was prepared to accept that the Appellant is a member of MDC-T. The Tribunal accepted that concession, and reference to it is made at several points in the determination. I am not therefore persuaded that there is any merit in

ground (i), since the Tribunal was plainly aware that the Appellant is a member of the MDC, and of the country guidance underlining that this is itself significant, but not determinative, in any risk assessment. The answer to the arguments put in the grounds on this point is found at paragraphs 39 and 40 of the decision: “whilst I accept that the Appellant is a member of the MDC I do not accept his claims as to what he says happened to him in 2008/2009” and “I find the Appellant’s responses to be vague and suggest that he had little involvement with the MDC prior to 2018 and after 2018 his role was a minor one limited to his membership and nothing more”.

7. No doubt mindful of those difficulties Mr Ell concentrated his submissions on ground (ii). That is that the Judge is said to have erred in failing to consider all of the evidence in the round. Mr Ell took me to paragraphs 39 to 42 where the Tribunal reaches adverse conclusions on the Appellant’s account, before going on to then discount the documentary evidence that the Appellant had adduced in support of his claim. Mr Ell submitted that this is a classic Mibanga error, where the Judge has *first* reached a negative conclusion and *then* rejected evidence capable of lending support to the account.
8. I am not satisfied that this ground is made out. Judges have to start somewhere in making their findings. It is therefore inevitable that the Judge will start by making his findings on one aspect of the evidence first. Where an error would arise is if a Judge, having discounted an appellant’s evidence, went to on diminish the weight to be attached to remaining evidence *because* that negative finding had already been made. That is simply not what has happened here. What Judge McCall has in fact done is given cogent and discrete reasons for rejecting each of the items of documentary evidence submitted. I note that the grounds take no issue with any of the reasons he has given in that regard. It is therefore impossible to see how the Appellant would have gained anything if Judge McAll had started his analysis with the documents, or indeed waited until the end of his evaluation before he set out his conclusion that the claim is without merit. Nowhere does the reasoning betray a Mibanga type error.

Decision

9. The decision of the First-tier Tribunal does not contain an error of law and it is upheld.
10. There is no order for anonymity.

Upper Tribunal Judge Bruce
16th September 2019