Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14798/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House	**Decision & Reasons Promulgated**
On 20 January 2021	**On 28 July 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

E T C
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Imamovic, Counsel instructed by Tann Law Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is linked to a refugee from Zimbabwe and naming her might create a risk to her safety in the event of her return. I find that the risk is very slim but I see minimal public interest in the identity of the appellant, rather than the facts of her case, and so, out of an abundance of caution, I have made the order that I have.

2. This is an appeal against a decision of the First-tier Tribunal on 24 February 2020 dismissing the appellant's appeal against a decision of the respondent on 9 August 2019 refusing her leave to remain on "private life" grounds.

3. The appellant arrived in the United Kingdom in May 2005 and claimed asylum in January 2009. The application was unsuccessful and her appeal against refusal was dismissed so that her appeal rights were exhausted in February 2010.

4. However the appellant was given leave to remain on family life grounds from 21 February 2014 until 20 July 2016. The appellant had a close relationship with a partner who was a Zimbabwean national who had been recognised as a refugee. The respondent accepted that it was not reasonable to expect her to leave her partner and return to Zimbabwe without him and it was recognised that they were in a genuine and subsisting relationship. Her leave in that capacity was extended until 21 March 2019.

5. On 24 February 2019 the appellant made a further application leading to the decision complained of. That application was based on the private life she had established in the United Kingdom and the family life she had established with her mother. She made no mention of a relationship with her partner.

6. During the progress of the appeal before the First-tier Tribunal the appellant asked to change her grounds and rely on the domestic violence provisions because, she said, that she had been a victim of domestic violence at the hands of her previous partner. The Secretary of State regarded the argument as a "new matter" and indicated that she did not give consent for it to be considered in the current proceedings.

7. The First-tier Tribunal Judge then started to consider the matters that could be considered. The judge's findings begin at paragraph 46 of the Decision and Reasons.

8. He noted, correctly, that the appellant had claimed protection with her mother based on her mother's associated links with the MDC. Neither the appellant nor her mother were believed. In particular, the judge rejected their account of being detained in 2005 and did not accept that they were at risk in the event of return.

9. The appellant's mother made a subsequent application in September 2011. That succeeded on appeal. However, it was based on sur place activity. The appellant's mother had become an active member of the MDC and the Zimbabwe Vigil as well as being an official member of the MDC High Wycombe/Slough branch and being the Woman's Assembly Chairperson.

10. The appellant's mother's appeal was allowed because the judge believed the evidence about the appellant's mother's sur place activities and concluded that they led to a significant risk for her in the event of return. That finding does not necessarily assist the appellant.

11. In this appeal the First-tier Tribunal Judge noted that the appellant was not allowed to rely on domestic violence grounds and referred, understandably, to "some artificiality to the proceedings".

12. The judge took no real issue with the private and family life that was relied upon.

13. The appellant had been living in the United Kingdom for something in the region of fourteen or fifteen years and had established herself in the catering industry and by taking other employment and also enjoying a close family relationship with her mother and brother. Sadly, her mother suffered a stroke in February 2019 so that the appellant had taken on extra family responsibilities. The judge accepted that the appellant, her mother and her brother and that the appellant "checked" on her mother before and after work and helped look after some of her daily needs, particularly more personal ones such as helping her change her clothes, as well as preparing an evening meal.

14. As the appellant's brother lived at the same address and the judge found it "safe to assume that the appellant's brother also takes on some role in looking after her mother and her needs".

15. The judge found the appellant was "clearly integrated" into British society but whatever family and private life she had established she had established it during a time of limited leave or no leave.

16. At paragraph 58 of his Decision and Reasons the judge did take issue with evidence about the of assistance that the appellant provided her mother. It was her mother's case that the daily care provided to her by the appellant was the kind of care that ought to be provided by a woman and could not be undertaken by her brother and if the appellant had to return to Zimbabwe there would be no-one to look after her mother in "sensitive areas". The judge noted that if the appellant's mother was unable to provide that care for herself then it is the responsibility of the state to provide it for her. The appellant was almost certainly the preferred provided of care but she was replaceable.

17. The judge also found that the appellant had no useful family ties in Zimbabwe. She has a father and brother who used to live in Zimbabwe but the judge accepted there had been no communication with them for many years. The appellant had tried, unsuccessfully, to make overtures to her father recently but there was no response. The judge found there would be no family support network to assist the appellant in the event of her return.

18. The judge then noted it was the "key submission" that the appellant would be at risk because of her mother's sur place activities. Ms Imamovic was careful not to make the case into an asylum claim but argued, appropriately within the scope of the appeal, that it would be a difficulty for the appellant in the event of her return because she would be linked with her mother, who it must be assumed would be known to the authorities.

19. The appellant was born in Harare and her mother's reputation would add significantly to difficulties she would have on return. The judge was unimpressed with this argument and explained at paragraph 62 that the argument on the mother's behalf had succeeded in 2012 and:

> "This is some eight years ago and I find that there is a lack of evidence that she continues to be active some eight years later. The fact this may have been the position some eight years ago does not mean that it is the case today."

20. The judge also found it unlikely that the appellant's mother had remained active because of the consequences of a stroke.

21. Paragraph 64 of the Decision and Reasons is, if I may say so, a commendably clear synopsis of the judge's findings and he made plain at subparagraph (vii) that he did not accept that the appellant would face any obstacles on account of her mother's sur place activities because "I do not find that the evidential burden has been discharged on this issue."

22. The judge accepted that the appellant would have difficulties in the event of her return because of her lack of family ties and the period of absence but found there was nothing preventing her, relying on the experience she had obtained in the United Kingdom, from advancing her employment prospects in Zimbabwe. The judge was clear that this was a case for hardship, difficulty, inconvenience but not a case where there were "very significant obstacles" within the meaning of paragraph 276ADE of HC 395. Having repeated in paragraph 66 that the appellant would find hardship and difficulty re-integrating into Zimbabwe, the judge said that he was not persuaded "that the cumulative effect of those hardships and difficulties amounts to very significant obstacles". The judge then dismissed the appeal under the Immigration Rules, which might be thought slightly strange. The judge then looked outside the Rules and came to essentially the same conclusion. The Rules struck a fair balance and the Rules were not satisfied.

23. The grounds supporting the application begin by complaining that the judge had no basis for doubting that the appellant's mother would be known to the authorities and this would impact on the appellant. It was, the grounds contended, immaterial that the finding that she was involved in MDC activities was made eight years previously. The finding was not undermined by the passage of time. The grounds particularly refer to the skeleton argument where the importance of the mother's activity was explained.

24. I cannot understand why the judge decided that the appellant's mother would no longer cause problems for the appellant because she may no longer be an activist and was poorly. This just does not make sense to me. It was established that the appellant's mother had been an activist and an activist of sufficient prominence in the United Kingdom to need international protection as a consequence. It is the appellant's case that she is at risk because her mother is an activist and she would be in the minds of the authorities tainted by reason of her mother's activities. I cannot follow the judge's reasoning when he says that the appellant would not be at risk now because it was not established that her mother was still active. There is no justification for departing from the finding that she had been active and no reason was given for the inference that she would still be identified as an activist in Zimbabwe.

25. However, it does not follow that this error, for that is what it is, is material. The grounds appropriately refer to paragraph 9 of the skeleton argument and this is, again appropriately, rather dense and in order to deal with it properly I will set it out and then consider the points made. In her skeleton argument to the First-tier Tribunal Counsel said:

> "The appellant does not additionally have other family in Zimbabwe. The appellant's mother has been granted refugee status on account of a risk of

> persecution due to her MDC profile. The current country situation in Zimbabwe, as noted in (***Country Policy and Information Note Zimbabwe: Opposition to the government Version 4.0 February 2019) / CG (CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC) (31 January 2013)***, identifies return to all rural areas [other than Matabeleland North or Matabeleland South] 2.4.4 / high density areas of Harare see 2.4.17 / could expose people to a risk of harm and those returning to high density areas of Harare may be exposed to socio-economic difficulties [CM para 100]. Harassment/intimidation is reported to be high, use of violence and reprisals against opposition members by illegal evictions and deprivations of food [see also 2.4.20] is also reported in the CPIN against MDC supporters/members at para 7.1.1 – 7.7 10. There is a 'moderate level of 'moderate level of official discrimination throughout Zimbabwe' and 'members of their families' also suffer indirectly from the government's partisan distribution of food and agricultural products, as well as its demolition of illegal households' 7.7.1. Roadblocks make in country movement difficult: see **8.1.12 CPIN Women GBV v. 3 October 2018**."

26. It was Mr Kotas's submission that inspection of these references did not assist the appellant. As far as I can make out, the CPIN is not in my papers but it is a public domain document and I have checked it on the government website.

27. I cannot agree with Ms Imamovic's submissions. It does not support the proposition that people who are related to MDC activists in the United Kingdom face a real risk of being identified as a relative of that activist in the event of return. It is possible that a family living together would see all members persecuted even if they were not active themselves but this appellant would be returned on her own and her mother had not done anything in Zimbabwe. I see no reason why the appellant and her mother would be linked or why, if they were linked, the mother's activities in the United Kingdom would create any difficult for the appellant now.

28. It follows that I rule against the appellant on the main reason that permission was granted.

29. There are other grounds.

30. They are presented as failing to take into account material matters though in reality they are no more than a criticism of the balancing exercise, complaining that the judge has ruled in the way that he has. They are arguments based on weight. The judge clearly understands the case as Mr Kotas submitted. Paragraph 26 of the Decision and Reasons summarises it. I do note Ms Imamovic's reply that acknowledging the point is not the same as considering it but the difference is subtle and, I find, not important in this case.

31. The point is that the judge is said to have made an error of law but the judge has identified all the points of importance and I cannot see anything unlawful in the way that he has evaluated them. He has formed a view of the appellant's capabilities from considering her evidence and has decided that she does not face a risk of ill-treatment on account of being her mother's daughter, that the private life in the United Kingdom is not a weighty matter, that she can re-establish herself in Zimbabwe and that although her mother would no doubt prefer her to be in the United Kingdom because she is helping her getting over her stroke, that is not sufficient reason.

32. The judge did attract criticism by embarking on an examination of whether the appellant's mother was still active politically. The judge should not have done that without giving the appellant notice of his concerns but her present activity is irrelevant.

33. When the point is followed through I find it would have made no difference if the judge had not erred. It may well be the case that his phrasing was not felicitous but I have not identified any material error of law.

34. The fact is that this appellant is a woman who settled in the United Kingdom irregularly. She has never had leave to remain on a permanent basis. She may yet be able to show that she has a proper reason to remain but, in my judgement, not in these proceedings and although I am grateful to both representatives for clear submissions I am wholly unpersuaded there is any material error.

35. It follows therefore that I dismiss this appeal.

Notice of Decision

36. This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 27 July 2021