



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01410/2020**

THE IMMIGRATION ACTS

**Heard at Field House
by Skype for Business
On 25 March 2021**

**Decision & Reasons Promulgated
On 30 March 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**S S (ZIMBABWE)
[ANONYMITY ORDER MADE]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Emma Rutherford, Counsel instructed by Halliday
Reeves Law Firm

For the respondent: Mr Esen Tufan, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of S S who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of First-tier Judge S Gill dismissing her appeal against the respondent's decision on 31 January 2020 to refuse her refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Zimbabwe.

Background

2. The appellant was born in Zimbabwe in 1979 and is now 41 years old. She is married with one daughter. The appellant has siblings in the United Kingdom, but it is not clear how many.
3. In Zimbabwe, the appellant, her husband and their young daughter lived in Bulawayo, where her husband had a job driving for an NGO, a human rights organisation based in Harare, taking relief supplies by lorry to remote areas such as Gokwe, Binya and Tsholotsho. The appellant was mainly a housewife, taking care of her small daughter. In addition, she ran a second hand clothes stall, which was financially supported by her husband.
4. The source of the family's troubles is said to be the refusal by the appellant's husband to take Zanu-PF (government) propaganda to the villages as well as the supplies from the NGO for which he worked. Zanu-PF is the ruling party in Zimbabwe since its independence in 1980. In 2016, and again in 2017, the appellant's husband was attacked and beaten for failing to agree to take the propaganda with him. Initially, the appellant and her husband thought that the 2016 attack was 'just a mugging' as it was less severe than the 2017 attack. The appellant was not present on either of these occasions: her husband maintained his refusal. Both attacks were reported to the police, without any progress: the appellant and her husband chased the police up on the 2017 attack.
5. On 15 January 2019, soldiers came to the family home and attacked both the appellant and her husband. There were many raids in Zimbabwe in January 2019 in response to striking and looting caused by an increase in fuel prices, but the appellant says that although neighbours of hers were also raided, she and her husband were singled out by reason of his connection with the NGO and his refusal to carry propaganda. The soldiers threatened to 'teach her husband a lesson'.
6. The appellant was hit on the back of a head, but was roused from unconsciousness by hearing her daughter cry. Her husband was abducted, and the appellant fled with her daughter to an agent already known to her. The appellant did not report that attack, or the abduction of her husband.

7. She stayed one night at the agent's home, then left Zimbabwe on 17 January 2019, by car to South Africa, which took about 5 days, then by scheduled flight from South Africa to the Republic of Ireland via Zurich, on a forged South African passport which bore her real name. Her daughter travelled with her.
8. On 27 January 2019, the appellant was encountered in the Republic of Ireland and made an asylum claim, which she did not pursue. She travelled on by air to the United Kingdom on 29 January 2019, and claimed asylum two months later, on 1 March 2019. During March 2019, her husband contacted the appellant to say that he was trying to find a way to rejoin his family in the United Kingdom. That has not yet occurred. There have been no enquiries about the appellant in Zimbabwe since she left, now more than two years ago.

First-tier Tribunal decision

9. First-tier Judge Gill dismissed the appeal. Her credibility findings are confusing. It is clear that she accepted that the husband worked for the Harare-based NGO as claimed. At [55] she noted that the appellant and her husband did not support either Zanu-PF or MDC and found that the husband was not directly employed or connected with the NGO for whom he drove. Her parents, brothers, and the parents of her husband had not been threatened or pursued by the authorities since she left.
10. At [42], Judge Gill stated that the appellant was unable to provide sufficient detail of why the soldiers in 2019 would know to single out her family. At [43], she identified an inconsistency in the appellant's account of the 2019 attacks: having previously stated that she was hit 'across the head with the back of a gun', in oral evidence, she said she was hit 'across the side of her face'. Judge Gill recorded that the appellant became visibly distressed and needed 'time to recompose herself'. She found that this (arguably minor) discrepancy damaged the appellant's credibility.
11. At [44], Judge Gill appears to have treated the 2017 attack as the one where the attackers said they would teach her husband a lesson, although at [43] she identified that as the 2019 attack. Her decision continued:

"44. The appellant stated that she did not report [the] 2019 attack as 'no one was coming to help me' (AIR 73). Given the pattern of the comments that were made to the husband on the second occasion (2017) I do not find it credible that the husband would not have realised why he was being attacked in 2017. Similarly, I find it odd that the couple took no action as a result of the attack earlier. I am not satisfied that the attack in 2 [paragraph incomplete]."

[Emphasis added]

It is unclear what Judge Gill intended to say. The paragraph ends there.

12. Paragraphs [45] and [46] are even more confusing: they, like much of the decision, bear the signs of a document dictated on Dragon software and

then not checked. There are missing words and repetitions. Judge Gill noted the appellant's account that she had rested, and then claimed asylum immediately on arrival in the United Kingdom, but that on the evidence, she appeared to have waited two months to claim. He considered that this had damaged her credibility.

13. Judge Gill did not accept that the appellant had been able to travel to the United Kingdom from the Republic of Ireland on just her boarding pass, but stopped short of making a finding that the appellant had used the South African forged passport to enter the United Kingdom. At [49], Judge Gill said:

“49. On the lower burden of proof *I do find the appellant to be credible* in her account.”

[Emphasis added]

That is somewhat surprising, given the earlier findings, but it is quite clear and unambiguous.

14. Under a subheading ‘Risk on Return’, Judge Gill considered the appellant's account that on return she would attract adverse attention from the authorities, who would want to know where her husband was. She held that this was not consistent with the appellant's account that it was the authorities who had abducted her husband and could therefore be presumed to know where he was.
15. Judge Gill discounted the appellant's account that after 2019 she was herself of interest to the government or Zanu-PF: she was not involved in her husband's work, had no direct connections with the NGO or the government, could not say whether she was being sought after her departure, and her elderly parents and those of her husband had not been troubled since she left. Nor had the appellant's two brothers. On return, the First-tier Judge considered that this appellant would be treated simply as a person who had been absent from Zimbabwe since 2019.
16. Judge Gill applied *Secretary of State for the Home Department v MM (Zimbabwe)* [2017] EWCA Civ 797 for what it said about the country guidance of the Upper Tribunal in *CM (EM country guidance; disclosure) Zimbabwe* [2013] UKUT 59 (IAC). The appellant and her husband had no MDC links and were therefore unlikely to be at risk, applying the lower standard applicable in international protection claims.
17. The appellant's Article 8 ECHR claim was also considered, within and outwith the Immigration Rules. Judge Gill's concluding paragraph on exceptionality reads as follows:

“78. I have taken a step back and considered all the factors in favour of the appellant and factors in favour of the public interest. In all the circumstances, notwithstanding the private life that the appellant has developed since being in the United Kingdom, I find that the appellant will be able to re integrate into Zimbabwe. *I am accord little weight to the private she has formed present in the United Kingdom* as it was

accrued while present precariously. On the balance sheet approach, I therefore do not find the scales to be tipped in the appellant's favour. I am not satisfied that there are exceptional circumstances in the appellant's case, for the reasons set out above, that would warrant a grant of leave outside of the Immigration Rules and I consider this decision to be proportionate."

[*Emphasis added*]

Again, there are signs of lack of proof reading and this paragraph is somewhat generic, but the thrust of the judge's decision is tolerably clear.

18. The First-tier Tribunal dismissed the appeal. The appellant appealed to the Upper Tribunal.

Permission to appeal

19. The renewal grounds, on which permission was granted, pointed out the difficulties with the judge's approach to credibility in different paragraphs, and her poor drafting, with paragraphs being repeated and [44] not fully completed. The appellant challenged the decision overall on the grounds of perversity, irrationality, inadequacy of reasons, and failure to take into account and/or resolve conflicts of fact or opinion on material matters.
20. In particular, the appellant argued that the judge had failed to engage with the additional risk category identified in *HS (returning asylum seekers) Zimbabwe CG* [2007] UKAIT 00094 (those seen to be active in association with human rights or civil society organisations where evidence suggests that the particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwean regime). The appellant also relied on the earlier decision in *SM and others (MDC - internal flight - risk categories) Zimbabwe CG* [2005] UKIAT 00100 which held that family members of the identified risk categories could also be at risk. The appellant contended that the finding in CM was no longer good law and the judge should have departed from it.
21. First-tier Judge Scott-Baker granted permission for the following reasons:

"4. The judge considered the evidence at [32]-[48] and at [50]-[54]. There is merit in the allegation that the determination as a whole is poorly drafted in places with paragraphs being repeated and in parts uncompleted. As a result, findings on credibility are unclear.

5. It was accepted at [35] that the appellant's husband was a subcontracted lorry driver delivering aid for NGOs. At [37], she rejected the claim that the appellant's husband had been approached to distribute propaganda and found that the lack of detail, together with the late disclosure, not credible given that she had found that her husband was a subcontracted driver with a low profile. At [42], [43], [44] and [48] the judge found the appellant not credible on various facets of her claim yet at [49] found the appellant credible. No specific finding was made as to whether the appellant's husband had been abducted and the finding at [57] that she would not be at risk in Zimbabwe in the absence of involvement in politics or NGOs seemed to

be made in a vacuum without regard to the facts which had been accepted.

6. The appellant is entitled to a decision with clear findings on the core of her account and it is arguable that the determination is devoid of such clarity, with the judge failing to give reasons or adequate reasons for findings on material matters. Permission is granted.”

Rule 24 Reply

22. The respondent filed a Rule 24 Reply, drafted by Mr Stephen Whitwell, a Senior Presenting Officer. After setting out a number of excerpts from the First-tier Tribunal’s credibility findings, the respondent submitted that the judge’s findings on credibility ‘cannot sensibly be said to be unclear’. The respondent contended that the appellant and her husband did not fall within the risk group of those active in association with human rights or civil society organisations: see *HS (returning asylum seekers) Zimbabwe CG* [2007] UKAIT 00094. He was a contract driver with no political interest in the work of the NGO which employed him.
23. Nor was it an error of law for the judge to continue to apply extant country guidance in *CM (EM country guidance: disclosure) Zimbabwe CG* [2013] UKUT 00059 (IAC). The standard for departing from country guidance was high: *SG (Iraq) v Secretary of State for the Home Department* [2012] EWCA Civ 940 at [4]. The appellant had not advanced evidence of durable change: the closest approach to that was to mention pages 37 and 74 in her bundle, and to allude to a rise in political violence in Bulawayo. The appeal should be dismissed.
24. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

25. For the respondent, Mr Tufan relied on the Rule 24 Reply.
26. For the appellant, Ms Rutherford relies on the appellant’s association with her husband and on the difficulty which family members could face on return: see *SM, TM, MH (MDC - Internal flight - Risk categories) Zimbabwe CG* [2005] UKIAT 00100 (11 May 2005). She relied on the appellant’s skeleton argument in the electronic bundle submitted to the First-tier Tribunal, which confirmed that politically motivated violence and abductions were occurring, that socio-economic circumstances in Zimbabwe were dire. Ms Rutherford submitted that although there was no loyalty test in Bulawayo, the level of increased violence there meant that it could no longer be regarded as a safe place to which to return.
27. I reserved my decision, which I now give.

Analysis

28. This is a very unsatisfactory decision. It is poorly proof read, if at all, and the contradictory findings on credibility, unfinished and duplicated

paragraphs, and omitted words do Judge Gill no credit. The decision fails to engage with the evidence before the judge and her reasoning is incomprehensible in places.

29. I have considered whether in the light of the unambiguous positive credibility finding, I can proceed to remake the decision. However, there are so many omissions and errors that I do not consider that it would be safe or appropriate to do so.
30. There is no alternative but to set aside this decision and remake it.

DECISION

31. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal.

Signed [Judith AJC Gleeson](#)
2020

Date: 27 March

Upper Tribunal Judge Gleeson