



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10431/2019

THE IMMIGRATION ACTS

Heard at Manchester via Microsoft Teams
On 30 June 2021

Decision & Reasons Promulgated
On 13 July 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JSJM

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akram instructed by Halliday Reeves Law Firm

For the Respondent: Ms Everett a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Traynor ('the Judge') promulgated on 5 January 2021 in which the Judge dismissed the appellant's appeal on all grounds.
2. Permission to appeal was granted on a renewed application by the Upper Tribunal, the operative part of the grant being in the following terms:

- 1) The renewed grounds appeal against a very narrow finding – the FTT’s approach to prospective risk in the light of matters that have been accepted, i.e. the appellant’s participation in MDC activities in the UK. Much of the appellant’s claim has been rejected and has not been the subject of any challenge.
 - 2) It is arguable that the FTT failed to give adequate reasons for rejecting the evidence of the country expert on the narrow issue identified in the grounds of appeal.
3. The appellant is a citizen of Zimbabwe who was born 10 October 1965.

Discussion

4. There is no error in the Judge accepting the evidence of the appellant’s country expert in relation to the fact the arrest warrant produced by the appellant was not genuine, yet not accepting the evidence of the country expert with regard to risk on return, which is predicated on the basis of an individual’s profile, provided such an approach is supported by adequate reasons.
5. Ms Everett submitted that whether the Judge had erred in law depended upon what interpretation was given to [41] of the experts report and whether that related to an assessment of the appellant’s overall profile. It was accepted that if the Judge had found no risk based upon a more narrow and less nuanced assessment of the appellant’s profile the error would be made out.
6. At [41] in Section 7: Risk of state persecution on return, the country expert wrote:
 41. The CIO and other security forces take a keen interest in those who have been deported back to Zimbabwe from the UK. This is not only the case regarding those arriving through the airport, but also with those who use the road. In particular, those who are identified as having failed in their asylum application are inevitably interviewed by security agents stationed at the airport. This practice is a rigorous Harare International Airport, as it is the main international airport serving the country.
7. It is important that the Judge considered all the material that was made available. In addition to the country evidence the Judge had country guidance caselaw and although the country expert states that in her opinion the situation in Zimbabwe requires a reconsideration of country guidance decisions, it was not made out that this was a point raised before the Judge either in the appellant’s skeleton argument or submissions made. Indeed, Mr Akram in his submission to the Judge specifically relied upon the country guidance case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC) when arguing against the availability of internal relocation.
8. In TM, KM and LZ (Zimbabwe) [2010] EWCA Civ 916 the Court of Appeal said that the Tribunal “must treat as binding any country guidance authority relevant to the issues in dispute unless there is good reason for not doing so, such as fresh evidence which casts doubt upon its conclusions, and a failure to follow the country guidance without good reason is likely to involve an error of law. It was not made out there was sufficient material to enable the Judge to depart from the current country guidance in this case, which makes an individual’s profile relevant to the extent of risk faced upon return in light of the prevailing country conditions.

9. The evidence contained in the expert report relates to the position in Zimbabwe following the deposing of President Robert Mugabe and the swearing in of the current incumbent President Emmerson Mnangagwa and the activities of the security forces and Zanu-PF against those perceived to be in opposition to the government, which reflects the activities of the state authorities and Zanu-PF in relation to the Mugabe regime which was considered in the country guidance case law.
10. The Judge's factual findings, which are not challenged can be summarised as follows:
 - a. Whilst undertaking reporting activities the appellant covered events at an LGBT book fayre in her capacity as a reporter but there was no evidence that simply because she was there as a reporter the authorities, including members of the Zanu-PF, took any adverse interest in her [62].
 - b. The respondent did not doubt the appellant's claimed membership of the MDC, both in Zimbabwe and in the United Kingdom [62].
 - c. The appellant's claim to have received threatening anonymous telephone calls, which she attributed to the government intelligence officers or members of Zanu-PF was speculative, wholly vague, evasive and an unreliable account [63].
 - d. The appellant's husband and children continue to live in Zimbabwe with the appellant producing no evidence to suggest that the authorities had visited the home or that there was any continuing interest in the appellant [65].
 - e. While not doubting the appellant was a member of the MDC in Zimbabwe, there was nothing in her activities in support of that organisation or as a journalist, which attracted the adverse attention from the authorities. Whilst in Zimbabwe the appellant was a member of the party and sympathetic to the aims of the MDC with no evidence she had held any profile within that organisation sufficient to attract the attention of the authorities there [66].
 - f. The appellant's activities on behalf of the MDC in the United Kingdom are self-serving. The appellant claimed asylum in January 2019 yet there was little evidence of activity or even membership of the MDC branch in Newcastle upon Tyne until late 2019. At its highest the appellant is an organising secretary with minutes of the branch meetings implying she is involved in social events and other similar activities, but not at a greater or higher profile than that [67].
 - g. It is not just doubted by the Judge that the appellant attended one demonstration in London but that is found to be an isolated event. The Judge finds it is reasonably likely such attendance would have come to the attention of the Zimbabwean authorities who monitor such meetings and it is accepted MDC activities in the UK are heavily monitored. Notwithstanding, it is found the appellant's profile is not of any significance and the minutes of the meeting did not suggest she is anything other than a member of an organisation with some limited role not found

to be sufficient to provide her with a profile which would be likely to draw adverse attention to her upon her return to Zimbabwe [67].

- h. Whilst the appellant's support for the LGBT community in Zimbabwe is accepted there was no evidence the authorities in Zimbabwe know about the appellant's previous support for this group. There was no evidence the appellant held any profile as an activist or supporter of the LGBT community in Zimbabwe when living there [68].
 - i. The Judge finds there was no plausible or credible reason why the authorities in Zimbabwe would take any interest in the appellant; finding it highly implausible and unlikely that the authorities would continue to take any interest in her beyond 2011, a finding reinforced by the appellant's admission that she encountered no problems in Zimbabwe between 2011 and 2018 when she left to visit her sister in the UK [69].
 - j. The documents submitted by the appellant, claiming she was charged with offences relating to public order issues that took place in January 2019 in Zimbabwe, relate to a time she was in the United Kingdom. The country expert acknowledged the document is unreliable. The Judge finds the appellant is willing to produce a document which is clearly bogus with no plausible reason why the authorities would pay "the remotest interest" regarding events that took place when she was not even present in the country. The Judge accepts the appellant's absence would have been known as she left the country using her passport and that her return will be monitored by showing the same passport [70].
 - k. The appellant's support and activities on behalf of the LGBT community in the United Kingdom would not lead anyone in Zimbabwe to take an adverse interest in her. There is no evidence that she was active on behalf of the LGBT community in Zimbabwe [71].
 - l. The expert report did not assist the Judge in lifting considerable doubt regarding the appellant's reliability is a credible and truthful witness. There was nothing within the context of the appellant's activities which she could not continue to do upon return to Zimbabwe. Whilst in Zimbabwe the appellant encountered no adverse consequences as the result of past activities and there will be no adverse interest in her if she continued the same activities on return [72].
 - m. There is an absence of any credible or reliable evidence to show the appellant had come to the adverse attention of Zanu-PF, the government/authorities or anybody else. There was insufficient evidence to show her claim has merit or that she would face any risk on return [73].
 - n. The appellant's attempt to raise her profile by suggesting that an adverse interest has been taken in her was not accepted as the appellant had failed to establish any reliable factors which will show that she has suffered any adverse interest in Zimbabwe in the past or that she would be likely to do so in the future.
11. The Judge sets out the conclusions following the application of those findings to the relevant legal test between [74 - 75] in the following terms:

74. Having carefully considered the Appellant's case, I find, where she has continuously sought to provide vague speculative accounts of alleged adverse interest in her in Zimbabwe in the past, that all of this fails the low threshold of proof of reasonable likelihood. I find that there is nothing within the context of the Appellant's account which would indicate that she has come to the adverse attention of the authorities in Zimbabwe prior to coming to this country in October 2017. It is noteworthy that she states that her husband is a supporter of Zanu-PF and that she has two children who are clearly highly educated. I find that her account is absent of any information regarding her personal and family circumstances and there is nothing to suggest that her family either in Zimbabwe or in the UK have supported her in her application to seek protection from the United Kingdom authorities based upon the reasons which she has given. I find that there is nothing within the context of her claim that would lead me to conclude that she has faced persecution in the past, or that anything that she has presently done in the United Kingdom is sufficient to amount to presenting her with a profile which is likely to attract adverse attention from the Zimbabwean authorities and members of Zanu-PF upon her return to Zimbabwe. I find that it is open for the Appellant to return to live with her family in Harare and she has not suggested that this would not be an option available to her. Should she choose to live anywhere else in Zimbabwe, then I equally find that it is open for her to do so because I find that there is no risk that she would face for the reasons which she has given.
75. Given the conclusions as outlined above, I find that the Appellant has not discharged the burden of proof to establish that she is entitled to the grant of asylum. I come to the conclusion that the Appellants removal would not cause the United Kingdom to be in breach of its obligations under the Qualification Regulations.
12. It is clear from reading the decision that the Judge did take into account all the material that the appellant relied upon, including the content of the expert's report. It is also clear from reading the expert report that some of the conclusions contained therein relating to risk are based upon an acceptance of the appellant's claims relating to her activities and related risk, some of which the Judge found lacked credibility.
13. So far as the point raised by Ms Everett is concerned, it is clear that the expert at [41] of the report was referring to the issue of risk taking the appellant's profile into account as a whole and I find this is what the Judge did having found the appellant to lack credibility. I do not find it made out that the Judge's assessment of risk based upon the appellant's profile has been unfairly restricted or limited.
14. The appellant's sur place activities in the United Kingdom, including the attendance at one demonstration, was accepted as was the fact that this would have come to the attention of the authorities in Zimbabwe who monitor such occurrences. That is not a new phenomena but one that has been known for some time. It is also accepted by the Judge that the appellant attended meetings of the MDC at a local branch in Newcastle upon Tyne and that such meetings are monitored by the authorities in Zimbabwe through their UK network/connections. It does not matter whether the appellant's attendance at such events is disingenuous if the agents of prosecution view them as being opposed to their interests.
15. The expert at [46 – 48] when considering procedure on return writes:

46. In February 2017, the government of Zimbabwe acquired approximately 70 biometric scanners that use iris recognition and introduced advance passenger information systems (APIs) at its international airports to help increase security. The Zimbabwean Department of Immigration, has developed a link between Immigration and all airlines Departure Control Systems (DCS) in order to facilitate data transfer. Airlines DCS electronically transmit to the border control agencies at the destination after the flight departs. This enables the CIO to be given data on all passengers several hours before their arrival in Zimbabwe. The CIO monitors every flight from London to Harare. Passenger lists are passed to agents in the airport before the flight lands.
47. The CIO meet flights arriving in Harare, where British Immigration officers' hand over failed asylum seekers to their Zimbabwe counterparts.
48. It is my opinion that it is plausible and consistent with country conditions that if the Appellant has come to the adverse attention of the CIO in the UK as a result of her political activities with the MDC she will be identified by state authorities on her return to Zimbabwe as a critic of the government of Zimbabwe. It is plausible that this may render her vulnerable to state persecution within Zimbabwe, including arbitrary arrest and violence is witnessed throughout the country in 2018 – 2019.
16. The incidents of violence referred to by the expert postdate the appellant leaving Zimbabwe and the question in all appeals of this nature relate to that of future risk. The expert in [48] finds that the appellant may be vulnerable to state persecution within Zimbabwe but whether she is will depend upon her profile as acknowledged by both the expert and the country guidance caselaw.
17. Whilst the expert report speaks of violence and human rights violations following the election in July 2018 and individuals being attacked and persecuted as suffering ill treatment as a result of the perpetrators of such ill-treatment having lists of individuals they are seeking, or as a result of random acts of violence on some occasions, there is no evidence of any ongoing interest against the appellant based upon her experiences or those of her family in Zimbabwe.
18. The Judge gives reasons for why he did not follow the country expert which is that the Judge did not accept that the appellant's profile would give rise to a real risk at the point of return or within Zimbabwe. It is for this reason that the Judge does not accept the expert's opinion that such risk will exist, even if the appellant is questioned on arrival at Harare airport.
19. In the CM, it was found:
- (d) The fresh evidence regarding the position at the point of return does not indicate any increase in risk since the Country Guidance was given in HS (returning asylum seekers) Zimbabwe CG [\[2007\] UKAIT 00094](#). On the contrary, the available evidence as to the treatment of those who have been returned to Harare Airport since 2007 and the absence of any reliable evidence of risk there means that there is no justification for extending the scope of who might be regarded by the CIO as an MDC activist.
20. The headnote of HS, which properly reflects the findings made by the Upper Tribunal in that case reads:
1. *Failed asylum seekers do not, as such, face a risk of being subjected, on return to Zimbabwe, to persecution or serious ill-treatment. That will be the case whether the return is voluntary or involuntary, escorted or not.*

2. *The findings in respect of risk categories in SM and Others (MDC – Internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100, as adopted, affirmed and supplemented in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 are adopted and reaffirmed. The Tribunal identifies one further risk category, being 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.*
 3. *The process of screening returning passengers is an intelligence led process and the CIO will generally have identified from the passenger manifest in advance, based upon such intelligence, those passengers in whom there is any possible interest. The fact of having made an asylum claim abroad is not something that in itself will give rise to adverse interest on return.*
 4. *The Tribunal adopts and reaffirms the findings in AA in respect of the general absence of real risk associated with any monitoring of returnees that might take place after such persons have passed through the airport and returned to their home area or re-established themselves in a new area.*
 5. *Country conditions have continued to deteriorate but are not generally such as to bring about an infringement of Convention rights for returnees or to require the grant of humanitarian protection.*
21. In addition to the expert's report, the appellant relied upon country material, including the respondent's Zimbabwe CPIN dated February 2019. The appellant in her grounds specifically refers to paragraph 40 of the expert's report, which refers to paragraphs 2.4.25 in support of the argument it is plausible that a person with the appellant's profile will face a real risk of harm on their return to Zimbabwe.
22. At Judge finds the appellant can return to the family home in Harare. At [2.4.5] it is written:
- 2.4.5 With regard to urban areas, primarily Harare and Bulawayo, the Tribunal in CM found that a returnee to Harare will face socio-economic difficulties living in high density areas not faced by persons living in other urban areas and persons perceived to be active in MDC politics may face the risk of targeted reprisals (para 100 of CM referencing para 200 of EM). However, in general a person returning to a high density area without ZANU-PF connections will not face significant problems unless he or she:
 - has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment
 - would otherwise engage in political activities likely to attract the adverse attention of the ZANU-PF
 - would be reasonably likely to engage in such activities if it wasn't for a fear that by doing so they would come to the adverse attention of the ZANU-PF (EM, para 215 (5))
 - 2.4.6 A returnee to a low or medium density area in Harare will, however, in general face no significant difficulties (EM, para 215 (5)).
23. The Judge found there was no evidence of problems being experienced by the appellant's family who live in Bloomingdale in Harare in Zimbabwe, a low density comparatively affluent suburb, and that her husband is a supporter of the ruling party.
24. At 2.4.25 it is written:

- 2.4.25 The authorities use legal restrictions to impede or interfere with the activities of civil society organisations and human rights defenders perceived to be critical of the government. Prominent activists, who are vocal in their criticism of the government, may be at risk of serious harm or persecution (see Civil society groups (NGOs) and Protests and demonstrations about the economy).
25. The Judge's finding is that the appellant's profile is not as a prominent activist or one that will lead to her being perceived to be critical of the government such as to give rise to a real risk on return.
 26. Other country information includes an article referring to journalists being beaten and humiliated by security forces dated 30 June 2020, but the appellant was found not to be at risk as a result of such activities in 2011, which is a finding reasonably open to the Judge on the evidence. Similarly, the account of two freelance journalists being assaulted by soldiers in Harare dated 24 June 2020 indicates an ongoing problem for journalists perceived to be reporting matters the authority would rather they did not, rather than establishing a credible real risk for this appellant on return.
 27. The Amnesty International article dated 8 June 2020, referring to hospital-based activists risking being jailed refers to action being taken against known activists in Zimbabwe.
 28. The country material supports the findings that the authorities remain critical of persons accused of insulting the President's office and there is reference to arrests being made by those in Zimbabwe being openly critical of the government, although also of charges being withdrawn. Those targeted do appear to be those with the type of profile identified in the country material as giving rise to a real risk which the Judge did not find was satisfied by this appellant on the facts as found.
 29. The Judge did not accept the appellant's claim that her role within the MDC in the Newcastle upon Tyne branch included recruiting members and that at its highest the evidence only showed she was an organising secretary involved in social events and other similar activities. The Judge found little evidence of her membership of the MDC or activities until after her asylum claim had been made and there was nothing before the Judge to warrant a finding that even if questioned about her activities it would be shown the appellant's profile was such that she would be deemed to be of adverse interest the authorities.
 30. There was nothing before the Judge to show that all members of the MDC at any level were at risk, it being dependent upon how their activities are perceived.
 31. In relation to the demonstration, the Judge does not find that the appellant had any profile, noting that even if the agents of the authorities in Zimbabwe were aware of her attendance, they would know it was an isolated event, there being no further evidence of subsequent attendances, or that the appellant was anything other than a member of the MDC with no adverse profile.
 32. The point in issue in this case is that in so finding, the appellant asserts the Judge fails to give adequate reasons for rejecting the evidence of the country expert that in light of the conditions that prevail at the date of the hearing in Zimbabwe the profile as found will give rise to a real risk at the point of return as stated in the grant of permission.

33. Whilst it is accepted that on arrival at Harare airport the appellant may be subject to robust questioning, it was not established that with the profile as found, which is not challenged in the grounds of appeal, that such will result in ill treatment sufficient to amount to persecution or to warrant the grant of leave pursuant to article 3 ECHR on any other basis.
34. The Court of Appeal have made it clear that appellate judges should not interfere in a decision of a court below unless there is an identifiable legal error material to the decision to dismiss the appeal. The fact the appellant disagrees with the outcome is not the correct test. Having given very careful consideration to this matter I find it is not made out, in light of the factual findings made by the Judge and current country guidance case law, that the conclusions in relation to risk on return at the airport and within Zimbabwe are outside the range of those reasonably available to the Judge. On that basis, it is not appropriate to find that the Judge has erred in law in a manner material to the decision to dismiss the appeal or for the Upper Tribunal to interfere any further in this matter.

Decision

35. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

36. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 5 July 2021