IAC-AH-KRL/FH-CK-V3

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13262/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 November 2020	**On 06 January 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE KEITH

Between

BS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms P Solanki, instructed by Duncan Lewis & Co Solicitors (Harrow office)
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the rehearing of the appeal of BS against the Secretary of State's decision of 5 November 2018 refusing his claim for international protection and human rights.

2. He had appealed that decision to a Judge of the First-tier Tribunal who allowed the appeal in a decision promulgated on 25 June 2019. The Secretary of State sought and

was granted permission to appeal that decision, and following a hearing on 13 November 2019 Upper Tribunal Judge Allen found that the judge had erred in law and directed a rehearing of the appeal, the Article 3 asylum and Article 8 issues, though preserving credibility findings that the judge had made as to the evidence of the appellant, his partner and her mother on Article 8 matters and as regards his partner as to her political activity.

3. The appellant gave evidence. He had provided three statements, the most recent in 2020 and said the contents were all true and they were adopted as his evidence-in-chief.

4. When cross-examined by Mr Tufan the appellant accepted that his appeals in 2002 and 2016 had been dismissed. He was asked why he would be at risk on return now, having been found not to be previously and he said it was on account of his sur place activities. It was put to him that there was nothing to suggest that he had any position of leadership and he said that he was the deputy secretary of the south east district of the MDC for UK and Ireland. He was asked why the leader was not present and he said that it was a mix of four branches and the leader was not able to come and give evidence, though the London branch secretary had. He had not been able to attend because he was suffering from COVID-19 and had been on the list of witnesses and had been due to attend. He had put in a statement.

5. The appellant was asked about the fact that for several years he had claimed to be Belgian, including while he was in prison. He said that when he converted to Islam they asked if he wanted to change his name and he had done so. It was something he had said when in the prison system.

6. He had seen a psychiatrist on two occasions and told him how he felt. He believed that the psychiatrist had diagnosed severe depression and symptoms of PTSD. He was asked how he did his job with the MDC with these problems and said that taking minutes was his job and it was not mentally challenging. He was able to cope with his position. Part of what he did also as a deputy secretary was to take minutes at monthly meetings but also he organised and people told him what to arrange for the next meeting.

7. He was asked why, since the MDC was a legal party in Zimbabwe he would be at risk as the deputy secretary of the branch. He said that anybody was at risk and people were arrested for no reason. He had a profile in the MDC and had written articles criticising the government. They had supported sanctions against Zimbabwe. He had been threatened and he referred to e-mails in this regard in the bundle. He had not reported these to the police. He did not know whether they were from the UK or Zimbabwe and had no way of knowing who they were from. He would be in danger as he had campaigned against Zimbabwean officials who came to the United Kingdom and had appeared on videos where ZANU-PF threatened them. The Home Office had enabled Zimbabwean officials to interview him in 2015 while he was in detention and they were then unaware of him. His MP

had responded and had been told it was to do with redocumentation but could not confirm what questions had been asked.

8. He was asked about the 2018 elections and which parties formed the MDC Alliance and he referred to the MDC-T and MDC Alliance and MDC-M. That was it as far as he knew.

9. He did not live with his mother-in-law but he saw her every day and helped her with cleaning. She had arthritis. He cooked for her sometimes and did the shopping.

10. There was no re-examination.

11. The next witness was CQ who is the appellant's mother-in-law. She had provided two statements. She remembered writing the statements and they were true.

12. She was asked by Ms Solanki how often she and the appellant saw each other and she said it was every day and they would telephone two or three times a day. She had put him down as her next of kin. They supported each other since she was all alone in her house. He did what she needed.

13. Mr Tufan had no questions for the witness.

14. In his submissions Mr Tufan referred to the two previous decisions, the most recent in 2016 and the need to apply the Devaseelan guidelines to the findings of the judge in those decisions. The respondent did not challenge the section 72 finding. The findings at paragraphs 90 and 91 of the judge in 2016 were relevant. The appellant's explanation for his claim to have been a Belgian national previously was unsatisfactory. The judge had come to adverse credibility findings. He was not found to be a member of a political party and that finding was not disturbed. He now claimed to be a member of the MDC. There was documentary evidence to corroborate that, but again no one had come to give oral evidence today in his support. The appellant had said he was merely a secretary taking notes and referred to organising, etc. also but this was not credible evidence. In this regard Mr Tufan referred to paragraph 4.4.1 of the CPIN on Zimbabwe: Opposition to the Government of February 2019. That set out the various parties that made up the MDC Alliance formed in 2017. The appellant had referred to MDC-C and MDC-M and that was all he knew but there were a number of factions and parties involved and MDC-M was not listed there. He had quite limited involvement in the MDC in the United Kingdom. He would not be of interest on return. The MDC was a legal party in Zimbabwe anyway. The expert said in her report that members of the party were hassled and referred to the police activity in Bulawayo and journalists being hassled, but there was nothing to suggest a designed and systematic persecution of those involved with the MDC. There was nothing concerning people of the appellant's profile being of interest. He had had no political involvement in Zimbabwe before he left.

15. As regards the threats the appellant said had been made it was unclear where they came from and how they found his e-mail. ZHRO was said to have been threatened and again it was unclear by whom.

16. The appellant was from Bulawayo. None of the evidence he provided suggested that the ratio in the country guidance in CM [2013] UKUT 59 (IAC) had changed. In general people could return to Bulawayo even if they had a significant MDC profile, and he did not have that anyway. He could therefore not succeed on asylum or Article 3 grounds.

17. As regards the medical issues, there were two reports prepared by a psychiatrist. It could be seen from the CPIN that there was treatment available for the appellant. He had referred to the psychiatrist to torture in Zimbabwe but he had been found not to be credible by the judge. Despite the reference to other cases by Ms Solanki in her skeleton, in the end the guidance in AM (Zimbabwe) [2020] UKSC 17 applied. Although the decision there had lowered the threshold set out previously in N [2005] UKHL 31, it was still a high threshold. There had to be substantial grounds of a real risk of a serious, rapid and irreversible decline leading to intense suffering and that was not the case here.

18. As regards Article 8, the appellant was a criminal and there was nothing to suggest that paragraph (b) applied. There had to be very compelling circumstances and there were none. The test was a very high one. Ms Solanki had referred to the decision in Kamara [2016] EWCA Civ 813 with regard to very significant obstacles to integration, but the appellant was a "insider", having lived in Zimbabwe for most of his life. He knew how the system functioned. As regards his relationship with his mother-in-law, it seemed that they met daily and he helped her. As had been held by the Court of Appeal, the court was entitled to assume that Social Services would do their duty. The claim could not succeed.

19. We asked Mr Tufan about what was said in the CPIN (published in February 2019) concerning the use and monitoring of the internet. Paragraph 10.1.2 referred to online journalists and ICT users facing regular harassment, intimidation and violence for their online activities in the past year. In addition there was reference at paragraph 7.4.6 to the authorities shutting down the internet service, subsequently restoring it. With regard to the appellant and his use of the internet, Mr Tufan said that social media seemed widespread in Zimbabwe and the authorities prevented the system working when there were protests. The appellant was not a journalist. It was not the same as the situation that had been considered in the country guidance concerning Iran. There did not seem to be a manhunt on the uses of social media.

20. In her submissions Ms Solanki relied on and developed points made in her skeleton and also responded to the arguments put forward by Mr Tufan. With regard to the earlier findings, a number were positive, such as the appellant being a member of the dance and music troop and the travel he carried out and attendance at rallies in Zimbabwe and occasional attendance by ZANU-PF. This was significant, as the

expert said there would be intelligence about that. Other matters had not been accepted, but the evidence was different since then.

21. With regard to the MDC he was listed on the website as a committee member and secretary. In the bundle could be found minutes which were posted online. That evidence also included a Google search which showed his name as a member of the MDC. This was post-2016 evidence.

22. As regards the use of a false name and ID he had given a good explanation that he had been high on amphetamines when he gave that name and did not change it until he came out of the prison system. As concerned the truth about his siblings, it was relevant to consider what was said at pages 186 to 191 of the bundle which referred to the witness Mr N's awareness of the appellant's sister passing away. There was mention there also of the appellant living on the streets in Zimbabwe and that should be considered against the objective evidence and the fact that he had not been in Zimbabwe for nineteen years and that was relevant to the possibility of family support.

23. With regard to the points made about the lack of evidence, the explanation was because of the pandemic and members being at high risk. As regards other organisations, despite the lack of attendance there was consistent support and documentation, for example the minutes and photographs and articles he had written referring to his activities. In respect of those activities he was credible, given the volume of material and the length of time during which it had been made. He had been affected by his wife's illness and the pandemic. Contrary to what Mr Tufan said the appellant did not only take notes but had also referred to other activities and the bundle showed that he was organising and handing out fliers and encouraging people to attend. The e-mails at pages 192 and page 196 should be noted. There were also tweets from Facebook activity as set out in the bundle and the number of people who were engaging in retweeting.

24. His lack of knowledge of the MDC Alliance partners had to be considered against the medical evidence and how he would be perceived on return. It was not relevant to risk on return. The CPIN referred to risk on account of absence after a significant period and it was also noted at headnote 2 in CM. The appellant would not be able to demonstrate loyalty, having been in the United Kingdom for nineteen years. Also with regard to headnote 5 in CM and paragraph 2.4.4 of the CPIN, this referred to rural areas and the fact that he could not show connections and would be at risk. He would be returned to Harare and would have to travel via rural areas to Bulawayo and there were checkpoints throughout the country and it could be seen from paragraph 12.1.3 of the CPIN how people in those circumstances were treated and that he would be questioned about his activities in the United Kingdom and his history in Zimbabwe would come out.

25. He would be at risk in Harare. He had a significant MDC profile and so what was said in headnote 5 in SM was relevant. The expert in her evidence said that there

would be questions at the airport and his mental health was relevant to how he would withstand an interrogation and he would be held for some time and this would put him at real risk.

26. What was said in the country guidance about Bulawayo could not stand in light of the more recent evidence but in any event he would be at risk on return within Zimbabwe. The CPIN showed incidents involving MDC members in Bulawayo since the decision in CM. The expert referred to this at paragraphs 88 to 89 of her first report and paragraph 59 of her second report. The evidence showed a quite significant deterioration in the situation in Zimbabwe generally. With regard to what Mr Tufan said about the political landscape being much the same as in 2013, Ms Solanki referred to paragraphs in the CPIN from 7.1.4 to 7.3.6. There were numerous attacks on opposition members and also evidence at pages 1,772 to 1,785 in the bundle. This met the test for departure from the country guidance.

27. The persecution did not have to be systemic. As regards the threats, the expert had looked at the e-mails and concluded it was plausible that they were genuine. There had been no criticism made of her qualifications at any stage. The appellant was properly to be viewed as a journalist bearing in mind the points summarised at paragraph 17 of the skeleton. There was a schedule to the evidence which showed where his articles were circulated and their reach. There were Google searches for his name. As to how his activity would be detected by the Zimbabwean state, the expert addressed this in particular in her second report. He would be at risk on account of his Twitter and online activity. The CPIN at paragraph 4.9.2 was relevant as quoted at paragraph 25 of Ms Solanki's skeleton argument. The claim was made out.

28. As regards health grounds, there was clear medical evidence that he would deteriorate if removed. He was receiving bereavement counselling and had been referred to a psychiatrist and was receiving ongoing support. It had been concluded that he needed trauma focus therapy when his immigration status was resolved.

29. In the expert's evidence it was suggested that the appellant would not be able to receive the necessary treatment. The CPIN at paragraph 11.1.1 to 11.1.7 was relevant with regard to the available treatment and medication. As the expert made clear at paragraph 130 the situation was worse since the CPIN was produced, bearing in mind the pandemic. There was also reference to suicide risk and the lack of support. He had a clear plan for suicide if he were returned. Asked whether there were effective means in place on return, the expert said no as there would be no counselling in Zimbabwe for that. He had professional support and the support of his mother-in-law in the United Kingdom and also from friends but no realistic support network on return, having been away for so long. The GP records showed a low to moderate risk, at pages 336 to 337. He had a history of torture. There was a psychiatrist and the Rule 35 reports. The judge had not had that evidence.

30. With regard to Article 8, it was not useful to compare cases, as had been said in HA (Iraq) [2020] EWCA Civ 1176. There were very compelling circumstances given the depth of his integration and the quality of his relationships and his behaviour after the deportation decision and the likely obstacles to integration. There was no risk of reoffending. There were significant obstacles to integration, bearing in mind his political activities, the time away and his mental health. There was no real challenge to the evidence of his relationship with his mother-in-law. That could not be replaced by modern means of communication. He was integrated into the United Kingdom and there were his health issues and his support issues and he was rehabilitated which was relevant, according to HA (Iraq), and also there was the delay on the part of the Secretary of State between April 2009 and June 2015 making a decision on his case. This according to MT (Colombia) was a relevant issue. He faced a real risk of destitution in Zimbabwe where there was food insecurity and he had a subjective fear also. According to the test in Kamara he had no reasonable opportunity to be accepted in Zimbabwe. He was not enough of an insider. The test was met. Eleven years had passed since the deportation order had been made.

31. We reserved our decision.

Discussion

(1) The International Protection Claim

32. The appellant has been in the United Kingdom since August 2001, having been granted leave to enter for two months as part of a traditional performance troop known in Zimbabwe. He claimed asylum on 21 January 2002 and having been refused a subsequent appeal was dismissed by an Adjudicator in March of that year.

33. On 16 August 2004 he was sentenced to six years and six months in prison for unlawful wounding and GBH. A deportation order was signed on 28 May 2009. He appealed but that appeal was struck out. He made an international protection claim in April 2009, and that claim was refused in a decision letter in June 2015. He appealed that decision and his appeal was heard in March 2016 and dismissed by a Judge of the First-tier Tribunal.

34. The judge did not accept that the appellant was a member of the MDC during his time in Zimbabwe. He accepted there was evidence of sur place activities, but found that there was nothing to show that the regime monitored those who merely demonstrated in London against it. The judge took into account the country guidance in CM and also applied the Devaseelan guidance to the earlier decision, in which the Adjudicator did not find the appellant to be telling the truth mainly on the basis that he failed to claim asylum until after he was arrested in the United Kingdom.

35. The appeal against the most recent decision was set aside, as noted above, in December 2019, with only limited findings being preserved. Accordingly the

Devaseelan guidance is relevant to our assessment of the issues in this case, bearing in mind in particular the findings of the judge in 2016.

36. It is argued on the appellant's behalf that there have been significant changes and there is a good deal of documentary evidence to support that contention.

37. In the country guidance in CM the Tribunal found that a person without ZANU-PF connections returning from the United Kingdom after a significant absence from a rural area in Zimbabwe other than Matabeleland north or Matabeleland south may find it difficult to avoid ill-treatment from ZANU-PF authority figures and those they control. However the Tribunal found that in general those returning to rural areas of Matabeleland north or Matabeleland south would be highly unlikely to face significant ill-treatment from ZANU-PF and its proxies, including the security forces, even if the returnee is an MDC member or supporter. A person from Matabeleland may however be able to show that his or her village or area is one that unusually is under the influence of a ZANU-PF chief. Those returning to all other rural areas after a significant absence and without a ZANU-PF connection would face a real risk of persecution.

38. With regard to urban areas, primarily Harare and Bulawayo, in CM the Tribunal found that a returnee to Harare will face socioeconomic difficulties living in high density areas not faced by persons in the other urban areas, and persons perceived to be active in MDC politics may face the risk of targeted reprisals. A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces even if he or she does have a significant MDC profile. The appellant is from Bulawayo.

39. The respondent's CPIN in February 2019, to which we have referred above, accepts that the political landscape in Zimbabwe had seen some change since CM was promulgated in 2013, noting the removal of Robert Mugabe and the inauguration of Emmerson Mnangagwa in November 2017. It is noted that in August 2017 a new opposition coalition, the Movement for Democratic Change Alliance (MDC Alliance) formed consisting of seven opposition parties. It said that the political space is controlled by the ruling ZANU-PF Party which uses the state security apparatus to harass and intimidate those in opposition to it. There has been a decline in levels of politically motivated violence and human rights violations committed by the security forces and ZANU-PF supporters against opposition party members since 2008, these fluctuate, with recent peaks being seen in the 2018 postelection period and in response to the current economic situation. It is necessary also to bear in mind the guidance in SG (Iraq) [2012] EWCA Civ that decision makers and Tribunal judges are required to take country guidance determinations into account and follow them unless very strong grounds supported by cogent evidence are adduced justifying their not doing so. In general as is noted at paragraph 2.4.16 of the CPIN, a person who is or is perceived to be a supporter of the MDC-T is in general not likely to be at risk of persecution or serious harm in Bulawayo.

40. As noted above, the appellant's claim to have been politically active in Zimbabwe was disbelieved, and his claim is based essentially on sur place activities, and it was accepted in the judge's decision in 2016 that he was engaged in sur place activities. According to the evidence provided on his behalf he is a member of the London branch of MDC UK and Ireland and participates in protests against the Zimbabwean government and takes part in fundraising events in the MDC UK and Ireland province. He is secretary which involves taking minutes for meetings and also has an organisational role. His evidence is that he organised and participated in numerous demonstrations against ZANU-PF, including organising a demonstration against the President, in July 2018. He is also a member of the Restoration of Human Rights for Zimbabweans, Zimbabweans Human Rights Organisation (ZHRO) and the Zimbabwe Association, and was a chairman of Zimbabwean Human Rights Organisation.

41. There is also evidence that he campaigns on Twitter, Facebook and writes articles on the situation in Zimbabwe.

42. Though there was no oral evidence on the appellant's behalf other than his own, there is a good deal of documentary evidence. There is for example a letter from the MDC London branch manager, Hasani Hasani who confirms that he knows the appellant from monthly meetings and that he is an activist who is passionate and advocates for the recognition of human rights and actively participates in and organises demonstrations raising awareness of human rights abuses by ZANU-PF, that he has organised demonstrations at Zimbabwe House and sent e-mails inviting individuals (with examples of those e-mails) and that his commitment to the democratic struggle is unquestionable. The appellant is a committee member and deputy secretary and is active in both positions. There are also letters from the MDC London branch, chairperson and the secretary over a period between October 2018 and August 2020 confirming that the appellant participates in protests against the government and fundraising for the MDC, stating that the appellant was elected as a committee member in March 2019 and vice secretary subsequently. There are letters from other MDC members making similar points, including the fact that the appellant has played a big part in fundraising, plays a big part in ZHRO and at the vigil he is named for manning the table and handing out fliers and getting people to sign petitions. MDC London branch monthly meeting minutes confirm his name in attendance and as vice secretary and a committee member and also the MDC UK website shows his name as a member and a Google search also shows his name as a member. There is also evidence from the Zimbabwe Vigil Coalition confirming that he is a political activist and regular attendee since 2011. There is further evidence in support from ZHRO showing his attendance and attesting to his activities and also from ROHR.

43. There is also evidence of the appellant's activism on the internet, including a number of internet articles written by him concerning oppression in the regime and criticising the President, making points about a number of problems in Zimbabwe, including the healthcare system and human rights violations and extreme poverty. There are

also internet press articles in which the appellant is named and photographed as being involved in antiregime activities and speaking out against the regime and also showing him at antiregime protests at the Zimbabwe Embassy and showing him quoted in The Zimbabwean as criticising the President. There are a number of his antiregime tweets on Twitter provided in the bundle and also antiregime posts on Facebook. One example of the government activity shows a Zimbabwean government social media account asking for information on a photograph of an anti-regime protest. The appellant was in that photograph with others. The clear intention of that request was to find those who were protesting against the regime and keep a record of their activities, if not prosecute them.

44. In January 2019 he received threatening e-mails/tweets from unknown individuals.

45. In June 2018 the Home Office arranged an interview for the appellant with Zimbabwean officials. He said that the officials had a file with his photograph in it and asked him information about his background and he was told he was lying about his reason for being here and spreading lies about the Zimbabwe government. He was very concerned that the officials knew about his asylum claim and he rang the Zimbabwean Embassy following this and they said they had not sent the officials. His MP asked the Home Office for details as to why the authorities had visited him but they refused to disclose this and he believed he had been placed at greater risk through this and that the authorities are aware of his activities.

46. It is necessary for us to assess the credibility of the appellant's claim as to his sur place activities. We do this bearing in mind on the one hand the adverse credibility findings made by the judge in other respects of his claim, in the hearing at 2016, but noting also that the judge did accept that he was engaged in sur place activities. We also bear in mind the fact that none of the witnesses attended to provide oral evidence and therefore were not available for cross-examination by Mr Tufan. That must weaken the force of their evidence. We also bear in mind that the appellant, given his problems of extreme depression and PTSD as it has been found in the medical evidence, to which we shall return later, is properly to be regarded as a vulnerable witness and that is relevant to such matters as the hesitation he expressed in describing his role, in cross-examination, and also on the lack of clarity in his evidence about the various parties making up the MDC Alliance.

47. Taking these matters together and bearing in mind in particular the cumulative effect of the evidence as to sur place activities, we accept that he has been engaged and is engaged as his claim as an active member of a number of organisations, with a formal role in several of them, in criticising the Zimbabwean regime and attending meetings, organising demonstrations and being active on the internet in those criticisms. He can properly be regarded as having a significant MDC profile, and that is relevant to headnote 5 of CM. As to how he would be perceived, the main relevant provisions in the CPIN to which Ms Solanki drew our attention were in the context of treatment of journalists, and we agree with Mr Tufan that it is difficult to see that the appellant can properly be described as a journalist. He is certainly a

person who is active on the internet and on Twitter with regard to the expression of his views about the regime, but that does not seem to us to amount to him being a journalist. It is however relevant to note from the Freedom House Report from which there is an excerpt at paragraph 10.1.2 of the CPIN that online journalists and ICT users faced regular harassment, intimidation and violence for their ongoing activities in the past year, and it seems to us that the appellant can properly be regarded as coming within this category.

48. In addition there is a section in the second report of the expert Dr Cameron which describes first of all the Cyber Security and Data Protection Bill published in May 2020. It is said that the definition of crimes is described in such poor terms that the bill will allow the government to arrest people because they have said something on a social media platform to criticise the government or say something that is unfair to government. We note however that this appears still to be in bill form only. However Dr Cameron goes on to observe that Zimbabwe has long maintained close relations with the Chinese who are already helping the Zimbabwe government keep a closer eye on its citizens, including partnership with a Chinese facial recognition company to create a surveillance network similar to the one deployed to monitor the Uighurs in Xinjiang. It is said at paragraph 75 that it has been a recognised strategy of ZANU-PF for many years to send intelligence agents to infiltrate expatriate communities within the UK. She is of the opinion that the public profile of the appellant, established while residing in the UK, is at such a level whereby he will have been identified by Zimbabwean intelligence agents as a person engaged in political descent from within the UK and that his activities between April 2019 and July 2020 will have further underscored him as a defender of human rights in Zimbabwe, a supporter of the MDC and an outspoken criticism of the Zimbabwean government.

49. It is also relevant to note the points made at paragraph 25 of Ms Solanki's skeleton, including that during protests WhatsApp became inaccessible suggesting government interference, a pastor posted critical comments on social media and this led to his arrest, the Ministry for Cyber Security was established in 2017 and the government said it needed to respond to threats against the state by the use of social media, physical violence continued and people were arrested by security forces during protests.

50. We have read the expert report with care. It is suggested there that the country guidance is now out of date and that the evidence which is set out in detail of the nature and activities of the regime in Zimbabwe is that political opposition continues to be subjected to intimidation and harassment by the authorities with impunity. She was of the view that the appellant's profile ensured that he would attract the negative attention of the authorities on return to Zimbabwe and would be at high risk of state persecution and harm on return. She is also of the view that his significant online and public political profile will have come to the attention of the Zimbabwean intelligence authorities within the UK who will continue to monitor his activities and he will be identified by the CIO at the airport in Harare as a failed

asylum seeker, an overt critic of the government of Zimbabwe and a member of the MDC political opposition.

51. These two reports of Dr Cameron's are detailed and fully sourced. She cites a range of sources to support the evidence that she provides of the situation in Zimbabwe. We find this a credible and helpful report and we read it of course together with the CPIN which itself paints a rather gloomy view of the situation in Zimbabwe.

52. It is not a case where we consider we need to contemplate going as far as considering whether we have to apply the SG (Iraq) guidance and not follow the country guidance in CM. It is relevant to note that CM had nothing to say about internet activity and risk on that account, and it is not departing from CM for us to take into account the evidence which we accept of the risk of surveillance by the authorities in respect of the appellant and the likelihood of their being aware of his activities. We take that together with the profile he has of significant involvement in the MDC and opposition parties and the wealth of evidence to show what the nature and the extent of that opposition is, as giving rise to a sufficient degree of likelihood to put him at real risk of this coming to the authorities' attention. A simple Google search on his return would reveal a range of activities which would cause him to be of adverse interest to the Zimbabwean state. Accordingly we find that on the particular facts of this case and in accordance with the country guidance in CM and bearing in mind the evidence as set out in the CPIN and the expert report, the appellant is a person who faces a real risk on return to Zimbabwe and as accordingly his appeal against the refusal of international protection succeeds.

Medical Issues

53. The appellant has provided medico-legal reports from Dr Burman-Roy, the first dated January 2019 and the second dated July 2020.

54. In the first report Dr Burman-Roy diagnoses PTSD and severe depressive episode. She considers that it would not be sensible to commence trauma focused therapy while the appellant's situation and future remain uncertain. He needs trauma focused psychological treatment and this would involve a combination of antidepressant medication and a high intensity psychological intervention. Dr Burman-Roy is of the view that the appellant's prior detention had caused significant detriment to his mental health and caused his symptoms of PTSD and depression and his sense of hopelessness is ongoing if he has not reached a point of safety. The appellant reported difficulties with memory and concentration. Dr Burman-Roy recommended that he be treated as a vulnerable witness, and that is a point that as noted above we have borne in mind. If separated from his family this would have a detrimental effect on him.

55. In the second report of Dr Burman-Roy the appellant had reported two separate incidents during which he came close to suicide, the first was two weeks prior to the sad death of his wife and the second time was after his wife died. On a former

occasion his wife opposed the idea of them both ending their lives together and on the second occasion he called his counsellor and with her help was able to stop himself from taking his life. Testing and examination showed that his depression was severe and he continued to fulfil the ICD-10 criteria for a diagnosis of PTSD and severe depressive episode. He would continue to benefit from the treatment options as highlighted in the earlier report but due to his significant social stresses Dr Burman-Roy believed that he might see limited benefit from those treatments at the moment. His recent bereavement and increased alcohol use would also make it more difficult for him to appreciate fully the benefits of treatment and the main priority at the time should be to help him stop regular alcohol consumption and grieve appropriately the death of his wife. Once those elements have been addressed it would be important that he receive treatment for his underlying mental health conditions and hopefully with social stability and adequate treatment his mental health might improve significantly. Without treatment his mental health would deteriorate and the importance of professional care and treatment would be more significant. Dr Burman-Roy noted that bereavements can result in substantial and long lasting damage and the appellant's chronic instability and fears might have a long lasting impact on prognosis and ability to recover. He has intermittent suicidal ideation and is receiving professional support and intends to end his life if forcibly removed.

56. The CPIN refers to a critical shortage of psychiatrists and the absence of government provision of psychological treatment in primary care in Zimbabwe, shortages of food and fuel and drugs and the lack of personnel, serious health gaps in psychiatric care and a shortage of psychotropic drugs and human resources. Mirtazapine is unavailable and people with mental disabilities are not properly diagnosed and not receiving adequate therapy. There are few certified psychiatrists working in public and private clinics and teaching in the country and getting access to mental health service is reported by NGOs as being slow and frustrating. People with mental disabilities suffered from extremely poor living conditions due in part to shortages of water, clothing, food and sanitation.

57. It is argued on the appellant's behalf that bearing in mind the shift in the legal test as set out in AM (Zimbabwe) [2020] UKSC 17 he would not receive appropriate treatment and on the evidence there would be a lack of access to treatment which would result in a risk of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy. In the alternative Ms Solanki draws our attention to the tests set out in J [2005] EWCA Civ 629. There among other things it is said that an Article 3 claim can in principle succeed in a suicide case and where the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is not objectively well-founded, that will tend to weigh against there being a real risk that removal will be in breach of Article 3. The decision maker is required to have regard to whether the removing and/or the receiving state have effective mechanisms to reduce the risk of suicide and again if there are effective mechanisms that will weigh heavily against a claim that removal will violate the Article 3 rights of the claimant.

Reference is also made to what was said in Y (Sri Lanka) [2009] EWCA Civ 362, as to whether there is any genuine fear which the appellant may establish albeit without an objective foundation is such as to create a risk of suicide if there is an enforced return.

58. In our view this case is not one which meets the AM (Zimbabwe) test. We accept that there would be difficulties for the appellant on return to Zimbabwe in terms of the mental health problems that he has and the relative lack of treatment and medication. But the test remains a very high one, being that of having to show a real risk of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy. It is relevant that though he thought of suicide on two previous occasions, on neither occasion did he go ahead. The existence of a suicide risk, as we accept there is, is not sufficient in our view for the tests set out in cases such as J and Y to be satisfied. The claim to be unremovable on health grounds is not made out.

59. The third issue is that of Article 8 of the European Convention on Human Rights.

60. Initially much weight was understandably attached to the argument that the appellant had established an Article 8 claim on the basis of his relationship with his wife. Tragically that claim can no longer be maintained in light of her death earlier this year. It is argued that there are nevertheless very compelling reasons for the deportation order to be revoked, bearing in mind as provided in section 117C(6) of the Nationality, Immigration and Asylum Act 2002 that in the case of a foreign criminal such as the appellant who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances over and above those described in exceptions 1 and 2. The very exceptional circumstances argued in this case relate to such matters as the appellant's inability to integrate into Zimbabwe in line with the guidance in Kamara bearing in mind the amount of time he has been away from Zimbabwe and the health problems that he experiences. Reference is also made to the caring role he has in the life of his wife's mother who has health problems, including having suffered a stroke in 2017 and suffering with low mood, osteoarthritis/pain and other conditions. We accept the evidence that they see each other every day and are in regular telephone contact, that he helps her with shopping, cleaning and other support. We bear in mind also the point made by Ms Solanki concerning delay on behalf of the respondent between 2009 and 2014 and the absence of family or network in Zimbabwe for the appellant and the risk of destitution. Nevertheless again we do not consider that the claim in this regard is made out. The appellant has been away from Zimbabwe for a long time, he has a private life we accept in the United Kingdom and in particular with regard to the care he provides for Mrs Quartey, his wife's mother. We accept that there would be difficulties in reintegration bearing in mind his health problems and his lengthy absence from Zimbabwe, but he did spend a number of his earlier years there and cannot be said to be somebody who was not able to integrate into that country. Accordingly the appeal is dismissed in this regard also.

61. We therefore allow the appeal under the Refugee Convention but dismiss it in respect of the medical claim under Article 3 and the Article 8 claim.

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 him or any member of his 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.

Signe  Date 23 December 2020
Upper Tribunal Judge Allen