Upper Tribunal
(Immigration and Asylum Chamber) **First-Tier Tribunal No: RP/00003/2020**

THE IMMIGRATION ACTS

Hearing at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 23rd August 2022	**On the 30 March 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

CM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Mohammed Moksud, Counsel instructed by Tann Law Solicitors
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction has been made previously. As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. 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.

1. The appellant is a national of Zimbabwe. He claims to have arrived in the UK in September 2002, aged 20. On 29 September 2010 the appellant claimed asylum. On 19 October 2010 he was granted refugee status. On 24 September 2015 he applied for Indefinite Leave to Remain. However, before a decision was reached upon that application, on 21 May 2018 the appellant was convicted at Wolverhampton Crown Court, of 'Conspiracy to Defraud'. On 16 July 2018 he was sentenced at Birmingham Crown Court to 4 years' imprisonment.

2. On 9 January 2020 a deportation order was made in accordance with section 32(5) of the UK Borders Act 2007 and on the same day, a decision was made to refuse the appellant's protection claim and human rights claim and to revoke the appellant's protection status. The appellant's appeal against the decision to revoke his protection status and to refuse his protection and human rights claims was dismissed by First-tier Tribunal Judge Kemp MBE for reasons set out in a decision promulgated on 18 January 2021. The appellant was granted permission to appeal and the decision of Judge Kemp was set aside by Upper Tribunal Judge Grubb.

3. The appeal was listed before me as a resumed hearing following the error of law decision of Upper Tribunal Judge Grubb promulgated on 31st March 2022. The appeal was adjourned for the decision to be re-made in relation to cessation (under Article 1C(5)) and Articles 3 and 8 ECHR, by the Upper Tribunal.

The issues

4. The issues before me are:

a. Whether the appellant has, as the respondent contends, ceased to be a refugee.

b. Whether the deportation of the appellant would be in breach of Articles 3 and 8 ECHR. At the outset of the hearing Mr Moksud confirmed the Article 3 claim is based upon the risk of destitution and or the appellant's mental health. The Article 8 claim is based upon the appellant's relationship with [JC], a national of Zimbabwe who has refugee status in the UK.

The respondent's decision

5. Before I turn to the evidence before the Tribunal it is useful to summarise the respondent's reasons for the decision to revoke the appellant's refugee status and to refuse his protection and human rights claims as set out the decision dated 9th January 2020.

6. The appellant's immigration history is set out at paragraphs [4] to [11] of the decision. The respondent noted that on 29th September 2010 the appellant claimed asylum on imputed political grounds. The respondent said:

> "… you were granted refugee status because the extant caselaw at the time, RN (Returnees) Zimbabwe CG [2008] UKAIT 00083, stated that people who were unable to demonstrate loyalty to the ruling ZANU-PF party faced a real risk of political persecution upon return in 2010."

7. The respondent went on to refer to the representations made on behalf of the appellant and the UNHCR in response to the notification of the intention to revoke the appellant's refugee status. The respondent highlighted the matters that were relied upon when the appellant made his claim for asylum, and went on to refer to the Country Guidance set out in CM (EM Country Guidance: disclosure) Zimbabwe [2013] UKUT 59 (IAC) and the respondent's Zimbabwe CPIN 'Opposition to the government' published in February 2019. The respondent concluded:

> "… It is considered, therefore, that having considered the grounds upon which you were originally granted refugee status, the submissions made on your behalf and the comments of the Office of the UNHCR against the current independent country evidence, paragraph 339A(v) of the Immigration Rules which mirrors Article 1C(5), applies to your case and your

> refugee status should be revoked because you can no longer, because the circumstances in connection with which you had been recognised as a refugee have ceased to exist, continue to refuse to avail yourself of the protection of your country of nationality."

8. The respondent went on to refer to the appellant's conviction at Wolverhampton Crown Court on 21st May 2016 of Conspiracy to Defraud and the sentencing remarks of His Honour Judge Berlin on 16th July 2018 leading to a four-year sentence of imprisonment. The respondent refused the appellant's protection and human rights claims. She concluded that the appellant does not fall within any of the exceptions to deportation set out in s33 of the UK Borders Act 2007 and s32(5) therefore requires the respondent to make a deportation order against the appellant.

The appellant's evidence.

9. I was provided with a copy of two bundles that were relied upon by the appellant before the First-tier Tribunal. The first comprises of pages 1 to 10 followed by section A (Certificates), section B (OASys report), section C (NOMS record) and section D (objective evidence). The second bundle comprises of witness statements (AB1 – AB7), a Country Expert report by Professor Aguilar (E1 to E21) and a report by Dr Agatha Benyere-Mararike, a Chartered Psychologist.

The appellant

10. I heard evidence from the appellant. He did not require the assistance of an interpreter. The appellant adopted his witness statements. He was cross examined by Mr Williams. His evidence is a matter of record and I only refer to his evidence insofar as it is necessary to do so to set out my reasons.

11. The appellant claims he has been in a serious relationship with [JC] and they have been in a relationship since 2012. He refers to the courses that he completed during his incarceration and lists the relatives that he has in the UK and the support provided to him. The appellant refers to the

treatment he has received from his GP and the prescription for Mirtazapine he has received, and the referral for therapy.

12. As far as the appellant's relationship with [JC] is concerned, the appellant accepted in cross examination that the OASys report makes reference to the appellant being in a relationship for about 5 years with [LT], and him speaking to her by phone. He had claimed he had no plans to cohabit with [LT] until his immigration status was resolved. The appellant accepted [LT] and [JC] are two different individuals and that he was in a relationship with both at the same time. He said that he is now only in a relationship with [JC], although they do not live together.

13. Mr Williams asked the appellant why the family members that currently support the appellant in the UK, could not continue with that support if the appellant is removed to Zimbabwe. The appellant said they live with their own families and although he can be accommodated and fed in the UK without any additional cost, they would not be able to provide that support if he was not living here. The pocket money that he states he receives is something in the order of £5 to top up his mobile phone. The appellant said the family members would be unable to send small amounts to him in Zimbabwe because of the cost.

14. The appellant said he would be unable to work in Zimbabwe because his life will be at risk. He claimed that his health and the fact that he has nowhere to live, would also prevent him from being able to secure employment. The appellant explained that he was on medication to assist with his mental health until about three months ago. The prescription ended on the advice of his doctor.

<u>Other evidence</u>

15. In addition to the evidence of the appellant, I have in the papers before me a witnesss statement dated 26th November 2020 made by [JC]. She did not attend the hearing to give oral evidence.

16. As I have already set out, I have also been provided with an expert report prepared by Professor Aguilar regarding the risk upon return to Zimbabwe dated 9th October 2020, and a report prepared by Dr Agatha Benyere-Mararike, following a psychological assessment of the appellant.

Findings and conclusions

17. Section 32 of the UK Borders Act 2007 defines a foreign criminal, a person not a British citizen who is convicted in the UK of an offence and, inter alia, sentenced to a period of imprisonment of at least 12 months. Section 32(4) of the 2007 Act sets outs out the clear proposition that deportation of a foreign criminal is conducive to the public good. That is a statement of public policy enacted by the legislature, which the courts and tribunals are obliged to respect. Section 32(5) of the 2007 Act requires the Secretary of State to make a deportation order in respect of every foreign criminal, subject to the exceptions set out in section 33. Insofar as is relevant that is:

> "(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–
>
> (a) a person's Convention rights, or
>
> (b) the United Kingdom's obligations under the Refugee Convention.
>
> …
>
> (7) The application of an exception—
>
> (a) does not prevent the making of a deportation order;
>
> (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;
>
> but section 32(4) applies despite the application of Exception 1 or 4.".

Cessation of Refugee Status

18. Where a person has been recognised as a refugee as set out in Article 1A of the Refugee Convention, that status can only be lost in accordance with Article 1C of the Convention. In EN (Serbia) v SSHD [2009] EWCA Civ

630, Stanley Burnton LJ, confirmed that a durable change in conditions in a country of nationality that results in a refugee having no genuine fear of persecution on his return will qualify as a relevant change in circumstances for the purposes of Article 1C(5), [95] – [96]. The requirement is not one of "fundamental change", although Stanley Burnton LJ noted that what may fairly be considered to be a durable change in conditions in a country of nationality that results in a refugee having no genuine fear of persecution on his return, may fairly be regarded as fundamental.

19. The onus is on the respondent to show that there has been a change in circumstances such that the refugee convention ceases to apply to the appellant. I must consider whether the respondent has established that the appellant can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

20. Mr Moksud refers to the letter from the UNHCR that is at Annex T of the respondent's bundle. On 24th October 2019, the UNHCR referred to the trigger of cessation clauses, and noted there must be a clear connection between the fundamental and durable changes in Zimbabwe being relied upon by the respondent, and the individual circumstances of the appellant addressing his particular cause of fear of persecution. Mr Moksud submits the UNHCR was concerned that the current situation in Zimbabwe does not warrant the application of Article 1C(5) of the refugee Convention.

21. In reaching my decision, I have had regard to the representations made by the UNHCR. The UNHCR draws attention to reports of politically motivated violence long after the 2013 elections and urged the respondent to carefully assess whether fundamental and durable changes have indeed occurred in Zimbabwe. Based upon the background material cited in its report, the UNHCR claimed that protection concerns persist in Zimbabwe and should be taken into consideration before any decision is made to cease the appellant's refugee status. It is said that there should be a

thorough assessment of whether fundamental and durable changes have occurred in Zimbabwe, a full assessment of the current human rights situation there and a full assessment of the appellant's existing connections in Zimbabwe, including a thorough assessment of any continuing family ties. I agree respectfully with the UNHCR that the situation in Zimbabwe remains difficult and I agree that some people who have been recognised as refugees might still be in need of international protection. That is something to decide on a case-by-case basis when the need arises.

22. In his witness statement the appellant maintains he fears persecution from Zanu-PF, the government and their agents. He maintains he was granted refugee status on the basis of his imputed political opinion, based on his association with his uncle, who I refer to as [Mr M], and who is described by the appellant as "a very active MDC member in the UK". He claims that in January 2020, he was visited by an official from the Zimbabwean Embassy. The official confirmed he had come to establish the appellant's nationality and confirm that he is Zimbabwean. The appellant got the impression that he already had information about the appellant's immigration status from the nature of the questions he was asked. The appellant claims he confirmed that he had been granted refugee status in the UK. The appellant claims the fact the official knew of the appellant's situation, places him at an enhanced risk of persecution on return.

23. The circumstances in connection with which the appellant has been recognised as a refugee are set out in the respondent's decision. They comprise of a combination of the general conditions in Zimbabwe and aspects of his personal characteristics. The appellant was born in Zimbabwe and arrived in the UK in September 2002, aged 20, as a visitor. He applied, in April 2003, for leave to remain as a student. He was granted leave to remain as a student successively until 31st December 2007. It was not until after a number of applications for further leave to remain had been refused by the respondent, that in September 2010, the appellant claimed asylum. The appellant was granted refuse status

because the country guidance in force at the time, RN (Returnees) Zimbabwe CG [2008] UKAIT 00083 (IAC) held that people who were unable to demonstrate loyalty to the ruling ZANU-PF party faced a real risk of political persecution upon return.

24. I do not accept the appellant's claim in his witness statement that he was granted refugee status on the basis of his imputed political opinion founded upon his relationship with his uncle, [Mr M], and who the appellant claims, was a very active MDC member in the UK.

a. There is nothing in the respondent's records that are referred to in paragraph [17] of the respondent's decision that suggests the grant of refugee status made to the appellant was founded upon the appellant's relationship with [Mr M].

b. As the respondent said in paragraph [9] of her decision, contrary to what is claimed by the appellant, he never claimed that he had to flee Zimbabwe due to a well-founded fear of persecution because of his associations with his uncle. The appellant's arrival in the UK for *"a holiday"* and his decision to wait eight years before claiming asylum and only doing so once a number of applications for leave to remain as a student were refused, do not support his claim.

c. The appellant claimed his uncle was a committee member of the MDC and that in the UK, he was a committee member of the Walsall branch of the MDC. However, the website shows the appellant's uncle does not hold an official role with the branch.

d. The respondent's records show the appellant's uncle was granted refugee status on appeal in 2009 under the same contemporaneous country guidance as the appellant.

25. I accept, as the respondent claims, the appellant was granted refugee status on 19 October 2010 because of the country guidance in force at the

time; RN (Returnees) Zimbabwe CG [2008] UKAIT 00083. The appellant's claim for international protection was advanced on the basis that he was not a supporter of any political party whilst living in Zimbabwe. The appellant claimed that whilst living in Zimbabwe he was occasionally asked to demonstrate loyalty to the Zanu-PF by attending rallies and being asked if he had a membership card. He confirmed that he did comply with the requests but would not wish to do so in the future. He claimed that he would like to join the MDC in the UK, but was too scared to do so.

26. In his witness statement dated 26th November 2020, the appellant claims he lived with his uncle between 2002 *(when the appellant arrived in the UK)* and 2010. He claims that in the period 2008 to 2010, he attended gatherings, meetings and demonstrations organised by the MDC UK. I do not accept, even to the lower standard, that very vague and general claim made by the appellant that is completely devoid of any substance. The appellant fails to provide any details of the gatherings, meetings and demonstrations that he claims to have attended, and without more, I do not accept his evidence. The appellant accepts he was not a supporter of any political party whilst he lived in Zimbabwe. Although he claimed he would like to join the MDC in the UK, I find, to the lower standard, that the appellant has not taken part in any MDC activities in the UK and has no desire to do so. He had every opportunity to do so between his arrival in the UK in 2002 and the death of his uncle in 2017, but he chose not to. That is in my judgment because he was never a supporter of a political party when he lived in Zimbabwe and he is not a supporter of a political party now. There is in my judgment no risk to the appellant arising from any connection he has to his uncle. As Mr Williams submits, on the appellant's account, his uncle [Mr M] passed away in 2017 and the appellant does not share the same surname as his uncle. The appellant would not on any view be readily associated with [Mr M].

27. In considering whether the circumstances in connection with which the appellant has been recognised as a refugee have ceased to exist, and whether he can continue to refuse to avail himself of the protection of the

country of his nationality, it is convenient to refer to the country guidance decision in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC) ("CM"). The Upper Tribunal accepted that there have been some changes in the general political situation in Zimbabwe since the appellant left the country in 2002. In CM, the Upper Tribunal concluded there had been a durable change since RN (Returnees) Zimbabwe CG [2008] UKAIT 00083.

28. The guidance is as follows:

> (2) The Country Guidance given by the Tribunal in EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) on the position in Zimbabwe as at the end of January 2011 was not vitiated in any respect by the use made of anonymous evidence from certain sources in the Secretary of State's Fact Finding Mission report of 2010. The Tribunal was entitled to find that there had been a durable change since RN (Returnees) Zimbabwe CG [2008] UKAIT 00083….
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> (3) The only change to the EM Country Guidance that it is necessary to make as regards the position as at the end of January 2011 arises from the judgments in RT (Zimbabwe) [2012] UKSC 38. The EM Country Guidance is, accordingly, re-stated as follows (with the change underlined in paragraph (5) below):
>
> > (1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.
> >
> > (2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).
> >
> > (3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the

evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.

(4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.

(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), 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, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.

(6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.

(7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.

(8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.

(9) The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.

(10) As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category,

> the significance of which will need to be assessed on an individual basis.
>
> (11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN … and remains valid.

29. Mr Moksud submits that applying the country guidance in CM, the appellant is an individual who would be returning from the United Kingdom after a significant absence, to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. The Country guidance makes it clear that such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty.

30. Mr Moksud submits the respondent does not challenge the expertise of Professor Aguilar. Professor Aguilar states the general political situation in Zimbabwe is that of an unstable country, impoverished by natural disasters, and by administrative laundering of money abroad without respect for ordinary citizens. Mr Moksud submits Professor Aguilar expresses the clear opinion that given the appellant's prominence and evidence of his convictions, it is most likely that the appellant will be interviewed or detained on arrival at Harare airport.

31. In his report, Professor Aguilar claims the political situation in Zimbabwe is not stable and that the persecution and violence against protestors in Zimbabwe during January 2019 has been the strongest and most violent seen in Zimbabwe for the past ten years. I attach some, but very limited weight to the opinions expressed by Professor Aguilar;

a. Professor Aguilar claims, at [37] and [38], that a search for the appellant's name using google Zimbabwe immediately reveals "the involvement of the appellant in several fraud schemes and the search shows his conviction as well as information on his activities in Zimbabwe *(my emphasis)* In fact, as Mr Moksud acknowledges the 'hyperlink' referred to in the report, does not in fact lead to any information about the appellant's activities in Zimbabwe. The hyperlink simply refers to the appellant's involvement, together with the involvement of other Zimbabwean nationals, of a plot to pocket £1,000,000 through a sham maternity allowance racket that led to the arrest and conviction of the appellant.

b. Professor Aguilar relies upon the erroneous reference to what the internet search of the appellant's name reveals to support his claim:

   i. that such abundant Internet entries in the UK and Zimbabwe have alerted the Zimbabwean authorities of the appellant's convictions and have attracted attention by the police towards him; [39]

   ii. that following routine checks on passengers arriving in Harare and/or charter flights with deported Zimbabweans, the authorities, through the CID will take a particular interest in the appellant on arrival; [41]

c. Professor Aguilar claims that the fact that the appellant has been convicted in the UK and that his activities are well documented in the newspapers would have brought him to the attention of the Zimbabwean security forces. The appellant has been interviewed by an official from the Zimbabwean embassy and his details would have been passed to the CID in Harare. It is likely that the appellant will be interviewed or detained by the CIO on arrival at

Harare airport. The background or objective material to support that opinion is not set out in the report. Professor Aguliar fails to engage with the country guidance set out in HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 in which the Upper Tribunal found that 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. Neither does Professor Aguilar engage with the guidance set out in CM that 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. 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.

d. Professor Aguilar bases his opinion on the appellant's personal political position vis-à-vis the current ZANU-PF government. I have found the appellant was never a supporter of a political party when he lived in Zimbabwe and he is not a supporter of a political party now.

e. Professor Aguliar's opinion that the appellant faces interrogation, arrest and detention without trial due to his uncle's political activity as well as suspicion that the money he got from fraud has been used to fuel anti ZANU-PF activities in the UK and within Zimbabwe, is nothing more than speculation. As I have said, on the appellant's account, his uncle [Mr M] passed away in 2017 and the appellant does not share the same surname as his uncle. The appellant would not on any view be readily associated with [Mr M]. The media reports available make no reference to the

appellant supporting or funding anti ZANU-PF activities in the UK. It follows that the opinion that the appellant faces a lengthy detention without trial due to his convictions, his lengthy stay outside Zimbabwe, and his association with a political figure that acted against ZANU-PF, is undermined.

f. Professor Agular claims the appellant is known to Zanu-PF as he claims to have attended rallies in Zimbabwe, when forced, and there is therefore information about his political involvement in Zimbabwe. If the appellant had indeed attended rallies it is difficult to see how those activities could be interpreted as a ZANU -PF supporter who betrayed the party and was a member of the opposition abroad, when, as I have found, the appellant has not been involved in any political activity in the UK.

g. Professor Aguilar claims the appellant will not have any state aid in order to find accommodation on arrival in Zimbabwe and due to the economic crisis, the prospect of a job will be difficult. Professor Aguilar fails to have regard to any familial support that may be available to the appellant.

32. As to the position in relation to the risk at the airport, in CM, the Tribunal considered what happens upon return at Harare airport, and in particular, the screening procedures. At paragraph [205] the Upper Tribunal said:

> "205. To return to the position at the point of return of the airport, we are fully satisfied that the fresh evidence completely fails to disclose any change in the position as described in HS, as tending to suggest any heightened scrutiny of returnees. On the contrary, the evidence of Ms Scruton, together with that of the 7 returnees who featured in the 2010 FFM Report, clearly shows no justification for regarding low level MDC supporters as the sort of activists, who the HS Tribunal thought likely to fall foul of the CIO. We will address this issue later, when considering the facts of the appellant's case. But it would be wrong not to observe here that there is no evidence to show the CIO are, for example, likely to detain at the airport and torture a person for having attended a MDC branch meeting in the United Kingdom."

33. I accept, as Mr Williams submits, there is no proper evidential basis upon which I can conclude that the appellant would be detained on arrival. There is no reason for the appellant to be regarded by the CIO as an MDC activist on return. On the evidence before me, even to the lower standard, I find that the fact of the appellant having made an asylum claim in the UK, even if that is known by the authorities in Zimbabwe, is not something that in itself will give rise to an adverse interest in the appellant on return.

34. Mr Williams accepts the appellant's home area, Rusape, is located in the Makoni District in the Manicaland Province. It is a high-density area within a rural area. The respondent's CPIN 'Zimbabwe: Opposition to government' of September 2021 records that the proportion of violations recorded in Harare and Manicaland has increased (from 24.3% in 2019 to 28.2% in 2021 in Harare and from 9.0% to 12.2% in Manicaland). However, Mr Williams submits the appellant can internally relocate to low or medium density areas of Harare, Bulawayo or in Matableleland generally. Mr Williams submits that once the appellant has passed through the airport he has family support available to him. His evidence regarding the death of his parents has been inconsistent throughout, and is at odds with the information he provided to the Probation Officer as set out in the OASys assessment. Mr Williams invites the Tribunal to find that the appellant is in touch with his family, and his parents remain in Zimbabwe. The appellant would be able to work in Zimbabwe and establish himself with the support of his family. Mr Williams submits that it is clear therefore that the respondent has established that the circumstances which justified the grant of refugee status to the appellant have ceased to exist, and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention.

35. Mr Moksud submits the appellant comes from a rural area where there is a significant ZANU—PF presence. Mr Moksud submits the country guidance makes it clear that internal relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is, as

here, Shona. Internal relocation from a rural area to Harare or Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate. Mr Moksud submits the appellant does not have any family support in Zimbabwe and has been away from Zimbabwe for over 20 years.

36. In CM, the Upper Tribunal confirmed that relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona. Internal relocation from a rural area to Harare or Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves, will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.

37. The appellant claims that in Zimbabwe he would not have the support that he receives in the United Kingdom. He is accommodated by his family. In Zimbabwe he would need to find accommodation and his family would have to pay for that. The appellant claims he has no close family members in Zimbabwe as both of his parents are deceased. The maternal aunt who looked after the appellant when he was growing up, is said to have passed away in 2015. The appellant believes his mother's cousins remain in Zimbabwe but he has never had any contact with them, and does not know their names.

38. I note from the outset that there is no documentary evidence before me to evidence the death of the appellant's parents. I acknowledge that there is a lower standard in asylum claims and no requirement for corroboration, but if there is no good reason why evidence that should be available is not produced, I am entitled to take that into account in the assessment of the credibility of the account. The appellant's written and oral evidence regarding the death of his parents and his connections to Zimbabwe is inconsistent and I find that the appellant is not a credible witness in this

respect. The appellant has in my judgment sought to paint a picture of someone with only the loosest of connections to Zimbabwe to support his claim that he would be without support in Zimbabwe and that it would be unduly harsh for him to internally relocate.

39. In cross examination, the appellant said that he was informed of the death of his father, in 2008, by his sister. He cannot remember when his mother passed away, but it was after his father. The appellant said that he had not been in contact with either of his parents since he arrived in the UK in 2002. The appellant was referred to paragraph [14] of his witness statement dated 4 December 2020 in which he claimed both his parents passed away in 2015. The appellant claimed that he had no contact with his parents and relied upon information provided to him by relatives in the UK. He said he received the news about his parents death in 2015. Mr Williams referred the appellant to paragraph [37] of the report of Dr Benyera-Mararike which records the appellant telling her that his parents died in 2011. The appellant accepted he may have given her that date, and went on to explain that he has been getting different information from different people and nobody has the proper date for the death of his parents. Mr Williams then referred the appellant to the OASys Assessment that he relies upon. In section 6 (Relationships), it is recorded:

> "[CM] states that he has no contact with parents or sister since being in custody as they all still live in Zimbabwe, prior to coming into custody he would make regular phone calls to his family back in Zimbabwe but in custody, it is very expensive, he has a cousin in this country who at this time is living in his home…."

The appellant claimed that he thought he was being asked about when he was living in Zimbabwe. He said his parents were still alive when he first arrived in the UK. He claimed he had a happy childhood in Zimbabwe and when he first arrived in the UK he was still in contact with his mother. He thinks the last time he spoke to his mother was in 2003/4 and she was still in Zimbabwe at that time. He was told by his aunt that she may have gone to South Africa for medical attention to treat cancer. He could not recall when that was. The appellant denied that he is being untruthful regarding

the death of his parents. He said that he has been trying to establish their whereabouts and although different people tell him different things, he knows they are deceased.

40. I find the appellant is not being truthful and giving an honest account regarding his parents. The death of the appellant's parents is undoubtedly a significant milestone in his life and background, and I do not accept the appellant's explanation that the inconsistencies in his account arise because he has no contact with his parents and relied upon information provided to him by relatives in the UK. His account of when his parents passed away is littered with inconsistencies as I have set out. It is significantly undermined by what is recorded in the OASys Assessment. That was a report that was being prepared for matters entirely unconnected to the appellant's immigration status. The appellant would have no reason to lie to the author of that report and I find that the appellant, when speaking about matters entirely unconnected with his immigration status, was being entirely candid and telling the truth when he said that although he has had no contact with his parents and sister since being in custody. He was, I find, being honest when he claimed for the purposes of the OASys assessment that they all still live in Zimbabwe, and that prior to being taken into custody, the appellant would make regular phone calls to his family back in Zimbabwe. He said that he was prohibited from making calls when he was in custody because it was very expensive. That is likely to be true. I reject the appellant's account that his parents have died since he left Zimbabwe and I find that the appellant was and has remained in contact with them.

41. I accept the submission made by Mr Williams that the appellant has not established that internal relocation to any of the areas identified by the respondent would be unduly harsh. At its highest, Professor Aguilar states at [52], that because ZANU-PF is the state and as a political party is present throughout Zimbabwe, any internal relocation by the appellant will not remove the risk of persecution by ZANU-PF and the state of Zimbabwe. Professor Aguilar does not state his reasons for that opinion in view of the

country guidance and he fails to engage with the areas that have been expressly identified by the respondent. Professor Aguilar refers to a crackdown on protesters and media reports at paragraphs [26] to [29] of his report but here, the appellant has never been interested in politics and there is no reason to believe that will change.

42. I note that there are several references in CM to the challenging economic circumstances in Zimbabwe in 2012 and I am satisfied that Zimbabwe was also suffering poor economic conditions then. It is not a new development. The Upper Tribunal in CM referred to the economy of Zimbabwe having markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand had ended hyperinflation. The availability of food and other goods in shops had likewise improved, as had the availability of utilities in Harare. Although the Upper Tribunal noted those improvements are not being felt by everyone, with 15% of the population still requiring food aid, it found there has not been any deterioration in the humanitarian situation since late 2008. The Tribunal found that Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.

43. The appellant arrived in the United Kingdom in September 2002 aged 20 and although he has been absent from Zimbabwe for a significant period of time, I find that he has family including his parents that still live in Zimbabwe, and with whom the appellant remains in contact, or can re-establish contact with. I have had regard to the evidence of Professor Aguilar regarding the economic situation in Zimbabwe but the socio-economic circumstances in which the appellant is reasonably likely to find himself is not on the evidence before me, such that it would be unreasonable or unduly harsh to expect the appellant to internally relocate to Harare. As the Upper Tribunal said in CM, internal relocation from a rural area to Harare is, in general, more realistic. The appellant has acquired skills during his time in the UK that he will be able to draw upon to secure

employment. The appellant will have support available to him from his family in Zimbabwe to secure suitable accommodation, together with some support, albeit I accept limited, from those that have supported the appellant in the UK.

44. Although I have considered the risk upon return to the lower standard, I remind myself that the onus is on the respondent to show that there has been a change in circumstances such that the refugee convention ceases to apply to the appellant. Having considered the evidence before me, I find that the respondent has discharged the burden of establishing that there has been a change in circumstances such that the refugee convention ceases to apply to the appellant. I find that even on the lower standard, the appellant can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

45. I go on to consider whether his removal would breach his Convention Rights under Articles 3 and 8 ECHR.

Article 8

46. Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") informs the decision making in relation to the application of the section 33 exceptions. Section 117A in Part 5A provides that, when a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

47. The issue before me is whether the decision to refuse the human rights claim made by the appellant is a justified interference with the right to

respect for family life, in the context of the appellant's conviction and the fact that he is a 'foreign criminal' as defined in s117D(2) of the 2002 Act. The deportation of foreign criminals is in the public interest as set out in s117C(1) of the 2002 Act. As set out in s117C(2), the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

48. The respondent's bundle has within it the sentencing remarks of His Honour Judge Berlin. The Judge noted that 12 of the 13 defendants on trial were unanimously convicted on overwhelming evidence of a conspiracy to defraud the Secretary of State of maternity allowance payments. He noted the conspiracy ran over some four years from May 2011 until late August 2015 and would have produced fraudulent payments of some £720,436 if it was not stopped when it was. He noted the total maternity allowance payments actually obtained were £463,000. The judge noted the fraud was a well organised and ruthless swindle against the public purse. It was not correctly labelled as a fraud against one person, but a fraud against all of us. The judge noted innocent people's names were used to obtain the fraudulent payments and suspicion must have been initially thrown onto those individuals until the swindling pattern, through the defendants, was established by the Crown. The judge said: *"... It is clear to me from the evidence and from my own observations of you all throughout this trial that not one of you gave a moment's thought to anything but your own greedy self interests, and therefore helped yourselves in various ways to swindle a system which you thought was weak and easily exploitable, with perhaps little chance of being caught doing it. You were not concerned with such niceties as genuine complainants who may have had to wait longer for their money as a result of necessary scrutiny; or indeed with the innocent peoples whose names you hijacked. You were concerned in my view with cold cash and what you could buy with it."*. Turning to the appellant, His Honour Judge Berlin said:

> "You are a Zimbabwean national. I have read a character reference from Rev Tai(?) … who shows you to have been an active member of that church and have done some good work for it over many years. The

> reference however is silent as to whether there was knowledge of the offending and I infer that even if there was some knowledge, it was largely incomplete.
>
> You fraudulently obtained some £42,000 over a period from 6 July 2011 to 22 January 2015 in maternity allowance applications …. You are identified with 11 false maternity allowance applications, only one of which was unsuccessful.
>
> There were large sums of dishonestly obtained money going into your accounts … You used maternity certificates and payslips provided by Clemence Marijeni in applications …. The Crown points to your email address and password and also a bank card with your name being found in the boot of a Porsche Cayman car purchased in Laura Baza's name when that car was searched by officers on 16 July 2015. You tried to blame others such as Elias Nezaza who lived or lives at an address seen in some of the false applications… You no doubt realised the person who lived at that address used it, casting suspicion on others.
>
> You are, as I have said before, nobody's fool. You have a law degree from Wolverhampton University obtained in 2014 and I have no doubt at all that you played a very significant part indeed in this conspiracy over a lengthy period, and knew exactly what was on offer and what high risks you are taking…. I have placed your culpability as medium but I place it at the high end of medium. You had plainly played a significant role and were motivated by personal gain…. I am sure you knew the extent, the full extent, of this operation.
>
> The starting point for you is five years in custody, with a category range from 3 to 6 years. I reduce that figure to 4 years to reflect the lower starting point of £720,436. As to aggravating factors, you tried to blame others; your direct involvement over a lengthy period from July 2011 until 2015 shows you were well involved in this conspiracy. I increase the figure to 5 years.
>
> As to mitigating factors, you have no previous convictions and I have heard the mitigation offered, but really the best mitigation that is offered is your lack of convictions. I reduce the figure from five years to 4 years, and you will also pay the victim surcharge…"

49. Mr Williams submits the appellant the appellant has been sentenced to a period of imprisonment of at least four years and the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2 of s117C of the 2002 Act. Exception 1 does not apply because the appellant is unable to establish that there would be very significant obstacles to the appellant's integration into Zimbabwe. Exception 2 does not apply because the appellant is unable to establish that even if he is in a genuine and subsisting relationship with [JC], the effect of the appellant's deportation on [JC] would be unduly harsh. Mr Williams submits the appellant is

unable to establish very compelling circumstances over and above those described in Exceptions 1 and 2.

50. Mr Moksud submits that as far as the Article 8 claim is concerned, the appellant has undoubtedly established a strong private life during the period he has lived in the UK. He lives with his cousins and is in a relationship with [JC], who has provided a witness statement dated 26th November 2020 supporting the appellant's claim. Mr Moksud accepts [JC] has not attended the hearing of the appeal. He explained that she is working and had gone to work. Mr Moksud submits the appellant has only one criminal conviction.

51. In his witness statement dated 26 November 2020, the appellant makes reference to various aunts, uncles and cousins that he has in the UK. He also refers to various courses that he has completed. In his witness statement dated 4th December 2020, the appellant expresses remorse for his role in the crime committed. He states that he has realised his mistake and has sought to have a positive impact on the lives of the people around him including the opportunity of supporting other inmates understand the options available to them in the rehabilitation process.

52. I also have before me a witness statement made by [JC] dated 26 November 2020. She confirms she arrived in the United Kingdom in 2003 and was granted settlement as a refugee in 2014. She confirms she has been in a relationship with the appellant since 2012. She states; "*.. I consider our relationship to be serious and hope to start a family as soon is we are able to formalise our relationship."*. She states their ability to formalise their relationship is hindered by the fact that the appellant is not allowed to work and therefore unable to save any money to pay *"the bride price"*. She states they are unable to live together before their relationship is formalised because her family would not accept such an arrangement. She states that she has gone through some depressive episodes when the appellant was in prison, and there was a relapse after

she lost a close family member. She states that she is unable to attend the hearing as she will be at work.

53. The OASys assessment states in section 2.8 that the appellant maintains his innocence and only accepts that he gave a fellow countryman access to his bank account. The appellant is said to present with a low risk of serious harm. There is a risk of financial harm to the government if the appellant were to get involved in other like-minded offenders who believe it is acceptable to defraud the government. Circumstances that are likely to increase the risk include the possibility of peer pressure and the appellant feeling the need to help a fellow countryman. The risk could be reduced by completing a 'Thinking Skills Programme' for the appellant to see the ripple effect of his offending on society.

54. As to Exception 1 set out in s117C(4) of the 2002 Act, I do not accept the appellant has been lawfully resident in the UK for most of his life. The appellant was born on 17th June 1982 and arrived in the United Kingdom lawfully in September 2002 when he was 20 years old. His leave to remain as a student expired on 31st December 2007 and he was in the UK unlawfully until he made a claim for international protection in September 2010 and was granted refugee status on 19th October 2010. Of the twenty years the appellant has been in the UK, he was in the UK unlawfully for some 33 months (between January 2008 and September 2010).

55. Equally, I do not accept that the appellant is socially and culturally integrated in the United Kingdom. The question is whether having regard to his upbringing, education, employment history, history of criminal offending and imprisonment, relationships with family and friends, lifestyle and any other relevant factors, the appellant was at the time of the hearing before me socially and culturally integrated in the UK. Although the appellant has been in the UK for a significant period, the evidence before me regarding the appellant's integration is very limited. He arrived in the UK as an adult. He has undoubtedly established a good

relationship with his family and friends as set out in his witness statement. None of the appellant's family or friends attended the hearing to support the appeal. There is some very limited evidence before me of the activities the appellant has undertaken in the community.

56. There is some evidence before me of qualifications the appellant has secured during 2018 and 219, but those qualifications were secured whilst the appellant was serving his sentence of imprisonment. The only evidence before me of the appellant's employment history prior to his offending is that he worked in Aldi. He has also undertaken some voluntary work. I have borne in mind the offending history and the fact that the appellant received a lengthy term of imprisonment. The sentencing remarks that I have referred to state that appellant was involved in a conspiracy that ran over some four years from May 2011 until late August 2015. In sentencing the appellant, His Honour Judge Berlin noted the appellant fraudulently obtained some £42,000 over a period from 6 July 2011 to 22 January 2015 in maternity allowance applications. The OASys report before me states that whilst fraud is itself a low-risk offence what must not be ignored is the impact fraudulent offences against the government have a ripple effect on the wider community and that the tax-payers end up footing the costs of these cases. The OASys report states that the only motivation for any fraud offences is agreed and financial gain. The commission of the offence cannot by itself extinguish the fact that the appellant has been involved in society and thereby integrated into society in the UK during the time that he has been here. However, on the limited evidence before me, I do not accept the appellant is socially and culturally integrated in the United Kingdom.

57. In any event, even if I had accepted that the appellant is socially and culturally integrated in the UK, I am unable to find that there would be very significant obstacles to the appellant's integration into Zimbabwe. The assessment of 'integration' is not confined to the mere ability to find a job or to sustain life while living in the other country. The idea of

"integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

58. I have already set out my reasons for finding that the appellant has family, including his parents, that still live in Zimbabwe, and with whom the appellant remains in contact, or with who he can re-establish contact. He will, I find, have the support of his family on return. The appellant was born in Zimbabwe and lived there until his arrival in the UK as a visitor in September 2002, aged 20. He was educated in Zimbabwe and spent the early years of his adulthood there.

59. I have had regard to the report of Dr Agatha Benyera-Mararike, but I note from the outset that she proceeds on the premise that the appellant has no family left in Zimbabwe. Her report is based on the history as provided directly to her by the appellant in answer to interview questions, together with her observations, and from the interpretation of psychometric scores. In her report Dr Agatha Benyera-Mararike states the appellant completed his Primary school education, secondary education and 6th Form, in Zimbabwe. I find that it is reasonably likely that the appellant has a good understanding of how day-to-day life operates in Zimbabwe and of the local cultures, customs and traditions. The appellant studied Law between 2011 and 2014 at Wolverhampton University after being granted refugee status. Dr Agatha Benyera-Mararike states the appellant has worked in Aldi, and volunteered at Tower Hamlets Council and South West Law Centre. Any qualifications and work experience the appellant may have gained in the United Kingdom, are in my judgement qualifications and skills that will assist the appellant to secure work and employment in Zimbabwe.

60. Dr Agatha Benyera-Mararike completed an assessment of the appellant's psychological symptoms and concluded that although the appellant presents with problematic prototypes within his psychological profile, his responses to the personality scales did not reveal evidence of personality dysfunction evasive and severe enough to be referred to as personality disorder but indicated that his day to day functioning and relationships are likely to be strongly influenced by *Schizoid, Avoidant, Narcissistic, Dependent, Negativistic, Borderline and Paranoid personality* prototypes. She noted the appellant also reported multiple symptoms of post traumatic stress symptoms, moderate anxiety symptoms, and depression although he was not on any treatment for anxiety and depression. The appellant was diagnosed as suffering from PTSD with severe symptoms. Dr Agatha Benyera-Mararike states the appellant presented with obvious symptoms consistent with Anxiety, depression, and trauma. Although I accept the diagnosis made by Dr Agatha Benyera-Mararike, I attach little weight to the opinions expressed by her as to the impact the appellant's deportation to Zimbabwe will have upon his mental health. She expresses the opinion that the appellant's mental health will deteriorate due to the inadequate mental health services and economic hardship and general collapse of the health system in Zimbabwe. The evidential basis for that opinion is not set out and it is clear that she has no expertise regarding the availability of mental health services in Zimbabwe. She recommended the appellant engages in long term psychological interventions given his psychological symptoms. The appellant's evidence before me is that he has been referred to groups in the UK, and on the advice of his GP, he is no longer prescribed any medication.

61. I have again had regard to the evidence of Professor Aguilar regarding the economic situation in Zimbabwe but the socio-economic circumstances in which the appellant is reasonably likely to find himself, is not on the evidence before me, such that it would be unreasonable or unduly harsh to expect the appellant to internally relocate to Harare.

62. Although I am prepared to accept there will be a good degree of disruption for the appellant to begin with, I find the appellant would be able, within a reasonable period, to find his feet and exist and have a meaningful life within Zimbabwe. The appellant is young and the support that he will have available to him from his family means that there is nothing preventing him from engaging fully in life in Zimbabwe. Even though he has strong familial relationships in the UK, that does not mean that he would encounter very significant obstacles in Zimbabwe. There will inevitably be a period of adjustment, but in my judgement he could adjust to life there within a reasonable timescale. The appellant is of working age. I find he would be able to secure employment using the skills and qualifications he has now attained, within a reasonable timeframe. He has experience of working in the UK and has acquired transferable skills. He will have the support of his parents and the relatives that he has in the UK I find, would provide some short-term support to the appellant. The appellant's education and knowledge of English will also help him get work although I do not for a moment suggest that it will be an easy task. Zimbabwe remains a difficult country where life will not be easy but I do not accept he could not cope. Having considered the evidence as a whole, I find there are no very significant obstacles to the appellant's integration in Zimbabwe.

63. As to Exception 2 set out in s117C(5) of the 2002 Act, again the evidence before me is very limited and vague. I have read the statement of [JC]. Her claim that she has been granted refugee status is supported by the copy of her passport that is exhibited to her witness statement. I am satisfied that she has been granted refugee status in the UK and is a 'qualifying partner' for the purposes of s 117D(1) of the 2002 Act.

64. The appellant claims he has been in a serious relationship with [JC] and they have been in a relationship since 2012. That claim is supported by what is said by [JC] in her witness statement. Her evidence as set out in her witness statement is that she visited the appellant in prison at least three times. She claims, without elaboration, that she has gone through

some depressive episodes when the appellant was in prison. Although I am prepared to accept that the appellant has been in a relationship with [JC] since 2012, the question for me is whether it is a genuine and subsisting relationship. It is surprising that [JC] did not attend the hearing before me to support her partner's appeal. There has been no opportunity to test her evidence and the weight that I attach to her evidence is reduced as a result.

65. As I have said in paragraph [12], in cross-examination before me the appellant accepted that he was previously in a relationship with both [JC] and [LT] at the same time. He said that he is now only in a relationship with [JC], although they do not live together. Giving the appellant the benefit of the doubt, for the purposes of this decision, I am prepared to accept that the appellant is in a genuine and subsisting relationship with [JC]. Whilst I accept [JC] will be upset if the appellant has to leave the United Kingdom, I do not accept on the limited evidence before me that the effect of the appellant's deportation on his partner, would be unduly harsh. There is nothing in the evidence before me that establishes that the effect of the appellant's deportation on [JC], would be harsh let alone unduly harsh. To the extent that the appellant was in some form of relationship with [JC] when he was in prison, I find on the evidence before me that [JC] was able to cope in the absence of the appellant without any real impact upon her health. For the appellant's part, at that time, he was, as he accepts, also maintaining a relationship with [LT]. It appears that the appellant had plans to cohabit with [LT] once his immigration status was resolved.

Very Compelling Circumstances

66. I have carefully considered all the matters relied upon by the appellant collectively in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation. For the avoidance of doubt, although not repeated here, I have taken into account the evidence before me and the findings that I have made and set out in this decision. I

have borne in mind the immediate difficulties that would be experienced by the appellant in Zimbabwe and the short-term difficulties he may experience in terms of finding work and reintegrating in Zimbabwe. I also bear in mind that the appellant would be leaving his wider family behind. I accept the appellant has a private life in the UK given the length of time that he spent here. I also bear in mind that his relationship with [JC].

67. Following the decision of the Supreme Court in Hesham Ali v SSHD [2016] UKSC 60 I also adopt a "balance sheet" approach and consider the various factors that weigh both for and against deportation. As I have already set out, the starting point must be the very great public weight which must be given to Parliament's intention that absent "very compelling circumstances" it is very much in the public interest to deport foreign criminals. The following factors weigh in favour of the appellant:

a. The appellant arrived in the United Kingdom lawfully, aged 20. He has not returned to Zimbabwe.

b. A number of the appellant's family live in the UK. There will inevitably be disruption to those relationships and it will be difficult for the appellant to maintain those relationships in the way currently enjoyed because of the distances involved.

c. The appellant and [JC] are in a genuine and subsisting relationship and the deportation of the appellant to Zimbabwe will have a detrimental effect on that relationship, particularly since [JC] has refugee status.

d. The appellant has expressed some remorse during the course of this appeal and he appears to have engaged well during his sentence of imprisonment. There is evidence in the appeal bundle before me regarding courses and rehabilitation work that the appellant has undertaken. The appellant has complied with his licence conditions and there is no evidence of any further criminal activity.

e. The appellant presents a low risk of reoffending overall.

f. The appellant speaks English, and has achieved qualifications and work experience in the UK.

68. The following factors weigh against the appellant and in favour of deportation:

a. The appellant has been convicted of a serious offence involving a and received a sentence of imprisonment of four years or more.

b. The more serious the offence committed, the greater is the public interest in deportation.

c. The strength of the appellant's integration must be viewed in the context of his serious offending.

69. My analysis of whether the deportation of the appellant breaches his right to respect for private and family life under Article 8, taking into account the public interest question as expressed in section 117C of the 2002 Act, lead me to the conclusion that there are no very compelling circumstances over and above those described in Exceptions 1 and 2.

70. Having carefully considered the evidence before me I conclude the decision to deport the appellant strikes a fair balance between the appellant's rights and interests, and those of his family, and [JC] when weighed against the wider interests of society. In my judgement it is proportionate to the legitimate end sought to be achieved and I find the appellant's removal in pursuance of the deportation order would not be a disproportionate interference with his right to respect for his family and private life.

Article 3

71. Finally, I turn to the appellant's Article 3 claim that Mr Moksud submits is based on the appellant's claim that he will be destitute upon return to Zimbabwe and upon the impact upon the appellant's mental health. Mr Moksud refers to the report of Dr Benyera-Mararike and the diagnosis that the appellant is currently experiencing Major Depressive Disorder. Dr Benyera-Mararike concludes the removal of the appellant to Zimbabwe is likely to have a detrimental impact on his mental health and would increase his suicide risk. It is said the appellant is highly distressed and experiencing significant levels of shame. Dr Benyera-Mararike expresses the opinion that the appellant would significantly benefit from long-term culturally responsive psychological counselling. Mr Moksud acknowledges that the appellant is no longer taking any medication and his evidence is that he has been referred to counselling.

72. I have no doubt that the appellant expressed his worries about going back to Zimbabwe to Dr Benyera-Mararike, but he will not, as he claims, find himself 'back on the streets or killed because of his affiliations with the opposition party'. The opinion expressed by Dr Benyera-Mararike that the appellant would not engage with any mental health facilities that may be available is without any foundation. Contrary to what is said by Dr Benyera-Mararike, the appellant has accessed some support, albeit limited, in the UK. I have already set out my reasons for finding that the appellant has family, including his parents, that still live in Zimbabwe. I find that he will have the support of his family on return. I have had regard to the report of Dr Benyera-Mararike, but as I have said, she proceeds on the premise that the appellant has no family left in Zimbabwe. For reasons that I have already set out, I accept the diagnosis made by Dr Benyera-Mararike, but I attach little weight to the opinions expressed by her as to the impact the appellant's deportation to Zimbabwe will have upon his mental health. The appellant's evidence before me is that he has been referred to groups in the UK, and on the advice of his GP, he is no longer prescribed any medication.

73. I acknowledge that an Article 3 claim, can in principle also succeed, in a suicide case. I address the claim briefly because Dr Benyera-Mararike expresses the opinion that the appellant is at risk of committing suicide. It is now well established that what is required is an assessment of the risk at three stages, prior to anticipated removal, during removal, and on arrival.

74. Although I accept the diagnosis made by Dr Benyera-Mararike, there is no evidence before me regarding the appellant having self-harmed. I have found that the appellant is not at risk upon return to Zimbabwe and I have rejected his claim that he will not have any familial support available to him.

75. I am prepared to accept that the appellant's symptoms and mental health problems are likely to have been directly caused by his past history and the current situation, and that his uncertain immigration status and fear of being returned to Zimbabwe are likely to be factors that caused some deterioration in his mental health. There has, on the appellant's own evidence been some improvement in his mental health and he is no longer prescribed medication. The appellant is aware of the risk to his health and has sought some assistance in the past.

76. I do not consider the medical evidence, taken at its highest, demonstrates a real risk that the appellant would commit suicide in the UK. The appellant has received support and cooperated with the medical authorities in the UK. Any risk upon the appellant learning of any decision to remove him, would be adequately managed in the UK by the relevant authorities. Any risk that manifests itself during removal, is capable of being managed by the respondent and in the knowledge that the appellant will have familial support in Zimbabwe. I therefore approach my assessment on the basis that it would be possible for the respondent to return the appellant to Zimbabwe without him coming to harm, but once there, he would be in the hands of the mental health services in Zimbabwe. The risk here, results from a naturally occurring illness. I have

found that the appellant has family in Zimbabwe, and I am satisfied the appellant would have the support of his family on return and that would provide an extra protective layer such as to prevent him taking his life. On the findings made, the appellant's subjective fear is not objectively well-founded. There is no evidence before me upon which I can conclude that any treatment and medication required by the appellant will not be available to him in Zimbabwe.

77. I accept as Mr Williams submits that the appellant will have family support and will be able to work. He will not therefore be destitute. I also accept, as Mr Williams submits, the support the appellant receives by way of prayer with a Church pastor is something that will be possible in Zimbabwe.

78. In AM (Zimbabwe) v SSHD [2020] UKSC EWCA Civ 64, Lord Wilson noted the ECtHR set out requirements (at paras 186 to 191) for the procedure to be followed in relation to applications under Article 3 to resist return by reference to ill-health. It is for the appellant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if removed, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. The Supreme Court confirmed that that is a demanding threshold for an applicant. His or her evidence must be capable of demonstrating "substantial" grounds for believing that it is a "very exceptional case" because of a "real" risk of subjection to "inhuman" treatment.

79. In the end having carefully considered all the evidence before me, I am not satisfied that the appellant has established that there are substantial grounds for believing that he would face a real risk of being exposed to either a serious, rapid and irreversible decline in the state of her mental health resulting in intense suffering or the significant reduction in life expectancy as a result of either the absence of treatment or lack of access to such treatment. The 'suicide risk' is not in my judgement such that the removal of the appellant to Zimbabwe would be in breach of Article 3.

80. It follows that the appeal is dismissed on all grounds.

NOTICE OF DECISION

81. The appeal is dismissed.

V. Mandalia Date 21 February 2023

Upper Tribunal Judge Mandalia