IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003317

First-tier Tribunal No: PA/50635/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RFV (ZIMBABWE)
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr D. Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr C. Mupara, counsel, instructed by Kimberly Wayne & Diamond Solicitors

Heard at Field House on 2 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. Although this is an appeal brought by the Secretary of State for ease, I refer in this decision to the parties as they were before the First-tier Tribunal ("the FTT").

2. The Appellant has the benefit of the above anonymity order and is to be referred to as RFV, which are not her real initials. In light of the issues in this case, I consider that to be necessary and proportionate notwithstanding the importance of open justice. I have given her this cypher because the use of her real initials is likely, in my judgment, to lead to her identification given the inevitably low number of individuals with those initials who are potential returnees to Zimbabwe.

3. The Appellant originally claimed asylum in 2017, shortly after her arrival in the UK. Her claim was refused by the Respondent and, after an earlier FTT decision which was set aside by this Tribunal, her appeal was finally dismissed by FTT Judge Manuell on 19 July 2019 ("the First FTT Decision"), which decision was not successfully appealed.

4. The Appellant filed fresh representations on 11 August 2021. The Respondent accepted these representations as a fresh claim, but, by her decision of 28 January 2022, refused the claim to asylum. The Appellant appealed and by a decision dated 21 March 2023 ("the Second FTT Decision") FTT Judge Phull ("the Judge") allowed the Appellant's appeal on asylum and human rights grounds.

5. The Respondent now appeals to this Tribunal against the Second FTT Decision. Permission to appeal was granted by FTT Judge Oxlade on 3 August 2023.

The FTT's Decisions

6. Given that the Respondent's Grounds of Appeal suggest that the Judge did not appropriately apply the principles in Devaseelan it is necessary to set out, briefly, the findings of the First FTT Decision as well as the decision under appeal.

The First FTT Decision

7. At [8]-[43] of the First FTT Decision FTT Judge Manuell records the evidence adduced before the Tribunal in detail. It is apparent from the First FTT Decision that the nature of the Appellant's asylum claim was that she was of interest to the Zimbabwean authorities, having been previously tortured, being suspected of working against Zanu-PF on behalf of "white people", and having connections (as a colleague) with a Mr K (whose initial I use because of the risk that his name will enable identification of the Appellant). Notably, the Appellant adduced both medical and country expert evidence, the latter from Dr Hazel Cameron.

8. The overall conclusion reached by the Tribunal in relation to her asylum claim was set out at [66] as follows:

> "Viewed as a whole with anxious scrutiny, the Appellant's story fails to approach the required standard of reasonable likelihood. It has no substance, with significant inconsistencies, convenient coincidences and

late additions, as well as claims of near superhuman powers of endurance. Dr Cameron's evaluation of the Appellant's story was based on the general assumption that she was being told the truth which unfortunately was far from the case. Dr Cameron's plausibility assessment thus takes the Appellant's case no further. The tribunal accepts no part of the Appellant's evidence as to persecutory events in Zimbabwe from 2008 onwards."

9. The above conclusion was reached in light of the following more specific findings (which summary is necessarily truncated for brevity):

a. Country conditions in Zimbabwe are poor, and the evidence of Dr Cameron in relation to them was accepted.

b. Notwithstanding her high level of education and her articulacy, the Appellant's evidence was vague in the extreme, such that it was impossible to know how she could have been of any interest to Zanu-PF, let alone of such interest that they would have spent hours questioning her.

c. While the Appellant claimed to be aware of vote rigging, this was well known internationally and she was unable to give a single example where a result had been changed to her knowledge.

d. The Appellant was unable to describe the process by which she acquired her scars and there was no evidence of her seeking any help or of any reaction from her husband to her alleged ill-treatment at the hands of Zanu-PF and neither of the Appellant's sons provided evidence of being told of her alleged torture in 2008.

e. The Appellant was unable to explain why she, rather than Mr K, should have been the object of Zanu-PF attention.

f. For the first time at the hearing the Appellant claimed to know of political murders, but she was unable to identify a single victim and did not explain how she came to have that knowledge.

g. The Appellant's continuation in the employment which is said to have caused her to have been maltreated was difficult to understand, as was her failure to seek support from her husband, which was unexplained.

h. The Appellant's diagnosis of HIV infection does not indicate its cause as rape.

i. It is difficult to understand why the Appellant would have been allowed to stay in her job if she was seen as an 'enemy of the people' by Zanu-PF.

j. Her account of her allegedly lengthy detention at Harare airport as 'routine' made no sense. She was a respectable citizen and such detention after a long flight would have been tiring and unwelcome and she provided no concrete details of the questions she was asked.

k. The Appellant's evidence that her flat in Harare had been seized by Zanu-PF in 2016 was not mentioned by either of her sons.

l. Her claim that she had been unable to contact a cousin after her arrival in the UK did not make sense. There was no suggestion that the cousin's flat had been seized, nor that the cousin was of interest to Zanu-PF, and the evidence given by the Appellant and one of her sons of the efforts made was half-hearted at best.

m. Her description of her husband's alleged disappearance was surprising. He was a Christian pastor with a congregation of 100 and was prominent in Christian groups. His disappearance would have provoked public concern, yet none of the Appellant nor her sons had taken any step to try to find her husband, including not asking for the help of any of the religious organisations for which the Appellant and her husband worked.

n. The summons produced by the Appellant was an isolated document with no context. Dr Cameron noted several defects in it which the Appellant sought to justify. As a legal document it made no sense. There would have been no point in it being served on a third party once it was known that the Appellant had left Zimbabwe, and given the wholly outrageous way in which the Appellant claimed she had been treated previously there was no reason why the government would now attempt to observe the outward forms of due process. Given that the Appellant was not someone with a political profile, a show trial would have been of no conceivable value.

o. The Appellant and her son's claim of her alleged escape to Zambia made no sense.

p. The threatening calls to her son also made no sense. He was unable to explain how the authorities obtained his UK number and it was hardly likely that a thug or apparatchik would make such calls with a number that was displayed on the recipient's phone and could be traced.

q. The letter provided from Mr K makes no reference to any of the problems faced by the Appellant.

10. Judge Manuell also dismissed the Appellant's appeal on Article 3 grounds relating to her HIV diagnosis, given that she was in receipt of appropriate treatment in Zimbabwe. Her removal was also considered to be proportionate to any interference with her private and family life rights that it would cause.

The Second FTT Decision

11. In the Appellant's further submissions to the Respondent, the Appellant renewed her claim to fear the Zimbabwean government on the grounds of imputed political opinion, which claim was bolstered by new evidence, in particular contact in 2020 telling her not to return. On appeal, she also alleged that she had been interviewed by the Zimbabwean authorities in immigration detention for the purposes of obtaining an Emergency Travel Document ("ETD"), and that this in itself put her at risk.

12. After briefly setting out the basis of claim, some basic legal propositions, the evidence and submissions, the Judge set out her findings as follows:

a. At [14], the Judge said that her starting point was the decision of Judge Manuell, summarised above. At [15]-[17], the Judge then sets out some early parts of Judge Manuell's decision, but none of his operative findings on credibility. The Judge suggests at [18] that Judge Manuell had "found that the Appellant's credibility was largely in dispute", but does not then go on to note that Judge Manuell resolved that dispute conclusively against the Appellant. She notes Judge Manuell's conclusion that the country expert's views made the Appellant's claims "even less credible".

b. At [19], the Judge summarises the Respondent's case, noting that it was not accepted that the Appellant had faced problems in Zimbabwe in the past or would do so in the future. The new letter from Mr K did not, the Respondent submitted, take the matter further and the previous findings should not be departed from.

c. At [20], the Judge finds it plausible that the Appellant made a subject access report to the Respondent, but has not had a response.

d. At [21]-[22], the Judge set out the Appellant's submissions on risk resulting from the ETD interview and the fact that the Respondent had consented to this new matter being considered by the FTT.

e. At [23], the Judge stated that she accepted the Appellant's evidence that she believed that she could not object to the ETD interview. The Judge then stated, "On the 21 June 2021, she was interviewed for an Emergency travel document, by someone from the Zimbabwe High Commission. She did not give consent to be returned to Zimbabwe." It is not clear if that is intended to be a summary of the Appellant's evidence or if that is a finding. It is in the findings section of the decision, but so too are various recitations of submissions and evidence. At [24] the Judge summarised the Appellant's evidence on this issue given in cross-examination.

f. At [25]-[26], the Judge noted a decision of FTT Judge Atwal of 12 October 2022, which directed the Respondent to serve an email of 6 October 2022 (relating to whether the Appellant was interviewed by a Zimbabwean official or not) and any supporting evidence that accompanies it. The Judge then recorded that that letter and a further letter of 24 October 2022 were then duly served on the Appellant and the Tribunal. As these letters feature in the grounds of appeal, it is worth setting out the relevant parts at this juncture, as the Judge did at [27]-[28]. The 6 October letter, from the Respondent's Country Manager for East, Central and Southern Africa, stated:

> "Returns Logistics Operations have no record of a re-documentation interview being conducted by the Zimbabwe official. Loughborough ROM have confirmed that an ETD application was completed by HO colleagues during a reporting event with Ms Moyo on 21 June 2022"

The 24 October 2022 letter, from an Assistant Country Manager for Africa, stated:

> "I have had a look at the history of this and can confirm there were no Zimbabwe interview schemes in 2021. The interview schemes for

> Zimbabwe were suspended in 2020 due to the COVID pandemic and to date have not resumed. Interviews with the ZWE official have only been over the telephone and there have been no face-to-face interviews to date.
>
> Having read your email below and looked at the history I can advise that there was an interview at Loughborough Reporting centre on 21 June 2021 however this would appear to have been an interview for the purpose of completing an ETD application which is standard practice. There would not have been a ZWE official in attendance at this, there would have been Immigration Officer based at the reporting centre. Therefore, I can only assume the people referred to were Home Office staff and cannot advise why Ms Moyo makes reference to a Zimbabwe Official."

g. At [29] the Judge recorded that, as set out in certain cases, an ETD could only be agreed after a returnee has been interviewed by the Zimbabwean authorities and consented to their return and at [30], the Judge finds that the Appellant's evidence is consistent with the caselaw. She then states,

> "Although the letter of the 06 October 2022, says there was no re-documentation interview, the letter of the 24 October 2022, says there was an interview and it would appear it was for the purpose of completing an ETD application by an immigration officer and it is stated there would not have been a ZWE official in attendance… Given the two letters provide conflicting information, I find it may have been assisted the Tribunal to consider the interview record to assess details of the interviewer and the interview questions and answers."

h. At [31]-[35], the Judge noted that the Appellant's counsel did not dispute that forced returns to Zimbabwe have been suspended since 2006 and that the Respondent accepted that it could only return Zimbabweans who will return voluntarily. The Judge then noted Appellant's submission that the re-documentation process took place in accordance with the Respondent's Country Returns Guide and that weight should be given to Dr Cameron's evidence that the re-documentation process could itself give rise to a risk on return. In support of this, it was noted that Dr Cameron's assessment of the situation in Zimbabwe persuaded Mrs Justice Steyn in a separate (unrelated) case to grant an interim injunction preventing removal.

i. At [36], the Judge stated that she found there was a reasonable degree of likelihood that the Appellant had a face-to-face interview with a Zimbabwean official for the purposes of obtaining an ETD, that they knew she was a failed asylum seeker and that she did not consent to her return to Zimbabwe. This was in light of the evidence in the Country Returns Guide, and the Appellant's written and oral evidence.

j. At [37], the Judge turned to the Appellant's claimed fear by reason of her association with Mr K. At [38], she notes that the Appellant relies on Mr K's lengthy letter of 5 April 2022 which was not before Judge Manuell. She does not however state whether, and if so why, she considered that reliance can be placed on this letter.

k. At [39]-[41], the Judge then considered relevant background country evidence. At [42]-[43], she considered the addendum report by Dr Cameron. In [42] she states that the report is unchallenged. That paragraph is about Dr Cameron's credentials as an expert and I think the Judge's statement that the report was unchallenged must be read as meaning her credentials were unchallenged. If the Judge instead meant was she said and thought that the contents of the report were unchallenged by the Home Office, that was plainly in error. There is a lengthy criticism of the conclusions reached and her reasoning in the Respondent's submissions filed in response to Judge Atwal's directions.

l. At [44], the Judge sets out her conclusions, as follows:

> "I find having considered all the evidence, the Country Return Guide, the addendum report by Dr Cameron, which refers to known sources, the High Court decision of Mrs Justice Steyn, that there is a reasonable degree of likelihood that the Appellant would be at risk on return from the Zimbabwe authorities. I find there is a reasonable degree of likelihood that given the political situation in Zimbabwe the question of internal relocation is not a viable option for the Appellant because it is the authorities that she fears in any part of the country. She would not receive sufficiency of protection from the state, and I find her fear is objectively founded."

m. The Judge accordingly concluded that the Appellant was a refugee and entitled to protection under Article 2 and 3 ECHR.

n. For the same reasons at [47], the Judge found that there would be very significant obstacles to the Appellant's re-integration in Zimbabwe such that she qualified for leave under paragraph 276ADE of the Immigration Rules. At [48]-[49], the Judge considered that, having found the Appellant to be a refugee, she did not require to consider her Article 8 claim.

Appeal to the Upper Tribunal

Grounds of Appeal and permission to appeal

13. The Respondent's grounds of appeal are somewhat prolix. They were however helpfully summarised by FTT Judge Oxlade in her grant of permission to appeal of 3 August 2023 and Mr Clarke accepted at the hearing before me that this summary was accurate. I therefore gratefully adopt Judge Oxlade's summary, which was as follows:

> "The Respondent says that the Judge made material errors of law, because he:
>
> (i) Failed to clearly explain why the Respondent lost the appeal/Appellant won the appeal ("ground 1"),
> (ii) Failed to explain why he [sic] departed from the findings of IJ Manuel [sic], considering Devaseelan ("ground 2"),
> (iii) Failed to give anxious scrutiny to the credibility of the Appellant's claim to have made a SAR, particularly in light of earlier findings as to her credibility by IJ Manuel [sic], and the Respondent's position ("ground 3"),

(iv) Failed to scrutinise the parties [sic] evidence as to which body had interviewed the Appellant, the allegation of the Appellant that she was interviewed by the Zimbabwe
authorities who knew her to be a failed asylum seeker – which put her at risk – being a new matter and key to disposal ("ground 4"),
(v) Failed to give anxious scrutiny to the stay on removal, and wrongly conflated it as evidence that there had been a finding as to risk on return ("ground 5")."

14. FTT Judge Oxlade granted permission to appeal on the basis that "There are arguable errors of law [in] fail[ing] to explain reasons for departing from earlier findings…and [in] treating the stay on removal as an earlier finding or evidence of risk on return." No restriction on the grounds to be argued was however imposed.

Appellant's response to the appeal

15. On 21 September 2023, the Appellant's solicitors filed a response under rule 24 of the Upper Tribunal's Procedure Rules. Such a response is required to be filed within a month of the date on which notice of the grant of permission to appeal was sent. It is also required to contain various pieces of information. See Rules 24(2)(a) and 24(3). The response was late and does not provide all of the required information.

16. Compliance with these rules is important to enable the Tribunal to further the overriding objective of dealing with cases fairly and justly, in accordance with rule 2. The provisions as to timing in rule 24(2) is of particular significance, because of the impact of a response on the further conduct of the appeal. In particular, receipt of the response requires the Tribunal to send a copy to the appellant (rule 24(5)), which in turn triggers the starting gun on the time for an appellant's reply under Rule 25. That reply must be received within one month of the date on which the Tribunal sent the Rule 24 response, or five days before the hearing of the appeal, whichever is the earlier (rule 25(2A)). It is thus essential to enable an appellant a fair opportunity to draft a rule 25 reply that the Rule 24 response is provided to the Tribunal within the prescribed time frame. Further, as Underhill LJ noted at [31] of Devani v Secretary of State for the Home Department [2020] EWCA Civ 612; [2020] 1 WLR 2613, "The point of the additional grounds provision [in rule 24(3)(e) set out below] is, evidently, that the appellant and the UT should know in advance of the hearing what matters will be in issue". For that reason, a respondent who wishes to rely on any grounds in support of his opposition to an appeal (other than those relied on by the FTT judge) must say so in a rule 24 response, and if he does not do so, he cannot rely on them: see Acornwood LLP v Revenue and Customs Commissions [2016] UKUT 361 (TCC) at [108] (Nugee J).

17. Notwithstanding the delay and the lack of any reason given for it, I consider that in this particular case it is in accordance with the overriding objective to grant an extension of time for the Appellant's rule 24. The Respondent has not indicated that she would wish to file a rule 25 reply and Mr Clarke did not object to the response being considered.

18. So far as necessary, I will set out and address the contents of the rule 24 response when considering the grounds below.

19. The Appellant's solicitors also filed a skeleton argument drafted by Mr Mupara. They did so at 16.56 on 29 September 2023 (i.e. the Friday before the hearing of

this appeal the following Monday morning). The email to the Tribunal from the Appellant's solicitors did not indicate that it was for a hearing listed the next working day or otherwise that it was urgent. The skeleton argument reached my inbox at 10.12 on the morning of the hearing (less than 90 working minutes after it was filed), when I was already hearing another appeal. Before hearing oral submissions, I and Mr Clarke took time to read it the skeleton in court. I have considered it again after the hearing.

Discussion

20. I start my consideration of the grounds with grounds 3-5, as they are more focused in their targets than grounds 1 and 2 which challenge the approach of the Judge more widely.

Ground 3

21. By Ground 3, the Respondent argues that the Judge erred in accepting that the Appellant submitted a subject access request. As Mr Mupara submitted however any such error is immaterial. The Judge has not, in my judgment, placed any weight on the fact of the Appellant having been found to have made such a request in either deciding whether to believe the Appellant's other evidence or deciding that she would at risk on return. Mr Clarke submitted that this finding in effect must have played a role in the Judge's assessment of the Appellant's credibility. Why, Mr Clarke asked rhetorically, would the Appellant have relied on the fact of having made a subject access request, other than to be able to say, at least implicitly, that she had nothing to fear from the potential response, such that her evidence on it should be believed? I see the force in that, in so far as it relates to the Appellant's deployment of this evidence, but there is simply nothing in the Second FTT Decision to indicate that the Judge took it into account in that way. I therefore reject ground 3.

Ground 4

22. In my judgment the Judge has erred in relation to the Respondent's evidence of whether there were Zimbabwean officials present at the Appellant's ETD interview on 21 June 2021. The emails of 6 and 24 October 2022 are not on any reasonable construction of them, as the Judge found, contradictory. Whereas the Judge considered that the 6 October email suggested that the Appellant had not been interviewed at all, that is simply not what it said. Rather, it said, consistently with the 24 October email, that the Appellant had not been interviewed *by Zimbabwean officials*.

23. Mr Mupara's submission in response to this ground was that, while the two emails may not be contradictory, they would not have given the Judge a reasonable basis for finding that the interview took place in the absence of a Zimbabwean official. In other words, he suggests that the error is immaterial. More particularly, he says that given that the Home Office had been directed to file any supporting evidence, and given that they must have had a record of who was present and what was asked, but they had not provided this, it followed that the Judge would have in effect been required to infer that there was no such Home Office interview and that it must have been an interview with the Zimbabwean authorities and the emails would accordingly have had to have been rejected. I am unable to accept that. The emails evidence two Home Office officials having checked internal records and having concluded that there was no

Zimbabwean official present. The Judge was required to set that against the Appellant's uncorroborated evidence that she spoke to a man who introduced himself as an official from the Zimbabwean High Commission. Even if the Appellant had not previously been found not to be a witness of truth, the emails would plainly be capable of affecting that assessment which the Judge was required to carry out. I also do not accept the submission that the Judge would have been compelled to find that the interview was not with Home Office officials because of the lack of a transcript or other contemporaneous record of it. It *may* be that on considering all of the evidence in the round, including the absence of the transcript or other contemporaneous record and the reasons for their absence, the Judge would have concluded that no weight could be placed on the emails. But the test for immateriality is whether the Judge would have been bound to do so (see Detamu v Secretary of State for the Home Department [2006] EWCA Civ 604 at [14]) and I am not satisfied that that high threshold is met.

24. The Respondent's grounds of appeal make two further points under this ground. First, they suggest that the process is such that interviews with Zimbabwean officials only take place at the High Commission. Second, they suggest that, because this was a new matter, the Home Office was evidentially on the "back foot". There was evidence before the Judge, namely the Country Returns Guide, which was reasonably capable of being read as indicating that interviews with Zimbabwean officials in non-voluntary returns cases took place at, among other places, Reporting Centres. I do not therefore consider that the Judge erred in rejecting the Respondent's case that interviews with Zimbabwean officials can never do so. I also reject the suggestion that the Respondent was somehow prejudiced in respect of this aspect of the Appellant's case. This was a new matter, which the FTT only had jurisdiction to consider if the Home Office consented. Had the Respondent considered it had insufficient time to prepare its case, it could have refused that consent. Moreover, there were several months between the Respondent giving that consent and the final hearing. Neither of these points however detract from the fact that the Judge, in assessing whether the interview which the Appellant underwent when reporting was with, *inter alios*, a Zimbabwean official.

25. As this issue goes to the core of the Appellant's claim for asylum, it follows that the Second FTT Decision must be set aside.

Ground 5

26. This ground asserts that the Judge erred in taking into account the decision and reasons of Mrs Justice Steyn in an interim relief application in another case, in which she accepted Dr Cameron's evidence (not that before the Tribunal in this case) about risk in Zimbabwe to that individual.

27. The Appellant's rule 24 response and skeleton argument accepted that the Judge took into account Steyn J's decision. They however suggest that "The FTTJ did not find that the Respondent would be at risk solely on the decision of Mrs Justice Steyn. She did so on the basis of **all** the evidence, the Country Returns policy, the addendum to the Country Expert report **and** Mrs Justice Steyn's decision". I accept that so far as it goes, but it is not an answer to whether the decision was wrongly taken into account unless it can be shown not to have been material.

28. I agree with the Respondent that the Judge erred. This was a decision in relation to another individual whose circumstances were different on an interim relief application in which different evidence was relied on. It is of no precedential value whatsoever and should not having been relied upon by the Appellant (nor, *a fortiori*, by the Judge). The fact that an expert's evidence has been accepted by another judge – even one as eminent as Mrs Justice Steyn – does not mean that their evidence should be accepted in other cases. That is particularly so where the evidence was relied on in support only of an interim injunction.

29. I cannot accept the Appellant's submission that this error is immaterial. There is nothing in the Second FTT Decision to indicate what weight the Judge gave to Steyn J's decision and it is therefore not possible to be satisfied that she would have been bound to have reached the same decision without it.

Grounds 1 and 2

30. To some extent, grounds 1 and 2 overlap, even if they are conceptually distinct. By Ground 1, the Respondent submits that the Judge failed to give adequate reasons and that she simply does not understand why she lost. This includes a lack of understanding as to why the Judge felt able to find the Appellant to be a credible witness in circumstances in which the Devaseelan starting point was that she was not credible. Ground 2 alleges a misapplication of Devaseelan. It is therefore convenient to consider these two grounds together.

31. The Appellant's response to these grounds, as developed orally by Mr Mupara, was that in light of the issues that were in fact before the FTT, which were not the same as those in the First FTT Decision, there was no failure to apply Devaseelan and the reasons were sufficiently clear to enable the parties to understand why the Judge allowed the appeal.

32. There was no real dispute between the parties that the Judge did not consider in substance what to make of the previous findings that the Appellant had not given a credible account. As noted, Mr Mupara's case was, rather, that the previous history of ill-treatment in Zimbabwe was now irrelevant in light of the fact that the fact of the interview was itself what gave rise to risk. I am unable to accept that. It is not the case, and was not suggested by Mr Mupara, that everyone who is interviewed by Zimbabwean authorities is, by reason of that fact alone, at risk on return. Rather, an interview may give rise to risk on return because of matters disclosed in that interview. In relation to certain persecutory regimes that could simply be the fact that someone has made an asylum claim, although more normally it is because of something about that asylum claim, such as that one has political views adverse to the regime. That was the case here. Dr Cameron's evidence (paragraph B of her Brief Summary of Findings in her report of 26 September 2022) was that "It is my opinion that the Claimant's responses to questions set by the government official will have identified her as a person not loyal to the Zanu PF regime, and a potential supporter of the political opposition". The question is therefore what the Appellant told the (assumed) Zimbabwean official and what risk that would have created. The findings in the First FTT Decision were in my judgment relevant to both aspects of this:

    a. In relation to what the Appellant said, this evidence needed to be assessed in light of the fact that she has been found not to be a credible witness. It is not clear from the Second FTT Decision why the Judge considered that she could now be satisfied that the Appellant was telling

her the truth. Indeed, as noted above, it is not clear from the Second FTT Decision whether the Judge even appreciated that the First FTT Decision had concluded that the Appellant was not credible.

b. Second, and perhaps more importantly, there is no consideration by the Judge of what effect the Appellant having repeated her rejected account of previous ill-treatment to the Zimbabwean authorities would have had in terms of risk. The Zimbabwean authorities would presumably (or at least potentially) know whether they undertook the activities which the Appellant alleges. In order for the Judge to be satisfied that repeating the substance of her earlier asylum claim to the Zimbabwean interviewer would put her at risk, the Judge needed to consider whether either that account was wrongly rejected by the First FTT Decision and the Zimbabwean authorities would correctly have understood that she was someone they previously perceived to be of adverse interest, or that, notwithstanding that the account was false, the Zimbabwean authorities would not know or accept that fact and so would take what the Appellant said at face value.

The Judge does not however begin to engage in this analysis, which in my judgment accordingly constitutes an error of law.

33. The Respondent further submits that the Judge has not adequately explained whether she considered that the Appellant is at risk on the basis only of the ETD interview or also on the basis of her relationship with Mr K. Mr Mupara's response is, as above, the issue of the Appellant's relationship with Mr K was not before the Tribunal and that the case was presented solely on the basis of the risk arising from the ETD interview. While that may have formally been the case, the Appellant adduced a letter from Mr K which appears to have been relied on (both by the Appellant and the Judge) to give credence to previously rejected account. Given that that account formed a basis on which the Appellant could have sought asylum, it would certainly have been preferable had the Judge made clear whether she was deciding the case on the basis of that previous account or not, in addition or in the alternative to the claim resulting from the ETD interview. While I had initially considered that, in light of the Appellant's appeal skeleton argument and the presumption when reading a decision of a specialist tribunal that the judge understands the task required of her (here determining only that claim), the Judge's decision should be read on the assumption that the ETD interview was the only ground of asylum being consider. However, if the task which the Judge considered she was undertaking was simply deciding whether the Appellant was at risk as a result of her ETD interview, it is wholly unclear why the Judge, after having expressed her conclusions on the ETD interview at [36] then "Turn[ed] to the Appellant's fear of persecution due to her association with Mr [K]." This would appear, contrary to the approach which the Judge had been asked by the Appellant to take, to involve a consideration of other, in effect, unpleaded, issues. I am unable to discern from the Second FTT Decision however whether this alternative claim was accepted.

Remedy

34. In light of the above, the Respondent's appeal succeeds and the Second FTT Decision is set aside.

35. Mr Clarke submitted that the appeal should be retained in the Upper Tribunal. However, I am satisfied that the extent of the fact finding required in the re-making of this appeal justifies its remittal to the First-tier Tribunal in accordance with Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC). I do not preserve any findings of fact made by the Judge. The First FTT Decision remains, in accordance with Devaseelan principles, the starting point for the redetermination.

Notice of Decision

The decision of the First-tier Tribunal involves the making of an error of law and is set aside. The re-making of this appeal is remitted to the First-tier Tribunal.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 October 2023