



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003840

First-tier Tribunal Nos: HU/57893/2022
LH/03035/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

LCS
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr J Azmi, Counsel; instructed by Solomon Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 30 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Row, dated 13th August 2023, dismissing his appeal under the Refugee Convention and human rights grounds.
2. The Appellant applied for permission to appeal on the basis that;
 - (i) the judge failed to consider the depth of the evidence relating to the Appellant's political activities and the full extent of the documentation;
 - (ii) the documentation provided was considerably greater than that considered or acknowledged by the judge;
 - (iii) there was an adequate consideration of the previous determination and the findings therein; and
 - (iv) the decision demonstrated an inadequacy of reasons.
3. Permission to appeal was granted by First-tier Tribunal Judge Galloway in the following terms:
 - “3. Having considered the judgment in full, I do consider there to be an arguable material error of law. The findings of fact made by the judge appear to commence from Paragraph 33, when the judge is considering the ‘oral evidence’. There is no clear reference to consideration of all the evidence in the round, when determining that the Appellant was not credible (paragraph 38). No reference is made to specific documentation, albeit that of course the judge is not required to and often does not refer to each individual item of evidence. I am also persuaded that it is arguable that there has not been full consideration of the previous findings.
 4. I do consider there to be an arguable material error of law and permission to appeal is granted on all grounds.”
4. At the conclusion of the hearing I reserved my decision, which I now give. I do find that the decision demonstrates material errors of law, such that it should be set aside in its entirety.
5. In respect of the first point, it is contended that the judge failed to consider the depth of the evidence relating to the Appellant's political activities and the full extent of the documentation, I note that the grounds at paragraph 3 mention seven pieces of evidence that the judge did not take into account explicitly on the face of the decision. Those seven pieces of evidence are as follows:
 - “(I) The appellant opposed Zimbabwe's re-admission to the Commonwealth and sent a two page letter setting out his reasons. The appellant was in email correspondence with his MP who took the Appellant's matter up with the Foreign and Commonwealth Office, who responded, acknowledging the Appellant's concerns (pages 36 to 44, appellants bundle).
 - (II) Appellant, was involved in correspondence regarding the petition to free Job Sikhara (opposition chair, Zimbabwean MP & lawyer), who

remained detained by the Zimbabwean authorities. The appellant is a named signatory of the petition, dated 6 March 2023 and presented to Downing Street by a small team including the Appellant. The appellant is on numerous photographs and is named (pages 52 to 79, Appellant's bundle).

- (III) Photographs of the Appellant at Downing Street with the petition appears on the following websites:
 - (a) for ZHRO (page 226 Appellant's bundle)
 - (b) on CCC, Manchester Facebook (page 87, Appellant's bundle)
 - (c) on Flickr (page 88 to 90 appellants bundle)
 - (d) on Twitter for ZHRO (page 91 Appellant's Bundle).
- (IV) Appellant is a named speaker on ZIMEYE website (page 96 to 97, appellants bundle).
- (V) Appellant is a named speaker outside the Zimbabwean embassy featuring on his own Facebook account.
- (VI) The appellant's photo appears, and he is named as a human rights activist on Flickr page 119 to 125, appellants bundle).
- (VII) On CCC website, the appellant is named as a political activist (page 126, Appellant's bundle)."

6. The reasons given by the judge can be found within paragraphs 36 to 46 of the decision. I have considered these paragraphs of the judge's findings which give broad conclusions as to the protection claim. The evidences listed above do not find mention therein. Given the brevity and robust reasons provided, I cannot be satisfied that these pieces of key evidence were even impliedly considered by the judge.
7. Ms Isherwood valiantly tried to persuade me that the omission of any explicit mention of these pieces of evidence was not fatal to the decision; however, I find that the paragraphs I was directed to, (i.e. paragraphs 40 to 43) do, for the large part, contain bald conclusions, which are unsupported by reasons and do not demonstrate that the judge's consideration of the evidence accounted for these pieces of evidence before coming to those short conclusions.
8. Albeit there is no evidence that either party could point me to, that the Zimbabwean government monitors online activities, the touchstone for risk on return according to Ms Isherwood would still be whether or not there would be an affirmation by the Appellant of his following the ruling party which, given that he claims to be an activist within the opposing party (i.e. the CCC), I find has not been sufficiently assessed by the judge in terms of the risk on return he may face before his appeal was dismissed. It is not merely a question of whether the authorities would *already* know of his online activities, but moreover whether or not the Appellant would affirm loyalty to the ruling party on return. Consequently, the first and second points are made out, for the reasons given above.

9. I also find that paragraphs 27 to 31 of this judgment, demonstrate inadequate consideration of the previous determination and the findings therein, in respect of whether or not the Appellant was a member of the MDC. As highlighted in the Grounds of Appeal, the judge failed to note as his starting point paragraphs 27, 28 and 31 of Judge's Buchanan's decision (pursuant to Devaseelan (STARRED, Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka [2002] UKIAT 00702), which paragraphs cumulatively confirmed that the Appellant attended MDC meetings, was a rank and file member and did use a false document to seek employment in the past.
10. Finally in respect of the fourth point, turning to paragraphs 38 and 39 where the judge finds that he does not believe what the Appellant says and that he has joined the CCC for the purpose of making an asylum claim, for the above reasons, I find that the judge's findings are unsupported by an adequacy of reasoning pursuant to the decision in Budhathoki (reasons for decisions) [2014] UKUT 00341).
11. I therefore find that the judge has materially erred for the reasons given.

Notice of Decision

12. The Appellant's appeal is allowed.
13. The appeal is to be remitted to the First-tier Tribunal to be heard *de novo* by any judge other than First-tier Tribunal Judge Row.

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber