IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001280
First-tier Tribunal No:
PA/50480/2023
LP/00901/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

XS
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Acharya a Solicitor
For the Respondent: Mr Diwynicz a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 17 June 2024

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

1. The Appellant was born on 8 November 1969. She is a citizen of Zimbabwe. She appealed against the decision of the Respondent dated 10 January 2023, refusing the application for international protection.

2. She appeals against the decision of First-tier Tribunal Judge Fisher, promulgated on 29 December 2023, dismissing the appeal. No grounds were advanced in relation to the Article 3 "health claim" or Article 8 family life claim" and I will not set out further information relating to these, the decisions of which stand.

Permission to appeal

3. Permission was granted by First-tier Tribunal Judge Chowdhury on 18 March 2023 who stated:

> "2. The judge recorded the Appellant was accepted by the Respondent as an active member of the MDC. The judge accepted the Appellant was a member of ROHR. The grounds aver that the judge had considered the Appellant to be a low-level member of both organisations at a local level. In summary, the grounds take issue with these findings on two bases. Firstly, the Appellant's witnesses, which included the chairman for the CCC in the UK and Ireland referred to the Appellant as holding a leadership position within the party structures. Secondly, the distinction between high-level profiles and low-level profiles was found to be not strictly applicable to activists from Zimbabwe, as was recorded by the UT in SM (Zimbabwe) [2005] UKIAT 100.
> 3. Further, in AA (Zimbabwe) [2006], the Tribunal noted that all returnees identified as returned involuntarily from the UK will be handed to the authorities and if a political profile is suspected, the deportee will be taken away for interrogation and it is the second stage of interrogation which carries with it a real risk of serious mistreatment. The grounds allege the current country guidance case of CM (Zimbabwe) [2013] confirms that there is a risk at the point of return in Zimbabwe, namely Harare Airport.
> 4. It is arguable the evidence of the witnesses corroborating the Appellant's high profile, her social media profile and her activities weigh against the judge's finding that she would in any event be considered a low-level member of the MDC. I find that this is an arguable error.
> 5. The judge found that there would not be very significant obstacles to her integration due to her limited and low-profile activities. I find that this finding may similarly be infected by an arguably flawed finding of her profile. Further, it is arguable that the judge had not adequately considered whether the Appellant would face obstacles as a result of her political orientation as is outlined in the Home Office guidance family life (December 2021).
> 6. Permission is granted on all grounds."

The First-tier Tribunal decision of 19 December 2023

4. Judge Fisher made the following findings which I have highlighted in bold within the decision:

> "8. Given that there have been two previous Tribunal decisions in respect of this Appellant, the principles set out in Devaseelan [2002] UKIAT 00702 are applicable to my consideration of the current appeal. Judge Zucker did not find her a credible witness. He noted that she was not a member of the MDC and did not believe that she had been involved in WOZA, or that she was even interested in politics. He rejected her claim to have been arrested or detained in Zimbabwe, or that she was pursued by Zanu-PF at all... On reconsideration, Judge Sacks … found that the Appellant's activities beyond the date of the original appeal were not credible. He rejected her

claimed motivation for working in the UK which had led to her prosecution and conviction. He did not believe that her claimed political interest in the MDC or ROHR were genuine. He found that she had joined them, not to voice her opposition to the Zimbabwean regime, but purely for the purposes of raising a "sur place" claim. Judge Sacks made reference to a continued picture of deception. He did not believe that the Appellant had any genuine political profile in the UK. He concluded that her involvement was purely for self-benefit, and that her attendance at demonstrations was simply attributable to her being in the right place at the right time.

9. These previous findings form my starting point in the assessment of the current appeal. **The fact that the Appellant has been found lacking in credibility by two previous Judges justifies me in approaching her evidence with caution and to look for support before accepting it**. Furthermore, in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC), the Tribunal said that, 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. The Tribunal went on to say that this important point was identified in the country guidance case of RN, and that it remained valid.

10. Notwithstanding the findings of the previous Tribunals, as I have already highlighted, in paragraph 46 of the decision letter, the author accepted that **the Appellant is an active member of the MDC, acting as treasurer of the Middlesbrough branch**. ..it was argued that she would be considered a low-level member of the MDC at best, and reliance was placed on the decision in CM, where the Tribunal concluded that a returnee to Bulawayo will not, in general, suffer the adverse attention of Zanu-PF, including the security forces, even if he or she has a significant MDC profile.

11. Mr Acharya invited me to consider the passage of time since the previous Tribunals' conclusions were reached. I have already noted the Respondent's concession that the Appellant is the treasurer of the Middlesbrough branch of the MDC. She explained to me that she was responsible for the income of the branch and for its outgoings. In addition, she said that she arranged meetings and recruited new members. She said that she had last attended an MDC demonstration in the UK in April of 2023. She went on to say that she had cooked and taken snacks for the participants at demonstrations, and that she addressed the crowds and distributed leaflets. In addition, she produced some placards. I am prepared to accept her evidence that **the ROHR (which she joined in 2008) and the MDC would combine** for these occasions. I am also prepared to accept that **the Appellant attended a demonstration at the COP 26 summit in Glasgow**.

12. Ms Hood submitted that all of the witnesses were family and friends of the Appellant, and so they would wish her to succeed. However, none of them was cross examined to any great extent. I heard from Kudzai Rusere of the MDC Middlesbrough. There was no significant challenge to her evidence, but it did not advance matters greatly, given the concession that the Appellant is an active member of the party on Teesside. I would make the same observations about the evidence of the witness Chrispen Chamburuka. His knowledge of the Appellant's activities in Zimbabwe was based partly on what she has told him, but also on what he had been told by Mr Yuda. Whilst the latter spoke of learning about the Appellant's arrest in Zimbabwe in 2006, that claim had been rejected by the previous Tribunal and there was no satisfactory evidence which would warrant me in departing from that conclusion. Mr Yuda's evidence was largely focussed on events after he and the Appellant met in the UK in 2009. He made reference to her involvement in WOZA and her attendance at the COP 26 summit in Glasgow in 2021. Again, there was no significant challenge to his evidence. Panyika Karimanzira confirmed that **the Appellant is a member of the ROHR organisation**. Given that she was not challenged on that, I accept that the Appellant is a member.

13. However, the Appellant told me that she was merely a supporter of the MDC whilst in Zimbabwe and that she only became a member in the UK. I also note that, despite having arrived in 2006, she did not join the party until 2008. On the totality of the evidence before me, I find, as a matter of fact, that **the Appellant is simply a low**

level member of the MDC, WOZA and the ROHR at a local level. She claimed to have attracted the online attention of a person named Godwin, but there was no satisfactory evidence that this individual has any power or influence in Zimbabwe and, given her previous lack of credibility, I am not prepared to accept her oral evidence as sufficient to discharge the burden of proof in that regard.

14. The decision in HS (returning asylum seekers) [2007] UKAIT 94 provided country guidance on the risk arising at the point of return, namely Harare airport. The purpose of the initial interview there is to establish whether the deportee is of any interest to the CIO or the security services. The deportee will be of interest if questioning reveals that he or she has a political profile which would be considered adverse to the Zimbabwean regime... However, if such a political ...profile is suspected... the deportee will be taken away by the relevant branch of the CIO for interrogation. The evidence did not suggest that the CIO has any interest in manufacturing or fabricating evidence to create suspicion that is otherwise absent. This second stage interrogation carries with it a real risk of serious mistreatment sufficient to constitute a breach of article 3. HS added one further risk category, namely those seen to be active in association with human rights or civil society organisations where the evidence suggests that the particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwean regime.

15. However, in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC), the Upper Tribunal held that there was no justification for regarding low level MDC supporters as the sort of activists whom the Tribunal in HS thought likely to fall foul of the CIO. In addition, there was no evidence to show the CIO was likely to detain at the airport and torture a person for having attended an MDC branch meeting in the United Kingdom.

16. This position was confirmed by the Court of Appeal in SSHD v MM (Zimbabwe) [2017] EWCA Civ 797. The Court held that there was no scrutiny at the airport for positive indication of loyalty to ZANU-PF and that “low level” MDC supporters were not the sort of activists who would fall foul of the authorities at the airport. The important point was that a real risk of illtreatment depended on an individual’s profile as an MDC supporter as being significant.

17. Having concluded that the Appellant is a low level member of the MDC, WOZA and the ROHR, **the case law does not show that she would be at real risk of persecution or Article 3 ill-treatment on return, and the supplementary bundle does not show that the process on arrival has changed, nor does it persuade me that the Appellant would be at real risk in Bulaweyo, where she was living before she came to the UK**. In all of the circumstances, I cannot uphold this appeal under the Refugee Convention.

...

24. The Appellant’s claim under Article 8 of the ECHR was advances on two bases. Firstly, I was invited to find that there would be very significant obstacles to her integration in Zimbabwe under Paragraph 276ADE of the Immigration Rules. ...

25. Dealing initially with the claim under Paragraph 276ADE, I have considered the principles set out in Kamara [2016] EWCA Civ 813 and Parveen [2018] EWCA Civ 932. I have also taken in to account the Home Office guidance at pages C13-15 of the Appellant’s bundle. Whilst I appreciate that the Appellant arrived in the UK in October 2006 and that she had spent almost 17 years in this country at the date of the hearing, as the Respondent pointed out, **she was 37 years of age when she arrived in the UK. She has, therefore, spent the majority of her life in Zimbabwe, including her important formative years. She gave evidence during the hearing through an Ndebele speaking interpreter, and so I am satisfied that language would not be a barrier to integration. I do not accept that there would be very significant obstacles to her integration due to her limited and low-profile political activities.** It was clear to me, through those activities, that **she will be aware of events in Zimbabwe since she left** the country. **That will assist with her integration, and she has family members there in the form of her mother who lives in a rural area and with whom she is in contact, as well as a sister in Bulaweyo, where the Appellant has previously lived**. Even if they are unable to assist her financially on return**, I am satisfied that they would be able to provide her with a degree of emotional**

support. It also has to be said that **the Appellant has shown some considerable personal fortitude to be able to remain in the UK for so long after her original asylum appeals were dismissed. I am satisfied that this fortitude would be of assistance to her on return**.
26. On the totality of the evidence, **I am not persuaded that there would be very significant obstacles to the Appellant's integration on return**. Accordingly, I am unable to uphold her appeal under Paragraph 276ADE of the Immigration Rules.
…31. …Section 117B(1) of the Nationality, Immigration and Asylum Act 2002 provides that the maintenance of effective immigration controls is in the public interest. As this aim is enshrined in primary legislation, I am satisfied that I should attach significant weight to it as it reflects the will of UK society. On the basis of the findings made by Judge Zucker and Sacks, **the Appellant advanced a false claim for asylum**. At the date of the hearing before me, she could not demonstrate that she should succeed in her appeal under the Refugee Convention, nor could she meet the requirements of the Immigration Rules in respect of her private or family life.
32. I accept that **the Appellant speaks English**, having been in the UK for some 17 years, but **the evidence did not show that she is financially independent**. In any event, both of those factors are neutral at best under Sections 117B(2) and (3) of the Act. I could attach little weight to any private life … under Section 117B(4) as it was established when she was in the UK unlawfully. At best, **her status has been precarious** under Section 117B(5), and this again would limit the weight which I could attach to her private life…
34. I am satisfied that, **if the Appellant has, indeed, established a private and family life outside the Immigration Rules, the weight to be attached to the maintenance of effective immigration controls by far outweighs that to be attached to either**. Accordingly, I must also dismiss the appeal on Article 8 grounds."

The Appellant's grounds seeking permission to appeal

5. The grounds assert (excluding duplication but including Appellant's highlighting):

"3. … the IJ having, made reference to the evidence provided by the appellant and the witnesses and the concession that the appellant is a treasurer of the MDC Middlesborough branch, and a member of ROHR, concluded that '….as a matter of fact, that the appellant is simply a low level member of the MDC, WOZA and ROHR at a local level.' … the Immigration Judge has not provided any clear reasons as to why he considers the appellant to be a low member of the MDC, WOZA and ROHR and has not considered whether the appellant would be initially screened upon arrival at Harare airport and as a result of her 'adverse political profile' the appellant would be subjected to a second stage interrogation at Harare airport.
.4. The appellant … had provided details of her emails, her Twitter account, of her attending meetings including zoom meetings, attending Zimbabwe vigil… the IJ has not … made any findings as to whether the appellant has an **'adverse political profile'** (as a result of which she would be subjected to a second stage interrogation upon arrival at Harare airport).
5. In SM Zimbabwe [2005] UKIAT 00100, the Tribunal recorded as follows at paragraph 43 in assessing the definition of an 'adverse political profile':
"In his submissions Mr Huffer argued that those suspected or perceived of being associated with the opposition have included **activists**, campaigners, officials and election polling agents, MDC candidates for local and national government, **MDC members**, former MDC members, **MDC supporters**, those who voted or believed to have voted for the MDC and those belonging to the MDC, families of the foregoing, employees of the foregoing, **those whose actions have given rise to suspicion of support for the opposition such as attending an MDC rally or wearing a T-shirt, attending a demonstration**, teachers and other professionals, refusal to attend a ZANU-PF rally or chant a ZANU-PF slogan or not having a ZANU-PF membership card. The Tribunal accept that these categories

illustrate those who might be at risk but each case must depend upon its own circumstances. In a number of cases the Tribunal has drawn a distinction between low level and high level political activities. The situation in Zimbabwe is arbitrary and unpredictable and in these circumstances such a distinction is not determinative. The phrase "low level activities" is sometimes used as a way of describing someone whose background and profile is such that it is thought that he would not be of interest to the authorities but someone whose political activities may have been at a low level may have become of interest to the authorities. The current position taken by the Tribunal that each case must be decided on its individual facts should be continued. This approach has been endorsed by the Court of Appeal in Mhute [2003] EWCA Civ 1029 and Ndlovu [2004] EWCA Civ 1567…

6. Considering the concession by the Home Office of the appellant holding a position as the Treasurer of the MDC Middlesbrough branch, the evidence by the witnesses of the appellants high profile, the google search against the appellants name, the social media profile and the period of time that the appellant has been involved with the MDC, it is submitted that that the IJ has erred in finding that the appellant is a low level member of the MDC.

7. Further, the IJ, having accepted that the appellant is involved with ROHR has not made any findings as to whether the appellant, belonging to a civil rights organisation in opposition to the ZanuPF, would be subject to a second stage interrogation upon arrival at the airport. In HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 it was stated as follows:

'2. The findings in respect of risk categories in SM and Others (MDC – Internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100, as adopted, affirmed and supplemented in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 are adopted and reaffirmed. The Tribunal identifies one further risk category, being those seen to be active in association with human rights or civil society organisations where evidence suggests that the particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwean regime.'

8. It is submitted that the IJ had not considered fully the statement of Panyika Karimanzira in assessing the appellants membership to ROHR and whether, as a result she would be, in addition to her adverse political profile, be subjected to a second stage interrogation upon arrival at Harare airport.

9. At paragraph 29, the IJ states that he does not accept '…that there would be very significant obstacles to her integration due to her limited and low profile activities'. It is respectfully submitted that the IJ has not adequately considered whether the appellant would face obstacles as a result of her 'political orientation' (that being her membership of the MDC, ROHR and WOZA and her active profile on the social media). The Home Office guidance, Family Policy Family life (as a partner or parent), private life and exceptional circumstances (December. 2021) states as follows:

'Relevant country information should be referred to when assessing whether there are very significant obstacles to integration. You should consider the specific claim made and the relevant national laws, attitudes and country situation in the relevant country or regions. A very significant obstacle may arise where the applicant would be at a real risk of prosecution or significant harassment or discrimination as a result of their sexual or political orientation or faith or gender, or where their rights and freedoms would otherwise be so severely restricted as to affect their fundamental rights, and therefore their ability to establish a private life in that country.'

10. It is submitted that the IJ had not made an assessment as to whether the appellant as a result of her **'political orientation'**, that being an active member and holding position within the MDC and CCC, being actively involved with ROHR (Restoration of Human Rights), would upon return to Zimbabwe face **'significant harassment or discrimination'**."

Rule 24 notice

6. There was no rule 24 notice.

Oral submissions

7. Mr Acharya submitted that the Judge wrongly assessed the risk as if the Appellant was in Bulawayo rather than at the airport on arrival. There would be a screening of her prior to arrival. She would be suspected of being of interest to the authorities. The second stage interrogation would breach the Article 3 threshold. The Judge noted at [7] that she was an active member of the MDC. She had undertaken further activity since the previous decision in 2007 as set out in [11] of the decision. There was no great cross-examination of her witnesses as confirmed in [12] of the decision. This was a sur place claim. The documentary evidence showed her involvement. When Mr Acharya sought to argue economic hardship I pointed out that this was not raised in the grounds, and as he chose not to apply to extend the grounds, I will not summarise his submissions.

8. Mr Acharya confirmed that the Article 8 ground of significant obstacles to reintegration depended on the findings of significant harm being found to have been established in ground 1.

9. Mr Diwynicz submitted that it was up to the Appellant to establish there was a material error of law, he did not wish to argue at any great length, and the grant of permission to appeal was pithy.

Discussion

10. In assessing the grounds, I acknowledge the need for appropriate restraint by interfering with the decision of the First-tier Tribunal Judge bearing in mind its task as a primary fact finder on the evidence before it and the allocation of weight to relevant factors and the overall evaluation of the appeal. Decisions are to be read sensibly and holistically; perfection might be an aspiration but not a necessity and there is no requirement of reasons for reasons. I am concerned with whether the Appellant can identify errors of law which could have had a material effect on the outcome and have been properly raised in these proceedings.

11. Regarding ground 1, Judge Fisher found that the Appellant is an active member of the MDC acting as the Middlesborough branch treasurer, that she had attended a demonstration at the COP 26 summit in Glasgow, and that she is a member of WOZA and ROHR. That plainly amounts to an “adverse political profile” of the type identified in [4 and 5] of the grounds and identified in SM (Zimbabwe). The Judge did not therefore need to state that specifically and did not materially err in not doing so.

12. The activities the Appellant referred to and which are identified in the decision at [10 and 11] (see above) comprised raising funds, being responsible for the branch income and outgoings, arranging meetings, recruiting new members, attending an MDC demonstration in April 2023,

cooking and taking snacks to participants at demonstrations, addressing the crowds, distributing leaflets, and preparing placards.

13. There was no supporting evidence of her addressing crowds, distributing leaflets, and preparing placards, and I note that none of those who had given evidence on her behalf referred to these activities in their letters of support. I bear in mind the previous findings of Judge Zucker and Judge Sacks of her not being a credible witness and Judge Sacks of her claimed political interest being purely for the purposes of raising a "sur place" claim and of continued deception.

14. The evidence of the authors of the letters of support from Chairs of committees was tested in cross-examination and assessed at [12] of the decision.

15. I note from within the Appellant's bundle that in addition to the letters of support, she had adduced minutes of meetings, pictures of many demonstrations and meetings, internet searches identifying her and her human rights involvement, and tweets by and mentioning her participation and activity at many events in a section of her bundle totalling some 300+ pages. She adduced evidence of her children being granted refugee status in Ireland and the evidence they had given in their statements of her political involvement.

16. The documentary evidence underpinning the oral evidence was not referred to in the decision. The Judge did however state in [13] "On the totality of the evidence before me…" I am satisfied that this means the Judge considered all the documentary evidence adduced even if he did not specifically refer to it.

17. Further, having considered that documentary evidence myself, I am not satisfied it added materially to the letters of support and oral evidence.

18. As was made clear in SM (Zimbabwe) "…The situation in Zimbabwe is arbitrary and unpredictable and in these circumstances such a distinction is not determinative. The phrase "low level activities" is sometimes used as a way of describing someone whose background and profile is such that it is thought that he would not be of interest to the authorities but someone whose political activities may have been at a low level may have become of interest to the authorities. The current position taken by the Tribunal that each case must be decided on its individual facts should be continued." The Judge made findings available to him on the evidence that the Appellant's activity would be perceived as being of an insufficient level to mean that she would be at real risk of persecution or Article 3 ill-treatment on return, or in Bulawayo. The grounds amount to nothing more than a disagreement with that evidence based assessment. I am not therefore satisfied that the Judge made a material error of law in relation to ground 1.

19. As ground 2 is dependent on ground 1, there is no material error of law in the Judge's assessment of whether there would be significant obstacles to her integration due to her limited and low-level activities.

Notice of Decision

20. The Judge did not make a material error of law. The decision of Judge Fisher stands.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
19 June 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.