



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/00766/2013

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Determination  
Promulgated**

**On 20<sup>th</sup> June, 2013**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**M M  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs Lynne Brakaj of counsel

For the Respondent: Mr P Mangion a Home Office Presenting Officer

**ANONYMITY ORDER MADE**

The First-tier Tribunal made a direction regarding anonymity. Unless and until a Tribunal or Court orders otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or her or any member of his or her family. This direction applies to the appellant and to the

respondent. Failure to comply with this direction could lead to contempt of court proceedings.

### **DETERMINATION AND REASONS**

1. The appellant is a citizen of Zimbabwe who was born on 22<sup>nd</sup> July, 1987.
2. He entered the United Kingdom on 15<sup>th</sup> March, 2005, using his own Zimbabwean passport. He had leave to enter with a visa valid until 20<sup>th</sup> January, 2007, as the dependant of his mother, a work permit visa holder. The appellant was granted further leave to remain in the United Kingdom, with his last leave expiring on 20<sup>th</sup> October, 2009. The appellant claimed asylum on 29<sup>th</sup> September, 2009, and made further submissions in respect of this claim by letter dated 15<sup>th</sup> November, 2012.
3. On 11<sup>th</sup> January, 2013, the respondent decided to remove the appellant, having refused the appellant's asylum claim and the appellant appealed this decision to the First-tier Tribunal, Immigration and Asylum Chamber.
4. The appellant's appeal was heard by First-tier Tribunal Judge S P J Buchanan who, in a determination promulgated following a hearing at North Shields on 26<sup>th</sup> February, 2013, dismissed the appellant's appeal on asylum grounds, dismissed the appellant's appeal on humanitarian protection grounds and dismissed the appellant's appeal on human rights grounds.
5. The appellant challenged the determination on the basis that the report of Dr Laurel Birch De Aguilar had not been properly considered by the First-tier Tribunal Judge and in respect of the consideration of the appellant's Article 8 claim. The report raised the notion of "likely" probing of the appellant on his arrival in Zimbabwe, both with regard to his long stay in the United Kingdom and his arrival in Zimbabwe without family. The expert report stated that it was "highly likely" that the appellant would be asked where he was going to stay, who he was going to see, and where he is from. The expert concluded that passport records could link the appellant with his brother.
6. The Article 8 challenge suggested that the Tribunal erred in its proportionality assessment as it failed to, "*take into account relevant factors as part of the proportionality assessment*". In particular, it was asserted that the Tribunal failed to take into account that the appellant had arrived lawfully in the United Kingdom as a minor dependent on his mother, who is now settled in the United Kingdom, the fact that his brother is a refugee in the United Kingdom, and that there are, therefore, limitations upon the ability of the family to maintain their ties, and the fact that the appellant has not formed an independent family life outside his lifelong family unit.
7. At the hearing before me, Mrs Brakaj suggested that the judge needed to take account of the expert report, but had simply failed to do so, leading

to an error of law on his part. The Presenting Officer told me that the appellant's mother has indefinite leave to remain and, prior to the appellant coming to the United Kingdom, his older brother had been granted asylum. I pointed out to Miss Brakaj that the expert's report had not actually been signed and in the circumstances it is difficult to see how the judge could have relied upon it to any great extent. I pointed out that the report may not be signed because it is a draft report, or the expert may simply have forgotten to sign it. Either way, it seemed to me that little weight could be attached to the report in the circumstances, given that the expert did not attend the hearing to give oral evidence.

8. I told the representatives, however, that on reading the determination, I was concerned with the judge's Article 8 determination, because nowhere did he indicate that he had considered the impact of the appellant's removal on his mother and brother.
9. The Presenting Officer told me that he agreed that the judge had not considered the impact of the appellant's removal on his mother and brother, but that was not material, because those factors alone would not make removal disproportionate.
10. The judge has made no reference at all to the expert report which was clearly before him. However, that report was not signed and the weight that he could have attached to that report would have been limited in any event. Because the First Tier Tribunal Judge had not referred to that unsigned report, I decided that the matter would have to be heard again. I was also concerned about the judge's consideration of the Article 8 claim. The judge found that there was both family and private life, but he failed to consider the impact on the appellant's mother and younger brother if he were removed from the United Kingdom. I indicated that I was minded to set aside the determination.

### **Appellant's Oral Evidence**

11. I then heard evidence from the appellant who confirmed his full names, address and nationality and said that he was born on 22<sup>nd</sup> July, 1987. His solicitor referred him to a statement made by him dated 11<sup>th</sup> November, 2012. The appellant was asked if he had read the statement and whether he wished to adopt it as part of his evidence.
12. I explained to the appellant that he was free to adopt anything he wished as part of his evidence, but that he should only do so if he was completely sure that the contents were true, accurate and complete, because, if when giving evidence to me he later contradicted anything in his written statement, that might cause me to believe that he was not telling the truth. I explained that in the event that I did not believe he was telling the truth, there was a danger that he might damage his appeal. The appellant told me that he understood the warning I had given to him and asked that he be permitted to read it.

13. For completeness, the statement is set out at Appendix A of this determination. Having read it, the appellant adopted his statement. He has, since the date of his statement, carried on with his cookery course which is due to finish this week. It is a level 2 professional cookery course and the appellant has enrolled for level 3.
14. At the moment the appellant lives with his mother and younger brother, J. His mother is a nurse. J is currently at school; he is 16 years of age and is going to sixth form.
15. The appellant told me that he hopes to go to university to study culinary arts.
16. In describing the impact that his removal would have on his young brother, the appellant told me that he and his brother spend all their time together. They go out together, go to church together and, "*do a lot of brotherly stuff*".
17. The appellant said that he is a mentor for his brother who comes to the appellant to discuss whatever problems he might have with him.
18. J arrived in the United Kingdom last year. He had been looked after by a guardian in Zimbabwe. The appellant's removal would affect J. Before 2005, the appellant lived with his grandmother in Zimbabwe. After his arrival in the United Kingdom, he and J spoke on the telephone. It was hard for him and his brother being apart, and J's schooling in Zimbabwe was affected.
19. The appellant told me that he was close to his mother who is a single parent. He helps in the garden and helps with shopping. He plays the 'male role' at home and helps around the house. He sees his other, older brother, P every week, but he lives in Scotland.
20. Most of the appellant's aunts live in Newcastle. The appellant told me that he sees them every Sunday at church. They would be very upset if he were to leave. He looks after his cousins and teaches them Bible stories. He sees them every weekend. He often cooks for the family and he teaches his uncles and aunts different dishes that he has learnt to cook.
21. The appellant's cousins are aged 6, 10, 12 and 17 years. He now has nobody left in Zimbabwe.
22. The appellant's mother found a friend who acted as a guardian to J when he was in Zimbabwe. This friend has now remarried and, because she lives with her new husband, would not be in a position to look after the appellant if he were to return. His family do not own any land or property in Zimbabwe.
23. If returned, the appellant believes that he would be at risk from ZANU-PF who were after his older brother. He believes that they would now want to come after him.

24. In answer to a question put to him by me, in order to clarify his evidence, the appellant confirmed that his former home in Zimbabwe had been in Bulawayo.
25. Cross-examined by the Presenting Officer, the appellant said that he last saw LM, his first cousin, two months ago. She lives in Brighthouse.
26. The appellant confirmed that the author of the letter at page 41 of the bundle prepared on his behalf was from his brother, P. He arrived in the United Kingdom in 2002.
27. The author of the letter at page 42, N M, is also a cousin and the appellant told me that he last saw her last year, as he did M M, another cousin. Both cousins live in Lincoln.
28. The appellant confirmed that he was the dependant of his mother who held a work permit visa when she arrived in the United Kingdom. J had not travelled to the United Kingdom at that time. The appellant explained that his mother tried to bring J into the United Kingdom, but he was refused. When the appellant came to the United Kingdom J would have been about 9 years of age. He lived with his grandmother, but when she died in 2009, he went to live with the guardian. The appellant did not know how much his mother paid the guardian to look after J, but he did remember that she used to send money every two weeks or so.
29. The appellant's grandmother did not own her own property, she rented it.
30. The appellant explained that if he were to go and live in Zimbabwe, his mother could send money to him to support him, but she is struggling already financially. She is a nurse working for an agency, but she does not work full-time.
31. The appellant confirmed that he used to live with his brother.
32. He was referred to page 46 of his bundle. I explained to the representative that I did not have page 46 in my bundle and she told me that she did not have a page 46 in her copy of the bundle either.
33. In answer to questions put by me, the appellant explained that his father had died before the appellant knew him.
34. There was no re-examination.

### **Submissions**

35. The Presenting Officer told me that he relied on the Secretary of State's Reasons for Refusal Letter and urged me to find that the appellant's removal would be a proportionate response on the part of the Secretary of State. J, the appellant's younger brother, is a half-brother and he arrived in the United Kingdom only last year. Before that the family were

separated when J was left behind after the appellant left Zimbabwe in 2005.

36. J's guardian had been willing to look after J for some three years before he came to the United Kingdom and there was no evidence to suggest that she would not be in a position to assist the appellant, should he need it. He is, however, an adult. Additionally, the appellant's mother would be able to assist. She supported J financially while he was in Zimbabwe and there would be no reason why she could not do the same for the appellant. The family had known for some time that it was possible that the appellant would be removed.
37. The appellant's older brother was granted asylum in 2005. The appellant left Zimbabwe in 2005 and his mother returned to Zimbabwe in 2009. There clearly would be no risk now because of the family name and it could not be said that there was a real risk to the appellant at the airport. Bulawayo was not likely to cause him any difficulties at all. He has no political profile of his own. He invited me to dismiss the appeal.
38. Addressing me in relation to the appellant's asylum claim, the appellant's solicitor asked me to note that the appellant was from Bulawayo, but that there would be a risk to him on return at the airport. He left Zimbabwe when he was a minor. His older brother was politically active and that would cause the appellant to be at risk. She asked me to consider *EM & Others*, in particular paragraph 66 on page 166. She referred me to the bundle containing the expert report and asked me to note in particular what the expert said at page 52.
39. Mrs Brakaj confirmed that the expert had not been told of J's departure from Zimbabwe, and nor had she been told of the appellant's mother's return to Zimbabwe in 2009.
40. Miss Brakaj asked me to refer to, and apply paragraph 203 of *CM*.
41. As to the appellant's Article 8 rights, he has a private life established in the United Kingdom and he obviously plays an important part in J's life as his mentor. The family were separated before, but that separation was not under the control of the appellant. The appellant's mother sought to bring J to the United Kingdom, but was not permitted to for some time. The appellant arrived in the United Kingdom at the age of 17 years and has no work experience in Zimbabwe. He has not only worked, but also studied in the United Kingdom. His younger brother is currently continuing his education. There were problems involving the appellant's mother's divorce and J clearly suffered in his education as a result of being separated from the appellant. He is a minor and separation will be devastating for him.
42. The appellant has always had status in the United Kingdom. He might have been able to secure status for himself before his 18<sup>th</sup> birthday, but for whatever reason he did not. He has no family in Zimbabwe and cannot rely on the guardian who looked after J. The family do not own any

property in Zimbabwe and there is no home he can return to in Bulawayo. The appellant's removal would be disproportionate, she said.

43. I reserved my determination.

### **The Law**

44. In asylum appeals the burden of proof is on the appellant to show that returning him to Zimbabwe will expose him to a **real risk** of persecution for one of the five grounds recognised by the 1951 Refugee Convention or to a breach of his protected human rights. The question of whether a person has a well-founded fear of persecution for a Convention reason has to be looked at in the round in the light of all the relevant circumstances and judged against the situation as at the time of the appeal. In human rights appeals, if it is established that there will be an interference with the appellant's human rights and the relevant Article permits, then it is for the respondent to establish that the interference is justified.
45. The standard of proof in asylum appeals as regards to both the likelihood of persecution and the establishment of past and future risks, is a **real risk**. In *Kacaj v Secretary of State for the Home Department* (01/TH/0634\*) it was held by the Immigration Appeal Tribunal that the standard of proof in human rights appeals is the same as that in asylum appeals.

### **Background Evidence**

46. I was supplied with a copy of the Human Rights Watch World Report dated 13<sup>th</sup> January, 2013. This spoke of the power-sharing government having either failed to amend, or come to an agreement on amending, oppressive laws such as the access to Information and Protection of Privacy Act, the Public Order and Security Act and the Criminal Law (Codification and Reform) Act, which severely curtailed basic rights through what are described as being "vague defamation clauses and draconian penalties". The laws provide criminal penalties for defamation, undermining the authority or insulting the President and have been routinely used against journalists and human rights defenders. The remaining parts of the report were of little assistance to me.
47. I was provided with extracts of the Zimbabwean Country of Origin Information Report of July 2012. Quite why I was not provided with the full report I do not know. The US State Department Country Report was quoted as saying that there were credible reports of politically motivated abductions and attempted abductions and that leaders of both MDC factions reported that security agents and ZANU-PF party supporters abducted and tortured MDC-T and MDC-M members, civil society members and student leaders. The Human Rights Watch Report referred to an increase of violence and abuses as a result of ZANU-PF and elements within security forces resorting to violence, intimidation and harassment. Members of the MDC were being implicated in beatings, arbitrary arrests

and harassment by state security agents, police and ZANU-PF supporters. None of the perpetrators of human rights violations have been held accountable and the assumption is said to be that they can operate with impunity. Concern was expressed about the failure to investigate security force abuse and that despite the constitution and laws prohibiting arbitrary arrest and detention security forces do arbitrarily arrest and detain people, particularly political and civil society activists perceived to oppose the ZANU-PF party. Police officers were accused of only arresting MDC-T supporters as they are regarded as enemies of the state, leaving known perpetrators of violence roaming free. Torture is said to be regularly used by the police when interrogating suspected criminals and the security sector continues to use torture during politically motivated interrogations. A Human Rights Watch Report noted that torture and other ill-treatment of activists by police and members of the Zimbabwe Intelligence Services remain a serious and systematic human rights problem in Zimbabwe. Detainees in police custody are at significant risk of torture.

48. In some cases torture was said to be an element of coercive interrogations while in others it was used as a form of punishment for activists' perceived leanings or intentions. Allegations of torture by the police or intelligence officers are rarely investigated, the report said. I read section 14 of the report dealing with 'Political affiliation'.
49. Included within the bundle were extracts from the 2011 Country Reports on Human Rights Practices, but quite why I was given this old material I am not sure. I was not referred to any of it and reading it did not alter my view of the objective situation in Zimbabwe which I gleaned from the earlier information.
50. It was against this background that I considered the appellant's asylum claim and made my findings of fact.

### **Findings of Fact**

51. The appellant is a Zimbabwean who, within a matter of days will be 26 years of age.
52. He arrived in the United Kingdom as the dependant of the holder of a work permit visa in 2005.
53. The appellant is a mild-mannered, polite, likeable and clearly intelligent young man who is currently studying professional cookery and who would like to become a professional chef.
54. The appellant's older brother, P, was granted refugee status in 2002, because of his political activity with the MDC. I have not been given any further information relating to his asylum claim, but it is suggested that because he and the appellant share the same name, the appellant will be identified as being from the same family and perceived to be opposed to the regime in Zimbabwe.



55. I have carefully read the expert's report. As I pointed out to the appellant's solicitor, the report is not signed. As a result, I do not know whether Dr Aguilar has approved the report or not. It is perfectly possible that the report is in draft stage.
56. I concluded that it was incumbent upon me to read the report, but to bear in mind that there was nothing to indicate that Dr Aguilar had approved it before it was submitted to the Tribunal. I did not feel able, in the circumstances to place as much weight on it as I would have done had it been signed.
57. I thought it significant that the expert had not been told that J, the appellant's younger brother, had remained in Zimbabwe until 2009, and had since joined the family. I accept, of course, that he might well have a different surname, but I believe that it was information which would have been relevant to the expert. I was also surprised to learn that the expert had not been advised that the appellant's mother had returned to Zimbabwe in 2009, without her having experienced any apparent difficulty. This is precisely the sort of information that might have affected the expert's opinion.
58. Reading the report, it became clear to me that the report did appear to be in draft form. For example, on page 50, at the end of the second paragraph, the word, "cite" is typed in parenthesis. I assume that this is because it was the intention of the author to make a reference to background information.
59. That part of the expert's report which deals with the likelihood that the appellant will be identified as being related to someone opposed to the regime and, therefore, be perceived as against the regime is on pages 51 and 52. Particularly relevant are the following paragraphs:-

"On arrival in Harare [the appellant] can use his Zimbabwean passport to enter the country, assuming it is current. It is highly likely he will be addressed in a local language, Shona or Ndebele, and asked why he has been away for so many years, where he is going to stay, who he is going to see, and where he is from. These questions are standard on arrival in my experience and experiences of others. How he answers these questions, and further ones, will be a factor in how he is treated on arrival in Zimbabwe.

It is highly likely Immigration Authorities will ask questions on arrival and probe for information about his prolonged stay in the UK, and his arrival without any family in Zimbabwe. It is also likely that his long absence in Zimbabwe will be known, or that this information is knowable by the CIO monitoring names of passengers in the airport. There are only a few flights per day bringing foreign passengers, and fewer originating in Europe, so the CIO will have ample time to investigate passengers if they wish.

It is plausible that CIO will have access to passport records and be able to make a connection between [the appellant] and his brother that fled in 2002 [sic], **and his mother who departed in 2004**. If so, it is highly plausible that [the appellant] will be asked about the whereabouts of his family. Such questioning is highly likely to lead to a more thorough questioning causing detention. An example of questioning was published in 2010 by a woman detained who had a family member in the ZANU-PF who rescued her and she later revealed what happened (2009 attached).

While it is not possible to know the actions of CIO officers in the airport on the particular day [the appellant] will arrive, it is plausible, in my view, that his long absence in the UK will raise questions. The fact that his passport is not in order with a valid visa will raise further questions. [The appellant] will arrive in the airport on his own and his treatment may not be known to anyone if he is detained for questioning on arrival, or followed as he leaves the airport.”[My emphasis]

60. The Presenting Officer confirmed that the appellant’s Zimbabwean passport was still current.
61. If it is plausible that the CIO will have access to passport records and will be able to make a connection between the appellant and his brother who fled in 2002 and his mother who departed in 2004, then the CIO will also be aware of the fact that the appellant’s mother returned in 2009 and was allowed to leave the country again and come back to the United Kingdom without experiencing any difficulty. That suggests to me that the CIO will have absolutely no interest at all in the appellant.
62. I do not know why the appellant’s older brother’s claimed asylum, because the appellant’s solicitors have chosen not disclosed this. I do not know whether the appellant’s brother had difficulties with the Zimbabwean authorities, or simply with members of the ZANU-PF. However, the fact that the appellant’s mother returned to Zimbabwe in 2009 and was then able to leave, bringing with her the appellant’s younger brother, suggests to me that the CIO will have absolutely no interest at all in the appellant, or anyone with the appellant’s family name.
63. The expert speculates by suggesting that, “the fact that his passport is not in order with a valid visa will raise further questions”. The appellant’s Zimbabwean passport is in fact both valid and in order. Why the expert was not advised of this I do not know; she should have been.
64. I concluded that the weight I could place on the expert’s report was very limited, because it had not been signed. Indeed, there were indications which suggested that it is possible that the report in the appellant’s bundle is only a draft report. Nonetheless, even if the report had been signed and I had felt able to accord it the very considerable weight I would have given ordinarily to an expert’s report, I believe that the fact that the appellant’s mother returned to Zimbabwe in 2009, without event, and the fact that this was not drawn to the attention of the expert, led me to conclude that the authorities in Zimbabwe would not be remotely interested in the appellant once they had established his identity would allow him to pass.
65. I have paid careful attention to what the Supreme Court said in *RT (Zimbabwe) and others v Secretary of State for the Home Department* [2012] UKSC 38 and note at paragraph 66 there is reported that it had been conceded before the Court of Appeal in the case of *KM* that the fact that *KM*’s son had been granted asylum in the United Kingdom on account of his MDC sympathies, would come out on his return to Zimbabwe and that this might place that appellant in an enhanced risk category, making it more difficult for him to demonstrate his loyalty to the regime. With

very great respect, each case is different and dependent on its own facts. I do not know why a concession was made before the Court of Appeal in *KM*, but it is quite clear that the Zimbabwean authorities were not remotely interested in this appellant's mother when she returned to Zimbabwe and, if the CIO had any interest in people with the same family name as the appellant's older brother who had been granted asylum in 2002, then she would have encountered difficulties.

66. I do not believe that the appellant would be placed in a position where he will face a real risk of having to demonstrate loyalty to ZANU-PF. *EM & Others (Returnees) Zimbabwe CG* [2011] UKUT 1998 supports the contention that a returnee to Bulawayo will, in general, not suffer the adverse attention of the ZANU-PF, including the security forces, even if he or she is thought to have a significant MDC profile.
67. *CM (EM country guidance: disclosure) Zimbabwe CG* [2013] UKUT 00059 simply reinforces the view that someone without ZANU-PF connections, returning from the United Kingdom after a significant absence, is not likely to face a real risk of having to demonstrate loyalty to ZANU-PF and returning to Bulawayo is not likely to cause him to come to the adverse attention of ZANU-PF or the security forces.

## **Conclusion**

68. I have concluded that the appellant has simply failed to show that there is a real risk that on his return to Zimbabwe he will be persecuted or suffer harm or ill-treatment as someone perceived to be an MDC supporter and against ZANU-PF, or the ruling regime in Zimbabwe. **I dismiss the appellant's asylum appeal.**
69. For the same reasons I dismiss the appellant's humanitarian protection and Articles 2 and 3 appeals.

## **Article 8**

70. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for respect for a person's private and family life, their home and correspondence. An appellant has to show that the subject matter of Article 8 subsists and that the decision of the respondent will interfere with it. If he does so, then it is for the respondent to show that the respondent's decision is in accordance with the law, that it is for one of the legitimate purposes set out in Article 8(2) (in this case for the economic wellbeing of the country, for the prevention of disorder or crime and for the protection of the rights and freedoms of others) and that it is necessary in a democratic society, which means that it must be proportionate.
71. At paragraph 17 of *Razgar v Secretary of State for the Home Department* [2004] UKHL 27, Lord Bingham of Cornhill said this:

“17. In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:

- (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
- (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
- (3) If so, is such interference in accordance with the law?
- (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
- (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?”

72. The First-tier Tribunal found that the appellant enjoyed both a family and private life. I am not sure how the appellant demonstrated that he met the “Kuganthas” (*Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31) test referred to in *JB (India) & Others v Entry Clearance Officer* [2009] EWCA Civ 234, because the appellant is an adult and the judge does not explain, but this finding was not challenged by the Home Office and I, therefore, proceed on the basis that the appellant does enjoy both family and private life. In any event, the private life he enjoys with his family members is close.

72. I have to bear in mind in considering the appellant's Article 8 appeal the fact that there is only one family life and that it is necessary to look at the family as a whole and to regard each affected family member as a fiction (see *Beoku-Betts v Secretary of State for the Home Department* [2008] UKHL 39). I must also have regard to the best interests of the appellant's half-brother, in the way required by paragraph 29 of the judgements in *ZH (Tanzania)* [2011] UKSC 4. There are no considerations inherently more significant than the best interests of children.

73. I have very little information about how J was affected when his mother and the appellant left him behind in Zimbabwe, but of course he was only 9 at the time. One can imagine that it must have been a most traumatic time for a 9 year old, losing not only a mother who decided to go abroad, but a brother who was going with her.

74. Were the appellant to be removed now then it has to be borne in mind, of course, that J would still have his mother and older brother with him in the United Kingdom and he is now, of course, very much older.

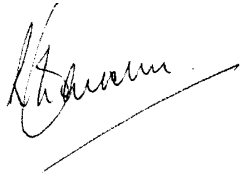
75. I have no doubt that J would be upset at the thought of his brother having to return to Zimbabwe, but in the absence of school reports, psychological reports or, indeed, any evidence from J himself, I am not prepared to accept that the upset he will be caused is likely to be anything other than temporary. In the event that the appellant were returned to Zimbabwe, J would still be able to communicate with him by telephone and other electronic means and, should he wish to, there is no reason why J should not visit the appellant. I have concluded, therefore, that the effect on J of the appellant's removal is likely to be temporary and short-term. It will be far less traumatic than it must have been for him when he was a 9 year old, saying goodbye to his older brother and his mother.
76. So far as the appellant's mother is concerned, of course one can quite understand how a mother would not wish to be separated from her son, particularly one who is 25 years of age, but I note that contrary to what I was told, the appellant and his mother have lived separate and apart before, in 2009 following his claim for asylum.
77. I have read the two letters from the appellant's mother, both dated 22<sup>nd</sup> September, 2012, in the appellant's bundle at pages 44 and 45. I have no doubt at all that she will be upset were her son to be removed, but I do not believe that his removal will have any long-term or adverse effects on her either. She will of course be free to contact him by telephone and other electronic means of communication should she wish to and of course she still has the possibility of going to visit him in Zimbabwe.
78. In considering the question of proportionality, I carefully examined the documentation in the appellant's bundle. The appellant's mother enjoys leave to remain in the United Kingdom. The appellant's older brother was recognised as a refugee following his arrival in 2002 and I take into account the fact that the appellant arrived in the United Kingdom with his mother, as her dependant, and has studied and worked in the United Kingdom. I bear in mind that he has been in the United Kingdom with leave throughout his time here. It is true, of course, that he could have made application for leave to remain before his 18<sup>th</sup> birthday, but did not do so. I do not know what the outcome of that application might have been; the fact of the matter is that he did not make the application. I bear in mind that the appellant has continued to live with his mother and never lived apart from her, other than for the period when he went to live in Liverpool for a year after claiming asylum, at the time he went to live with his aunt and his brother.
79. The appellant is a mild-mannered, polite and intelligent young man. He clearly enjoys cooking and the examination results in the bundle clearly show his enthusiasm and talent. His mother has every right to be proud of him.
80. The letters from the appellant's cousins clearly show what a credit the appellant is to his mother. I have read the letter from House of Destiny Ministries. It is unsigned and fails to identify the author, but I am prepared to accept that the appellant has become a valuable and reliable member

of the church and his community and he is a regular attendee at services and conferences and participates in activities for young adults and for the entire church.

81. It is not at all difficult to believe that the appellant is well-liked, appreciated and respected both in the church and in the community.
82. The appellant has applied himself diligently to his studies and clearly has a flair for cooking which, understandably, he shares with his family members.
83. The appellant has been in the United Kingdom now for some eight years and I accept that during this time he has become familiar with British culture and British way of life.
84. I have concluded, however, that the appellant's return to Zimbabwe would not be a disproportionate response on the part of the Secretary of State. The appellant and his mother have known that his stay in the United Kingdom was only temporary. I accept that he might very well have been entitled to apply for leave to remain before he was 18 years of age, and I also accept that it is possible that such application *may* very well have been granted by the Secretary of State. However, the fact remains that he did not make such application. The appellant and his mother have known since his claim was refused that his stay in the United Kingdom was precarious. The appellant is clearly an intelligent young man, who has quickly been able to adapt to life in the United Kingdom. I accept that conditions in his native country are entirely different, but I have no reason at all to believe that he would not quickly adapt. I do not know whether or not J's guardian would be able to assist the appellant, but it has to be borne in mind that he is, in any event, a mature young man who has skills which he has learnt in the United Kingdom which, should he choose to, he can put to good use in Zimbabwe.
85. In all the circumstances I have concluded that I must dismiss the appellant's Article 8 human rights appeal because the appellant's removal is, in my view, proportionate.

## **SUMMARY**

The making of the determination by the First-tier Tribunal did involve an error on a point of law. I set aside that determination. My decision in respect of the appellant's asylum appeal is that it should be dismissed. I have concluded that since his humanitarian protection and Articles 2 and 3 human rights appeals are based on the same factual matrix as the appellant's asylum appeal that they should be dismissed also. The appellant's Article 8 appeal is also dismissed.



**Upper Tribunal Judge Chalkley**

## **APPENDIX A**

“I can confirm that the contents of this statement are true and correct.

1. I write this statement in support of my claim for asylum in the UK.
2. I first arrived in the UK on the 12<sup>th</sup> of March, 2005, on a valid work dependant visa. I remained in the UK and later claimed asylum in September 2009.
3. I am originally from Bulawayo in Zimbabwe. I did not claim asylum on arrival in the UK as I was a minor with no knowledge of the asylum process.
4. I fear return to Zimbabwe as I believe I will be persecuted by ZANU-PF due to my family’s history of being actively involved in the MDC. My older brother PM was an active member of the MDC in Zimbabwe and targeted by ZANU-PF for this reason. He was forced to flee Zimbabwe

fearing for his life due to his political involvement. P fled to the United Kingdom and claimed asylum in 2002. He was recognised as a refugee on 20<sup>th</sup> December, 2002.

5. I believe there is a high risk that I will face persecution if I am returned to Zimbabwe as I will be affiliated with my brother. I fear that I will be questioned on the whereabouts of my family on return to Zimbabwe. I will then have to disclose that my brother has been granted refugee status in the UK. If asked I shall also have to disclose that my mother and my other family are also living in the UK. I fear that I will automatically be perceived as anti-regime, particularly in the light of my lengthy residence in the UK. I believe that I would be at serious risk if returned to Zimbabwe.
6. I have resided in the UK for the past seven years of my life and view this country as my home. I am currently studying at [*identity of college has been removed*] and I am currently enrolled on a level 2 professional cookery course, I hope to continue my education and one day be a professional chef. I ask that the UKBA do not remove me from my home and my family. I have no experience of life in Zimbabwe since my childhood and have no family, friends or contacts there. I enjoy a close family relationship with my mother and brother in the UK, in addition to all my aunts, uncles and cousins here. I ask that the UKBA do not deprive me of this.
7. I fear that if I am returned to Zimbabwe I will certainly be at risk of severe mistreatment due to my political affiliation.
8. I ask that the UK provide me with protection and allow me to stay in the UK where I can continue my life here with my family without risk.”