Upper Tribunal
(Immigration and Asylum Chamber)
AA/04902/2013

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford
On 29th October 2013

Determination Sent

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MS ABYGAIL MAKOPE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Billie, IEI Solicitors
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Zimbabwe born 6th June 1970. This is her appeal against the decision of the First-tier Tribunal Judge (Judge Reed) dismissing her appeal against the Respondent's decision to refuse to grant her asylum and to remove her from the UK by way of directions under paragraphs 8 to 10 of Schedule 2 of the Immigration Act 1971.

2. The Appellant left Zimbabwe and arrived in the UK on 9th October 2002 in possession of entry clearance as a student valid until 9th April 2003. Her leave was then extended until May 2004 when she submitted a further

application for leave to remain as a student, but this was refused in July 2004. The Appellant did not leave the United Kingdom but instead claimed asylum on 15th September 2008. That application was made after the discovery of a false stamp in her passport purporting to grant her indefinite leave to remain. The asylum application was based upon her claimed involvement with the MDC. It was refused. Her appeal against this refusal was allowed in a determination promulgated on 18th December 2008, but upon the Respondent seeking reconsideration the Appellant's appeal was dismissed by Senior Immigration Judge Waumsley on 20th May 2009.

3. Further submissions seeking a fresh claim to asylum were made in 2009, 2010 and 2011. All of those applications were rejected under paragraph 353 of the Immigration Rules. On 29th June 2012 the Appellant submitted an application using form SET(O) seeking indefinite leave to remain outside the Immigration Rules and relying upon her family and private life under Article 8 ECHR. She further claimed that any return to Zimbabwe would place her at risk of destitution and thereby would breach her Article 3 ECHR rights.

4. The Respondent considered those applications and refused them. A decision to remove her from the United Kingdom was made on 2nd May 2013. The Appellant appealed that decision claiming it would be unlawful as any removal would be contrary to the UK's obligations under the Refugee Convention; contrary to the Immigration Rules (Humanitarian Protection) and unlawful as being in breach of Articles 3 and 8 of the ECHR. The appeal came before Judge Reed who in a determination promulgated on 1st July 2013, dismissed the appeal on all grounds.

5. The Appellant sought and was granted permission to appeal. The grounds seeking permission were lengthy and in the main amounted to a disagreement with the negative credibility findings of the First-tier Tribunal Judge. But in summary the grounds in particular advanced that he should have taken a different view of the risk created by his acceptance of the Appellant's political profile, including risk on arrival at Harare Airport. It was also advanced that the Judge reached the wrong conclusion about the Appellant's sur place activities. Further the Judge's alternative internal relocation finding and Article 8 conclusions were criticised on the basis that the evidence was not assessed properly.

6. In granting permission Upper Tribunal Judge Storey said,

> *"Given the equivocal nature of the FTTJ's findings as to the appellant's political profile acquired through sur place activities (see para30) and the judge's apparent disregard for Danian principles at para 26 (see Articles 4 and 5 of the Qualification Directive), I consider it at least arguable that he erred in concluding that the appellant would not face risk on return. I would observe, however that I see no arguable error in the judge's findings on the appellant's past experiences in Zimbabwe or in the judge's Article 8 findings".*

The First-tier Hearing

7. The Appellant's claim before Judge Reed can be summarised thus. The Appellant at a previous Tribunal hearing, had been found to be a low level supporter of MDC. Her present claim is that since that claim was last considered her profile has change to a sur place activist and this situation has pertained for the last four years. She also states that she has now lived in the UK for the past eleven years and therefore is not noted as a Zanu-PF supporter.

8. In furtherance of the above the Appellant claimed;

(i) In 2009, she became a subscribing member of the MDC, joining the South Yorkshire branch of the party and has remained a member ever since. She also joined the Restoration of Human Rights Group (ROHR) and rose up to be a member of its co-ordinating committee. In March 2010 she was elected to gender secretary and is presently acting treasurer. Her duties include coordinating ROHR recruitment activities and organising monthly meetings. The Appellant is also a member of the Zimbabwe Vigil Coalition and participates in weekly anti-Mugabe demonstrations outside the Zimbabwe Embassy. At these meetings, she collects petitions and distributes flyers.

(ii) The protest activities of these groups are high profile and included for example a campaign to exclude Robert Mugabe from the AU/EU summit in Portugal in 2007. This campaign was criticised in Zimbabwe and press. The Appellant says she has been heavily involved in the anti-Mugabe activism.

(iii) If returned to Zimbabwe she would be at immediate risk immediate at Harare Airport because of her political profile. She refers to infiltration of anti-Mugabe groups by the Zimbabwean CIO and the publication of her activities on the Internet and Zimbabwean television. If asked what she had been doing, she would have to disclose her political activism which would again expose her to persecution. Even if she were able to exit the airport, her homeland is the rural area of Chiweshe in Mashonaland Central Province, which is still under the sway of Zanu-PF.

(iv) She has no one there to turn to as all her family have left the country and she would be virtually destitute. She says that she has no continuing connections in Zimbabwe as her two sons aged 18 and 23 are now in South Africa. She is divorced from their father and has no contact with him. Her parents are both deceased.

(v) In relation to her family and private life here in the UK the Appellant says that she has been living with Mr Cherechedzai Mudyambaje, a Zimbabwean national with indefinite leave to remain in the U.K. since August 2011. They met at a church conference in Manchester in June 2010 and started a relationship in February the following year. They

live as a married couple and would wish to marry, but require the Appellant's passport to prove her identity and this is presently with the Home Office. The Appellant has been supported financially by her partner and they share a joint bank account. He has also sent money to her son in South Africa and they have been on holidays together. She has also h established social relationships with members of the local community and has bonded closely with church members. She has undertaken voluntary work for vulnerable members of the community and made regular contributions to cancer research and other worthy causes.

9. Having fully analysed the country background material the Judge came to the conclusion that the Appellant had purposely manufactured her sur place activities in order to bolster her claim to asylum. Nevertheless, he did accept that there was evidence of the Appellant's sur place activities available on the Internet. He recognised he was still obliged to assess the potential risk on return to the Appellant. Having assessed that risk he found that the Appellant had not made out her claim and dismissed the appeal.

10. The grounds seeking permission are protracted and run to a lengthy nine pages. In the main they amount to a disagreement with the adverse credibility findings of the Judge. However UT Judge Storey granted permission on two distinct elements from those grounds. (See paragraph 6).

Thus the matter came before me in Bradford on 29th October 2013 to decide if Judge Reed's determination discloses an error of law such that the decision has to be set aside and remade.

The Hearing Before Me

11. Both representatives made submissions. Mr Billie's submissions followed the lines of the grounds seeking permission concerning the two elements upon which permission was granted. He conceded there was no arguable error on the Judge's findings on the Appellant's past experiences in Zimbabwe and that the Judge's findings on Article 8 ECHR claim were unarguable.

12. He submitted however that the Appellant could not return to her home area as she has no support system there. He wished to emphasise that the Judge's error revolved around his lack of understanding of what would happen to the Appellant should she be returned to Zimbabwe, via Harare Airport.

13. He said that there is a "two stage interrogation" at Harare Airport and risk of persecution depends upon whether you are distinguishable as an "ordinary traveller" or "a person of interest". The Appellant, simply by her association with or support of the MDC in her sur place activities places

herself into the risk category identified in **CM (Zimbabwe)** and becomes of interest to the CIO at the airport.

14. Any disclosure of mere association with the MDC, whether past or present makes it impossible for the Appellant to explain away the current video and photographic evidence of her political activism. The Judge accepted that this evidence existed. Any risk of persecution at Harare Airport is not dependent on the level of one's political profile but on whether that profile however low, has come to the notice of the Zimbabwean authorities.

15. Finally, he submitted that the Judge had not given anxious scrutiny to the **Danian** guidelines. Thus he had fallen into error and the decision needed to be remade.

16. Mrs Pettersen submitted that I should to look at paragraph 30, of the determination and read that in its full context. When paragraphs 27, 28 and 29 are factored in they show that the Judge fully dealt with internal relocation and any associated risk on return. Paragraph 32 of the determination deals fully with this.

17. **Danian** is a proposition that an opportunistic claim has to be assessed in the context of whether the claim is well-founded. This was plainly the exercise which the Judge had carried out. A reading of paragraph 30 would show the Judge's reasoning in the determination was sustainable, it revealed no error and therefore the decision should stand.

Has the Judge Erred in Law?

18. Having heard submissions from both parties I reserved my decision which I now give with reasons. It is appropriate to start my consideration with the **Danian** point. As Mr Billie correctly pointed out the principles enunciated in **Danian** and approved in **YB (Eritrea)** state "opportunistic activities sur place is not an automatic bar to asylum". In other words even if the claimant's activities in the UK have been entirely opportunistic what has to be looked at is whether the consequences of that opportunistic activity give rise to a well-founded fear of persecution. That is an objective question. If the persecution if well-founded then an Appellant is entitled to the protection of the United Kingdom authorities. It is a risk assessment. It is correct that Judge Reed found (with well set out reasons) that *"The Appellant's involvement with various anti-regime organisations in the UK has been solely designed to promote a claim for asylum here. I find that the evidence before me does nothing more than demonstrate that she is anything other than a self-styled "dissident human rights activist", who has done her upmost to push herself forward as being connected with those who are genuinely actively opposed to the Mugabe regime to bolster her claim"*. If that were all that the Judge had said there would have been an error. However that was not the end of the assessment so far as the Judge's reasoning was concerned, because it is clear from paragraph 30 that the Judge has directed himself properly on the Danian principles by saying, *"The important questions for me to consider about what would*

happen at the airport or whether or not upon arrival the Appellant would have been identified as someone who was of possible interest to the regime, and if so and the Appellant were to be questioned whether or not those questioning her would accept a truthful answer from the Appellant of the sort I have set out above and let her go on her way or would she face a real risk of persecution or serious ill-treatment". In my judgment that shows the Judge had in mind a proper evaluation of the Danian principles. It is also clear that the Judge recognises Danian is not a trump card, because as the Court of Appeal said, "Opportunistic post-flight activity will not necessarily create a real risk of persecution". What has to be carried out is a risk evaluation and this the Judge did. The findings which the Judge made at paragraph 26 have to be seen in the light of the context of paragraph 30. I find no error in the Judge's assessment. His reasoning cannot be said to be perverse.

19. On the evaluation of risk of persecution at Harare Airport, again the starting point is paragraph 30 of the Judge's determination. He properly identifies there what it is he has to consider (see paragraph 18 above) and refers to **HS** which is still the accepted Country Guidance.

20. Much has been made by Mr Billie of what he terms the 'equivocal findings' by the Judge. However paragraph 30 has to be read fully. What the Judge is saying is as follows;

21. He accepts that there is a real risk that a check of the Internet could reveal the name of the Appellant.

(i) Nevertheless the checks at Harare Airport are intelligence led.

(ii) An intelligence led organisation, having carefully considered the evidence, would come to the conclusion that the evidence which posted on the Internet shows she is nothing more than a hanger-on.

(iii) It is claimed on the Appellant's behalf that the CIO have infiltrated anti-regime organisations in the UK. That being so, the CIO will know very well who the serious activists are and equally that this Appellant is plainly doing nothing more that "trying to promote a false claim in the UK".

22. The Judge reinforced those findings by referring to the Country Guidance in **CM**. Thus he fully evaluated the risk to the Appellant and concluded as he does,

> *"I find that the Appellant has not shown to the low standard that she would be a (sic) real risk at Harare Airport".*

23. He then went on to look at the Appellant's situation on return to her homeland of Mashonaland Central. He accepted that she could be at risk there; but also accepted that matters do not rest there. Following the Country Guidance in **HS** the Judge found at paragraph 32 of his determination,

> *"The Country Guidance states however that relocation from a rural area to Harare can be realistic, but the socio-economic circumstances in which a person finds themselves would need to be considered".*

For the remainder of paragraph 32 the Judge carefully analyses and details the Appellant's circumstances. Having carried out that analysis he concludes,

> *"I therefore find that the Appellant has not shown that it would be unreasonable or unduly harsh to expect to relocate to Harare to avoid any problems in her home area".*

24. The Judge's findings in this well constructed and detailed determination are findings which are fully open to him on the evidence before him. They cannot therefore be said to be perverse.

25. DECISION

The determination of First-tier Tribunal Judge Reed discloses not error of law, requiring the decision to be remade. The appeal is dismissed.

No anonymity direction is made. The Appellant has been competently represented throughout and I am satisfied one would have been sought had those representing thought it necessary.

Signature **Dated** **26th November 2013**
Judge of the Upper Tribunal