Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00087/2014

THE IMMIGRATION ACTS

Heard at Birmingham **Determination Sent**
On 15th May 2014

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

SIMBARASHE MURADZIKWA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Y Gwashawanhu of Obaseki Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a citizen of Zimbabwe, appeals with permission against the decision of Judge of the First-tier Tribunal C J Lloyd, following a hearing on 3rd February 2014, to dismiss on asylum, humanitarian protection and human rights grounds his appeal against removal to Zimbabwe.

2. The Appellant had claimed to be at risk as a result of his connection with the MDC and as in 2006 friends returning to Zimbabwe had been found with a photograph of Zimbabweans in British Army uniform and amongst the group in the photograph was the Appellant. At the hearing the Appellant in his evidence stated that he had never been a member or supporter of the MDC and Judge Lloyd found that there was no evidence of MDC support on his part of which the authorities in Zimbabwe would be aware. The judge noted that the Appellant had applied for a new Zimbabwean passport after the alleged incident following his friends returning to Harare and that the delay in making the claim, only lodged after his arrest for a driving offence, adversely affected his credibility. She noted that the Appellant's last address had been in Harare and that return would be to that location. She found that he would not face any risk on return there, following the country guidance given in **CM** (**EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC)**. She noted the submission that the Appellant would be destitute with no means to sustain himself but referred to comments in **CM** as to the improved economic situation and noted that the Appellant had been educated to A level and there was reference to a family in Zimbabwe. She went on to refer to Article 8 issues which are not the subject of the current appeal.

3. The grounds, which are commendably short, contend that the judge did not assess the risk on return in respect of the socio-economic circumstances of the family such that they might find themselves forced to live in a rural area and issues under **RT (Zimbabwe) [2012] UKSC 38** were relevant if they had to relocate internally within Zimbabwe. It was submitted that there had been an inadequate assessment of risk on return.

4. At the hearing before us Mr Mills raised an initial point as to whether the application for permission to appeal had been out of time. He said that accordingly to Home Office records the determination had been sent out by recorded delivery post on 7th February 2014 and had been received by the Appellant on the following day, Saturday 8th, and by the solicitors on the following Monday, the 10th. If that was the case the application should have been received by the Tribunal on or before 17th February whereas in fact it was received the following day on the 18th. He accepted that the Respondent had not been prejudiced by that short delay. We noted that in his grant of permission Judge of the First-tier Tribunal Gibb had expressly regarded the application as having been made in time. We took the view that the issue had been decided by the judge granting permission. However to the extent, if any, that the matter remained unresolved, and as it was accepted that the Respondent had not been prejudiced, we considered that it was an appropriate case for time to be extended under Rule 24(4) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (as amended).

5. Judge Hanson then summarised the grounds of application, which now stand as the grounds of appeal, and referred to the findings made by Judge Lloyd, which on the face of them appeared to have dealt with the

issues. Mrs Gwashawanhu made her submissions as to the alleged errors of law made. She pointed out that the Appellant's home address in Harare had been where he had last lived more than ten years previously and his evidence had been that he had no access to the house he had then occupied. He had given evidence about difficulties of returning to Harare but, she said, the judge had made no express findings on that point. She accepted that the judge was not obliged to summarise the facts. She argued that the judge had not made adequate findings as to whether the Appellant would have been destitute, as he claimed, in Harare and therefore have been obliged to relocate to a rural area. She accepted that she could not properly argue that the judge's findings had been irrational or perverse. Judge Hanson pointed out the findings which had been made by the Judge of the First-tier Tribunal. Ms Gwashawanhu accepted that if we were of the view that Judge Lloyd had dealt adequately with the issue of the Appellant returning to Harare and being able to remain there then the second ground, relating to relocation to a rural area, would not come into play.

6. Having considered the matter we reached and announced our decision at the hearing, giving our reasons which we now set out in more detail.

7. There was no challenge before us as to the judge's findings on Article 8 issues nor as to the allegation that he would be at risk because he appeared in a photograph with British soldiers nor as to the finding that the Appellant had no profile of any significance with regard to the MDC which would bring him to the attention of the authorities either at the airport or in the area of Harare where he had lived before travelling to the United Kingdom (Mabelreign). The judge dealt with this latter point at paragraph 24 of her determination in which she stated:

> "I note the case of **CM**, return would be to Harare and that was his last home address. **CM** referred to the durable change in Zimbabwe and the reduced politically motivated violence. The return of a failed asylum seeker with no significant MDC profile - like this Appellant - would not result in him facing a real risk of having to demonstrate loyalty to ZANU-PF especially if returned to Harare and not the rural areas. The Appellant has no ZANU-PF connections but as he has no MDC profile and there was no suggestion he wanted to engage in opposition political activity I do not find that he would be at risk on return to Harare. …"

She went on, at paragraph 27, to refer to the submission that the Appellant would be destitute in Harare and would have to move to a rural area, the implication being that if he did so he might then be required to demonstrate a loyalty to ZANU-PF which he did not possess. The judge stated:

> "It was submitted that he would be destitute with no means to sustain himself or his family. **CM** noted economic improvements, the Appellant was educated to A level standard and there was reference

to family in Zimbabwe (although he said he was out of contact with his parents - his father had been in the mining business and the skeleton argument maintained he had no family connections). On the fairly limited evidence I do not find he has discharged the burden of proof."

8. Although the judge might have explained her reasoning in greater detail it was clear to us that she was well aware of the argument that the Appellant would be destitute if returned to Harare with the likelihood that he would have to relocate to a rural area. The judge's finding was to the effect that he was an educated man, that the economy had improved in Zimbabwe (as referred to in **CM**) and that the Appellant had family. He had not demonstrated to the necessary standard that he would not be able to live in Harare. That was a finding open to the judge on the evidence. She addressed the points made and came to conclusions, with reasons, which enabled the Appellant and those advising him to be aware of the findings she had made and the basis for them. In short the Appellant was able to know why he had not succeeded in his appeal.

9. In **R (Iran) and Others v SSHD [2005] EWCA Civ 982** (at paragraph 9 of the judgment) Lord Justice Brooke referred to examples of errors of law commonly encountered. One of those errors so identified was "failing to give reasons or any adequate reasons for findings on material matters." He made clear, in particular at the summary of conclusions appearing at paragraph 90 of the judgment, that a decision should not be set aside for inadequacy of reasons unless the judge fails to identify and record the matters that were critical to his decision on material issues in such a way that the appellate tribunal was unable to understand why he reached that decision. For the reasons that we have given we found that it was readily ascertainable why Judge Lloyd had reached the decision she did and the reasons she gave were adequate for that purpose. Her conclusions were entirely consistent with the country guidance in **CM**. If, as she found, the Appellant was able to remain in Harare then no issue arose as to the hypothetical question of relocation to a rural area. There was no potentially material error of law in the determination and this appeal therefore falls to be dismissed.

10. In the First-tier Tribunal a direction was made for anonymity. No request was made to us for an order in that respect to be made by the Upper Tribunal and we can see no necessity for such an order.

Decision

The original determination did not contain a material error on a point of law and the decision that the appeal be dismissed therefore stands.

Signed Dated 16 May 2014

Deputy Upper Tribunal Judge French