



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07528/2013

THE IMMIGRATION ACTS

Heard at Field House, London	Determination Promulgated
On 15 May 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

NR
(Anonymity direction continued)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood instructed by Turpin Miller Solicitors Oxford

For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Zimbabwe, appealed to the First-tier Tribunal against a decision made by the respondent to refuse her application for asylum and to remove her from the UK. Judge of the First-tier Tribunal Knowles dismissed the appeal. The appellant now appeals with leave to this Tribunal.
2. The issue in this appeal is whether, having accepted the appellant's account of her involvement with the Movement of Democratic Change (MDC) in Zimbabwe and in

the UK, the First-tier Tribunal Judge erred in applying the guidance issued in the relevant country guidance cases.

3. In the reasons for refusal letter dated 24 July 2013 the respondent accepted that the appellant was a member of the MDC within her own community in Zimbabwe, that she last lived in the district of Arcadia in Harare and was a member of the Arcadia branch in Harare until she left Zimbabwe in 2002. The respondent also accepted that the appellant joined the Oxford Branch of the MDC in January 2007. The respondent did not however accept that the appellant has any political profile in Zimbabwe or in the UK and decided that the appellant is not at risk on return to Zimbabwe.
4. On the basis of the documentary evidence and the oral evidence from the appellant and the branch chairman, the Judge accepted that the appellant was elected as a member of the fundraising committee of the MDC Oxford branch in January 2008 and as branch treasurer in March 2012 and that her appointment as branch treasurer was a *bona fide* appointment. The Judge accepted that there was documentary evidence that the Oxford MDC branch had been infiltrated since 2007. The Judge found that the appellant *'is a committed, trusted member of the Party with good organising skills and is reasonably likely to have been regarded as such by other Party members in Arcadia'* and that she was elected as the organising secretary of the Branch in her branch in Zimbabwe (a claim rejected by the respondent)[72]. Despite damage to the appellant's credibility by using a false passport endorsement in 2004 the Judge found that the appellant had suffered a degree of harassment, intimidation and even violence at the hands of Zanu-PF supporters at her place of work and at her home in Zimbabwe [74]. In terms of her involvement with the Oxford branch of the MDC the Judge found that, as treasurer, the appellant *'is likely to be regarded as a key member of the executive committee of the Oxford MDC responsible, as she is, for the collection and distribution of funds. I am satisfied that she has a significant political profile.'*
5. The Judge did not accept parts of the appellant's claim, that is that her husband used his influence within Zanu-PF and the CIO to intimidate and harass her after their divorce and that her brother was abducted and suffered serious chemical burns. The Judge regarded both of these claims as embellishments of the appellant's account.
6. Having made these findings in relation to the appellant's political profile the Judge went on to consider the risks to the appellant upon return to Zimbabwe in line with the current country guidance case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC). He considered that there was no evidence that Arcadia is a high density area of Harare and concluded that the appellant is therefore not at risk there. He found that, even if the appellant is at risk in Arcadia, she could safely relocate internally to Bulawayo. The Judge considered the guidance in HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 in deciding whether there would be a risk to the appellant at Harare airport. He concluded that the appellant may face a risk of persecutory ill-treatment if she returns involuntarily but not if she returns voluntarily.
7. In granting permission to appeal to the Upper Tribunal Upper Tribunal Judge Rintoul indicated that it was particularly arguable that the First-tier Tribunal Judge erred in his

consideration of the risk of the appellant coming to the attention of the CIO as it is arguable that it is not just involuntary returnees who are at risk given what was said in HS as followed in CM, it being arguable that the CIO seek to identify activists.

8. At the hearing Mr Haywood submitted that the Judge was wrong to approach his analysis of risk on return on the basis that the appellant could be expected to return to Zimbabwe voluntarily given that the context of the country guidance cases was in relation to failed asylum seekers. He submitted that the Judge misunderstood the country guidance in relation to this issue. Mr Nath submitted that, when paragraph 80 and 81 are read together, it is clear that the Judge was not trying to draw a distinction between voluntary and involuntary returnees. He submitted that it was open to the Judge to find that the appellant would not be at risk in Zimbabwe if she returned voluntarily.
9. In making his distinction between voluntary and involuntary returnees the Judge relied on the guidance given in HS where the Tribunal adopted and applied the findings in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061. The Judge said [80];

‘The Tribunal found, however, that a person who returns voluntarily to Harare will be indistinguishable from ordinary travellers who, it found, could pass freely and without difficulty in or out of Zimbabwe. Only a person who returns involuntarily will be identified as a deportee and may be diverted for questioning by the CIO to establish whether that person is of any interest. A deportee will only be of interest if initial questioning reveals that he or she has a profile considered adverse to the regime. I acknowledge that, if the appellant returns involuntarily, she is likely to attract the attention of the CIO as a deportee and that her answers during initial interview may well reveal the need for further interrogation during which, the Tribunal found, there is a real risk of persecutory ill-treatment. In my view, however, the key issue here is the Tribunal’s finding that a person who can return to his or her own country voluntarily is not a refugee, notwithstanding that, as a forced returnee, he or she would be at risk...’

10. The Tribunal in CM stated that the guidance in relation to risk on return at Harare airport remained that set out in HS where the Tribunal said;

“264. The CIO has taken over responsibility for the operation of immigration control at Harare airport and immigration officers are being replaced by CIO officers. We accept also that one of the purposes of the CIO in monitoring arrivals at the airport is to identify those who are thought to be, for whatever reason, enemies of the regime. The aim is to detect those of interest because of an adverse military or criminal profile. The main focus of the operation to identify those who may be of adverse interest remains those who are perceived to be politically active in support of the opposition. But anyone perceived to be a threat to or a critic of the regime will attract interest also.

265. The fact that the CIO has taken over responsibility for monitoring all returning passengers at Harare airport is not something that affects the level of risk. The evidence before AA(2) was that all deportees were handed over to the CIO for questioning in any event. Then, as now, those deportees will have been identified in advance from the

passenger manifest and the CIO will have formed a preliminary view as to which, if any, are of further interest.

266. Large numbers of passengers pass through the airport. The CIO continues to recognise that it cannot question everyone; and so there is a screening process to identify those who might merit closer examination. We see no reason to suppose that the heightened role of the CIO would change this. There are now additional demands upon the CIO as it is responsible for monitoring all passengers passing through the airport, both on arrival and departure. We have set out the evidence that indicates in whom the CIO has an interest. This will be those in respect of whom there is any reason to suspect an adverse political, criminal or military profile of the type identified in AA(2). In addition, those perceived to be associated with what have come to be identified as civil society organisations may attract adverse interest as critics of the regime.

267. There is no evidence that ordinary passengers returning from the United Kingdom experience any difficulty in passing through the airport. In fact, the evidence is to the contrary. Nor is there a real risk that those returning to Zimbabwe after being refused leave to remain after the leave initially granted has expired are regarded with suspicion or treated otherwise than as ordinary travellers.

268. Nor is there evidence of any consistent pattern of treating any differently those who have not claimed asylum in the United Kingdom but who have been forcibly removed to Zimbabwe because they have been refused leave to enter or remain. There is no evidence that any of the twenty three "immigration deportees" removed since August 2006 have experienced any such difficulties. We have accepted that all those who are deportees will be identifiable as such upon return to Harare airport and so will generally be subjected to some enquiry before being allowed to pass through the airport.

269. This demonstrates that, despite the political rhetoric of President Mugabe and other highly placed members of the ruling party, the fact alone of returning to Zimbabwe having spent time in the United Kingdom, even if there is some irregularity discernable from stamps in the passenger's passport, does not give rise to any real risk on return to Harare airport.

...

279. We do not accept either that all those seen as having claimed asylum in the United Kingdom will be thought to be supporters of the MDC on that account alone. As noted earlier, the suggestion that the Zimbabwean authorities proceed on the basis that anyone with a connection with Britain must be considered a supporter of the MDC is impossible to reconcile with the significant effort put into obtaining intelligence concerning those in the United Kingdom who *do* support the opposition. After all, there would be little point in sending CIO operatives to infiltrate groups in the United Kingdom if everyone returned was, in any event, to be presumed to be a supporter of the MDC and an enemy of the state qualifying for detention and interrogation."

11. The Tribunal in AA, which was affirmed in HS, concluded;

"244. A person who is returned involuntarily to Zimbabwe having made an unsuccessful asylum claim in the United Kingdom does not face on return a real risk of being subjected to persecution or serious ill-treatment on that account alone. That is so whether or not the removal is escorted. Each case must be considered on its own facts. We reaffirm the country

guidance in SM and Others (MDC - internal flight- risk categories) CG [2005]UKIAT 00100. The evidence before us demonstrates that those at risk upon return to Zimbabwe continue to fall into the risk categories identified and set out in SM. This is subject to what we say about those whose military history discloses issues that will lead to further investigation by the security services upon return to Harare Airport and those in respect of whom there are outstanding and unresolved criminal issues.

245. There continue to be three flights a week from the United Kingdom to Harare Airport. These are generally fully booked with ordinary travellers who pass freely and without difficulty in and out of Zimbabwe. Anyone who is indistinguishable from the ordinary traveller will not have any difficulty in passing through the airport. A person who has made an unsuccessful claim for asylum but who makes a voluntary return, with or without the assistance of an IOM reintegration package, will be indistinguishable from the ordinary traveller unless there is reason to believe that he will be identified on return as falling within one of the risk categories we have identified."

12. I agree with Mr Haywood's submission that Judge misinterpreted the guidance set out in the case law. It is clear from reading the decisions in AA, HS and CM that the Tribunal has said that the CIO are interested in those who have an adverse political profile, regardless of whether they are returned voluntarily or involuntarily, and no interest in those with no adverse political profile, even if deported following an unsuccessful claim for asylum. It cannot be right, as found by the Judge, that anyone, even with a very significant adverse political profile can enter Zimbabwe without coming to the attention of the CIO simply by travelling there voluntarily. This is contrary to the finding of the Tribunal in HS that the CIO monitors all arrivals at Harare airport *'to identify those who are thought to be, for whatever reason, enemies of the regime. The aim is to detect those of interest because of an adverse military or criminal profile. The main focus of the operation to identify those who may be of adverse interest remains those who are perceived to be politically active in support of the opposition. But anyone perceived to be a threat to or a critic of the regime will attract interest also'* [264].
13. I am satisfied that the Judge erred in his interpretation of the case law and therefore in his assessment of the risk to the appellant upon return to Zimbabwe. I therefore set aside the decision and remake it.
14. There is no challenge to the factual findings made by the Judge. I therefore apply the case law to those findings in remaking the decision. The Judge found that the appellant was a member of the MDC in Arcadia and that she was elected as organising secretary in 2001 and that she was harassed, intimidated and suffered violence at the hands of Zanu-PF supporters at her place of work and at her home. He found that the appellant is a member of the Oxford branch of the MDC, she was elected as a member of the fundraising committee in January 2008 and as the branch treasurer in March 2012. The evidence before the Judge, which he accepted, was that in this role the appellant was the custodian of monetary transactions and maintained subscription records and sent funds to the party treasurer in Zimbabwe. The Judge found that the MDC Oxford branch was infiltrated and a number of members, including the former chairman, were suspended in 2008. The Judge concluded that the appellant has a significant political

profile [77] and that if she was questioned by the CIO at Harare airport her answers during an initial interview may well reveal the need for further interrogation during which there is a real risk of persecutory ill-treatment [80].

15. I apply the guidance set out in HS to the facts found by the Judge. I note that the Oxford branch of the MDC was infiltrated and I accept that it is likely that this will have led to the identification of the appellant. Also, the appellant is the branch secretary of the Oxford MDC branch and has contact with the party secretary in Zimbabwe and holds details of members. This too may lead to her identification. I am satisfied that if the appellant returns to Zimbabwe, whether voluntarily or involuntarily, she is likely to be identified by the CIO at the airport as being of interest as a result of her political profile. At that stage it is likely that she will be taken for interrogation and at that second stage there is a real risk of serious harm.

Conclusion:

The decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by allowing it.

Signed

Date: 30 June 2014

A Grimes
Deputy Judge of the Upper Tribunal

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date: 30 June 2014

A Grimes
Deputy Judge of the Upper Tribunal