Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00001/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 23rd June 2014	**On 25th July 2014**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR KUDZAI CLIVE MASHIRI

Claimant/Respondent

Representation:

For the Appellant: Ms J Isherwood, Senior home Office Presenting Officer
For the Respondent: Ms E. Daykin, of Counsel, instructed by Lawrence and Co, solicitors.

DETERMINATION AND REASONS

1. The claimant is a Zimbabwean citizen born on 16th December 1992. He sought to appeal against the respondent's decision of 17th December 2013 to make a deportation order against him by virtue of Section 32(5) of the UK Borders Act 2007.

2. The appeal came before First-tier Tribunal Judge Place and Ms J A Endersby (non-legal member) on 28th March 2014. The appeal was allowed on the basis that it had not been established that the appellant had sufficient ties with Zimbabwe.

3. The Secretary of State for the Home Department seeks to appeal against that decision, essentially seeking to argue that the approach taken by the Tribunal to the issue of ties interpreting the decision of **Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 60 (IAC)** was fundamentally flawed.

   Permission to appeal was granted on that basis. Thus it is that the matter comes before me to determine that issue.

4. The claimant came to the United Kingdom as a minor when aged about 8 years old and has remained ever since. His main language since coming to the United Kingdom has been English although he understands some Shona.

5. On 17th March 2011 the claimant was convicted on two counts of possessing a controlled class A drug with intent to supply and of possessing criminal property. He was given a sentence of twelve months imprisonment suspended for 24 months. On 22nd December 2012 the claimant was convicted of supplying a class A controlled drug and being in breach of a suspended order. He was sentenced to a period of two years and six months' imprisonment.

6. It is his claim that his deportation would be a disproportionate breach of his rights under Article 8 of the ECHR.

7. That brings into play the provisions of paragraphs 398 and 399A of the Immigration Rules. Those are set out at paragraph 5 of the determination.

8. The most relevant aspect of the Rules, so far as the claimant is concerned, is that set out in paragraph 399A(b) namely that the person is aged under 25 years, he has spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the United Kingdom.

9. It was accepted by the Secretary of State for the Home Department that paragraph 399A(b) applied to the claimant to the extent that he was under 25 and had spent more than half his life in the UK. It was not accepted however that the claimant had no ties with Zimbabwe.

10. It was contended on behalf of the Secretary of State then and indeed before me now that the claimant had lived in Zimbabwe for eight years before coming to the United Kingdom and would have retained some of his

mother tongue and culture living with his parents in the United Kingdom. It was not accepted that the claimant had no family members in Zimbabwe and not accepted that he could not return there and build a life for himself.

11. The family members had given evidence before the Tribunal stressing that there was no-one in Zimbabwe who could care for the claimant. All siblings and cousins of the extended family were in the United Kingdom. His Mother gave evidence to the effect that the claimant understood some Shona but could only speak English. She did not think it possible for him to get by as an English speaker in Zimbabwe.

12. She was not found to be a witness of truth by the Judge and indeed reference was made, as can be seen in paragraph 27 of the determination, to the comments of the Immigration Judge in her own asylum claim. The Judge found that there was a family property in Zimbabwe. The Judge did not believe the witness when she had said that her husband's brother had been living there but the property was now sold. According to the claimant's mother the only person still in Zimbabwe was her mother living in a care home.

13. The claimant's father also gave evidence at the hearing before the First-tier Tribunal . He gave evidence that he has a brother in Australia and another in Reading and has lost contact with another sister. He said that the family home had belonged to his aunt and had been sold but he could not remember when. He had changed that evidence to indicate that the family house had belonged to his father and had been sold. He did not know what had happened to his auntie's house.

14. The claimant's brother and sister also gave evidence.

15. It was noted by the First-tier Tribunal that Immigration Judge McMahon, in his determination promulgated on 8th January 2010, found that the claimant's parents were not credible witnesses. The Tribunal did not find them to have given reliable evidence and had indeed given conflicting evidence about the name and whereabouts of family members and confusing evidence about family property. Their statements were largely not accepted, it being the finding of the Tribunal that they were seeking to minimise their level of contact that they or other family members have with Zimbabwe. Although the Tribunal found the claimant's siblings to be a little more reliable there was still the finding that they too were seeking to minimise their relationship with Zimbabwe.

16. The crucial passages therefore in relation to ties and links with Zimbabwe are those set out in paragraph 46 and 47 as follows:-

> "That said, the basic core of the evidence of the appellant and all four witnesses is consistent. On the basis of that evidence we find that the appellant has had no contact with anyone in Zimbabwe since he

> left there when he was 8. We find that he can understand some basic Shona but cannot speak that language. We find that he is not aware of any family members or family property in Zimbabwe. We find that he is not aware of any family friends in Zimbabwe. He has some basic linguistic ties to Zimbabwe but his cultural, social and family ties are all to the United Kingdom. He was educated here for all but two years of his time in education and all his immediate family members are here. He also has extended family in the form of aunts, nephews, nieces and cousins in the United Kingdom."

The Tribunal went on as follows:-

> "We found the appellant's parents so unreliable that we cannot make any definite findings about whether they have any remaining contact with Zimbabwe, other than with Mrs Mashire's elderly mother. We do, though find, that if the appellant's parents do have any remaining ties in Zimbabwe, they are not ties of the appellant or any ties which could result in support to the appellant in the event of his return there."

17. The Tribunal noted the case of **Ogundimu** and on the basis of their finding that the claimant had no ties in Zimbabwe the appeal was allowed.

18. It was argued in the grounds of appeal that the approach by the Tribunal was not logical. If it was the view of the Tribunal that the parents' evidence was unreliable there was no reason therefore to act upon it.

19. Further it was contended that the panel failed to direct itself to the correct interpretation of the no ties tests. The claimant retained the ability to reintegrate into the country of origin; he had family members living there and a working knowledge of the language. It was likely that he also had property to live in. It was contended therefore that there were proper links to Zimbabwe and accordingly the claimant failed to meet the test under paragraph 399A(b).

20. The Tribunal in the case of **Ogundimu** said as follows at paragraph 123 of that judgment

> "The natural ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. They have also been in continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the Rule. This would render the application of the Rule, given the context within which it operates, entirely meaningless."

21. The Tribunal at paragraph 124 went on as follows

> "We recognise that the text of the Rules is an exacting one. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all the relevant circumstances but is not to be limited to 'social, cultural and family circumstances'. Nevertheless, we are satisfied that the appellant has no ties with Nigeria. He is a stranger to the country, the people and the way of life. His father may have ties but they are not ties of the appellant or any ties that could result in support to the appellant in the event of his return there. Unsurprisingly, given the length of the appellant's residence here, all his ties are with the United Kingdom. Consequently the appellant has so little connection with Nigeria so as to mean that the consequences for him to establish private life there at the age of 28, after 22 years residence in the United Kingdom, would be justifiably harsh."

22. The Tribunal indicated that each case would turn on its own facts.

23. The Tribunal in that case had the advantage of having credible evidence about such connections whereas in this case there is less clear cut presentation of the evidence.

24. The Tribunal seems to accept the truthfulness of the appellant's belief as to the lack of ties but does not necessarily accept that it is being told the truth by his family.

25. Sadly it will often be the case, particularly in cases of deportation, that family members would be reluctant to give any support to the removal of a claimant. There would therefore be a natural desire to minimise the existing links with the country to which ties are alleged. Undoubtedly this is the case in this particular example as indeed the Tribunal have found.

26. All that can reasonably be expected of a Tribunal is for it to conduct a rounded assessment in the light of all of the evidence that is presented. There will be evidence that is rejected and that which is accepted and that which the Tribunal find difficult to accept or reject.

27. The fact that there may be misleading evidence presented as to a true state of events does not without more bring into being such events. Unreliable evidence may be an important factor in considering whether or not the burden of proof is discharged. The fact that less than truthful evidence is being given as to the situation and circumstances of a family home, does not without more establish either that there is such a family home or indeed that it would be accessible to the appellant.

28. What is being said in this case is that in reality this young man is to be separated from his family to make his way in Zimbabwe without any apparent family assistance or practical supportive community links.

29. The case of **Januzi** makes it clear there must be the opportunity for economic survival. The greater the family ties the more chance there will be for the appellant to forge a life for himself. Equally without that support it would be more difficult.

30. I detect no illogicality in the approach taken by the Tribunal. An overall rounded assessment has to be made and I detect nothing illogical or perverse or inaccurate in the approach which is taken by the Tribunal.

31. The Immigration Rules set a higher standard but not an impossible one. This was remarked by the Tribunal in **Ogundimu** that it would defeat the object of the Rules if the bar to successfully meeting the Rules was raised so high as to be unattainable.

32. The Tribunal can only proceed upon a fact by fact basis and in this case had made a conclusion as to fact which was open to them, they having properly warned themselves of the weaknesses of the evidence as well as the strengths.

33. In the circumstances therefore the Secretary of State's appeal before the Upper Tribunal is dismissed. The original findings of the Tribunal shall be upheld namely that appeal is allowed on the basis that paragraph 399A(b) is satisfied in the circumstances of this case.

Signed Date

Upper Tribunal Judge King TD