



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01752/2015

THE IMMIGRATION ACTS

Heard at Manchester
On 21st April 2016

Decision & Reasons Promulgated
On 19th May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

[N M]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood - Solicitor

For the Respondent: Mr Harrison - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by [NM], a citizen of Zimbabwe born [] 1974. He appeals against the decision of First-tier Tribunal Judge Siddiqi issued on 23rd June 2015 dismissing

on asylum and human rights grounds the appeal of the Appellant against the decision of the Respondent made on 16th January 2015 to refuse to grant asylum and to remove him from the United Kingdom.

2. Permission to appeal was initially refused by First-tier Tribunal Judge Page who found that the grounds amounted to nothing more than a disagreement with the conclusions reached by the Judge. Application was made to the Upper Tribunal and on 10th September 2015 Upper Tribunal Judge Blum granted permission. He said:

“2. The grounds contend that the First-tier Tribunal erred in law by refusing to grant an adjournment, at the Respondent’s request, to obtain a typed copy of the interview transcript, and by then relying on a reference in the Reasons for Refusal Letter to evidence given in the interview transcript when the Home Office Presenting Officer indicated he would not be relying on the interview record.

3. It is arguable that the Judge acted in a procedurally unfair manner in refusing a further opportunity to obtain the interview transcript as the transcript may have provided evidence that the Appellant’s account was internally inconsistent. It is also arguable that, in relying on information extracted from the interview in circumstances where the Home Office Presenting Officer indicated no reliance was going to be placed on it, the Judge acted in a procedurally unfair manner.

4. The grounds further contend that the Judge failed to make specific findings of fact in relation to the Appellant’s claim that his cottage was set on fire with him inside and that his car was criminally damaged. While making reference to these events the Judge does not appear to make any factual findings (paragraphs 37 to 40). It is arguable that the Judge failed to make necessary factual findings in respect of core assertions. In concluding that the demands from his uncle and [N] were not politically motivated it is also arguable that the Judge failed to contextualise the demands in respect of the political climate in 2008, the fact that the Appellant had given funds to a church which opposed Mugabe and that [N] was a war veteran.”

3. Mr Wood had asked the Presenting Officer on the day of the hearing, Mr Dillon, to provide a copy of his hearing minute from that day. This was done. The relevant parts of the note say:

“This was a difficult case, as we had not complied with directions following two CMRs over two months to produce a typed transcript of the Asylum Interview Record which unfortunately was really exceedingly difficult to read to the extent that it could not be relied upon at all (neither the IJ, rep or myself could read more than the odd answer).

Mr Wood quite reasonably requested an adjournment but as there were two very comprehensive statements the IJ decided to proceed. I had little choice given our failure to comply but to accept that I would not rely on the AIR in the

cross-examination nor any part of the refusal letter which referred to the interview. This was not a problem as the refusal letter relied mainly on the witness statement.”

4. Mr Wood submitted at the hearing before me that an adjournment should have been granted. He also submitted that the Judge failed to properly consider the background information on Zimbabwe in assessing the Appellant’s credibility. Mr Wood referred in particular to an extract from the 2007 COIS Report confirming that CIO operatives had been deployed in the area in which the Appellant lived because they were concerned about non-governmental organisations meddling in politics. He also failed to give proper weight to the fact that the Appellant’s mother is an MDC supporter and has been granted refugee status in the UK.

Findings on error of law.

5. Judge Siddiqi accepted that the main issue in the appeal was the credibility of the account given by the Appellant. She noted that the Appellant had given a detailed account of the dispute between him and his uncle. She went on to say that having considered the evidence she found that there was no political motive for the action that the uncle took against the Appellant. It was done for economic reasons. She gave clear findings on this matter.
6. I do accept that the Judge did, in paragraph 53, say that the Appellant attended six vigils in the UK. I accept that it may be the case that she took this information from the refusal letter when it had been decided that the refusal letter would not be taken into account. The submission made, however, is that according to his statement the Appellant said that he continued to attend vigils so long as he was financially able to. He did not say in his statement how many vigils he attended and in fact “continuing to attend vigils when I have the money” and “attended six vigils” are not mutually exclusive. The Appellant may not have attended more than six but even if he did this does not affect the findings that the Judge made about the risk on return of an Appellant who was not politically involved in Zimbabwe returning there. It was agreed to go ahead with this hearing and not to adjourn it because there were two comprehensive statements from the Appellant giving a very detailed account of why he was seeking asylum in the UK and why he feared persecution on return. Judge Siddiqi dealt with the points he made in the statements. She gave sound reasons for the decision she made. I do not think it was necessary for her to make findings on the alleged burning of his cottage since she found him to be incredible in any event and if his uncle had done it this would also have been found to have been for economic and not political reasons.
7. I find that the decision of the First-tier Tribunal does not contain a material error of law. I would comment that it is unacceptable that having been directed twice to provide a typed transcript of the interview the Home Office has failed to do so. This resulted in two further hearings that had to be adjourned at great expense.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law and shall stand.

No anonymity direction is made.

Signed

Date: 12th May 2016

N A Baird
Deputy Judge of the Upper Tribunal