



IAC-FH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: DA/00178/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 February 2016**

**Decision &  
Promulgated  
On 23 March 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**A M  
(AN ANONYMITY DIRECTION IS MADE)**

**Appellant**

**-and-**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr. C. E. Talachi, of counsel, instructed by Longfellows Solicitors

For the Respondent: Ms A. Brockley-Weller, Home Office Presenting Officer

## **DECISION AND REASONS**

1. The Appellant, who was born on [ ] 1994, is a national of Zimbabwe. He entered the United Kingdom as a visitor on 27 August 1998 and was granted indefinite leave to remain on 23 May 2000.
2. Between 20 May 2009 and 21 October 2012 he was convicted on thirteen occasions. In 2012 he joined the South-East London branch of the Movement for Democratic Change and attended a number of branch meetings. It is also his case that he attended some protests outside the Zimbabwean Embassy.
3. On 4 April 2013 he was convicted of violent disorder and burglary with intent to steal and sentenced to two years and four months imprisonment. Subsequently, on 24 September 2013 he was served with notice of his liability to deportation from the United Kingdom. He responded to this notice on 17 October 2013 but he was served with a deportation order on 20 January 2014.
4. The Appellant applied for asylum on 24 March 2014 and a screening interview was conducted on 15 April 2014. He attended a substantive asylum interview on 26 November 2014 but his application was refused and certified on 16 January 2015. He appealed against this decision later in January 2015.
5. On 8 April 2015 the Appellant was convicted for possessing and supplying a Class B drug and sentenced to five months imprisonment. On 20 April 2015 he was sentenced for possessing a class B drug and conveying a List B article into prison and sentenced to nine months imprisonment to run concurrently with his previous sentence. He was released from prison on 10 September 2015 and his asylum appeal hearing was heard on 2 October 2015.
6. First-tier Tribunal Judge Flynn dismissed his appeal in a decision promulgated on 10 November 2015. The Appellant appealed on 18 November 2015 and on 9 December 2015 Designated First-tier Tribunal Judge McCarthy refused him permission to appeal. He sought permission to appeal from the Upper Tribunal and on 5 January 2016 Upper Tribunal Judge Freeman granted him permission. He did so on only one of the three grounds put forward on behalf of the Appellant. This was that when considering the guidance given in *CM (EM country guidance; disclosure) Zimbabwe* [2013] UKUT 59 (IAC) First-tier Tribunal Judge Flynn should not have dismissed the appeal on the basis of paragraph 1 of the country guidance in isolation from paragraph 2 of that guidance. The Respondent filed a Rule 24 response on 2 February 2016.

### Error of Law Hearing

7. Counsel for the Appellant submitted that paragraph 94 of First-tier Tribunal Judge Flynn's decision indicated that he had found that the Appellant could be safely returned to Bulawayo. He also noted that in paragraph 110 of his decision the First-tier Tribunal Judge had found that the Appellant had some family members living in Zimbabwe who would be able to provide a degree of support, emotional even if not financial. He also noted that the First-tier Tribunal Judge had made no findings of fact as to where in Zimbabwe his family members lived or to where the Appellant could safely return.
8. Counsel for the Appellant relied on the fact that First-tier Tribunal Judge had failed to consider paragraph 2 of *CN*. The Home Office Presenting Officer then replied. She submitted that the First-tier Tribunal Judge had directed herself correctly to *CM*. She also submitted that the First-tier Tribunal Judge had found that the Appellant could return to Bulawayo and that, in any event, *CM* did not find that all rural areas would place returnees at risk. In addition, she relied on the fact that in paragraph 102 of her decision the First-tier Tribunal Judge found that the Appellant had retained some ties in Zimbabwe.

#### Error of Law

9. In paragraph 95 of her decision First-tier Tribunal Judge Flynn noted that there was letter which confirmed that the Appellant had attended meetings of the South-East London branch of the MDC in the past but found that there was insufficient evidence to establish that he had a significant MDC profile. This part of the decision was not challenged by the Appellant.
10. At paragraph 96 of her decision First-tier Tribunal Judge Flynn noted that in paragraph 1 of the head note to *CM* the Upper Tribunal had held that "as a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in *RN*. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF".
11. But, as noted by Upper Tribunal Judge Freeman, the first paragraph of the head note is qualified by the second, which reads "the position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to

international protection, where or not they could and would do whatever might to be necessary to demonstrate such loyalty (*RT (Zimbabwe)*)”.

12. In the current case the Appellant had left Zimbabwe in 1998 when he was four years old and there was no evidence that he had any allegiance to ZANU-PF; rather the evidence indicated that he had attended MDC meetings in London. It was also asserted that he had a grandparent or grandparents upon whose support he could rely. As a consequence, in order to apply this second part of *CM* the First-tier Tribunal Judge needed to consider whether the Appellant would be returning to a rural area in Zimbabwe, other than Matabeleland North or South.
13. It was not sufficient to merely rely on the sixth paragraph of the head note in *CM*, which stated that “a returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile”. The Respondent had referred to Bulawayo as a place of internal relocation; as had the Tribunal in *CN*.
14. The Tribunal also found in paragraph 7 that “the issue of what is a person’s home for the purpose of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban area such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona”.
15. First-tier Tribunal Judge Flynn made no findings of fact as to where the Appellant’s grandfather or grandparents lived. She did not take into account the fact that his birth certificate indicated that he and his mother were born in [N] village in [M] and his father in [D] village or the fact that his father’s death certificate indicated that he had been living in Harare at the time of his death. The Judge also did not consider the fact that in his statement, dated 8 April 2014, the Appellant indicated that he spoke at least some Shona.
16. I find that the First-tier Tribunal Judge needed to consider the totality of the guidance in *CN* and not just two paragraphs of the head note. As a consequence, there were errors of law in her decision.
17. At the hearing the representatives agree that this could be remedied by the decision being referred back to First-tier Tribunal Judge Flynn on this narrow basis.

## Decision

1. I allow the Appellant's appeal on the basis that First-tier Tribunal Judge Flynn made errors of law in the manner in which she applied the country guidance in *CN*.
2. The rest of her decision stands.
3. I remit the appeal back to First-tier Tribunal Judge Flynn for her to consider whether the Appellant can be safely deported to Zimbabwe in the light of the totality of the decision in *CN*, including paragraphs of the head note not referred to above.

#### Directions

4. The Appellant do file and serve on First-tier Tribunal Judge Flynn at the First-tier Tribunal further evidence as to where his mother and father and grandparents and any other relatives live or lived in Zimbabwe within 21 days of receipt of this decision.
5. The Respondent do file and serve any evidence in response on First-tier Tribunal Judge Flynn at the First-tier Tribunal within 21 days thereafter.
6. The matter by listed before First-tier Tribunal Judge Flynn as soon as practicable thereafter.

#### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 29 February 2016

**Nadine Finch**

Upper Tribunal Judge Finch