



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01827/2015

THE IMMIGRATION ACTS

Heard at Field House
On 24th May 2016

Decision & Reasons Promulgated
On 3rd June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

FARAI CHIZA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Muzira, Counsel, instructed by Solomon Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, whose date of birth is [] 1976, is a national of Zimbabwe. He appeals against a decision of the First-tier Tribunal (Judge Moore) ("FTT") promulgated on 15 March 2016 dismissing his appeal on human rights and asylum grounds.
2. In a Decision and Reasons the FTT found that the central core of the appellant's claim was lacking in credibility. He claimed to be participating in and a persecuted member of the Occupied Africa Unity Square (O AUS). His family was attacked by

the CIO after he left Zimbabwe and he would be at risk on return due to actual/imputed political opinion.

3. The FTT [23 – 36] found the appellant's claim to be totally lacking in credibility with regard to all issues and made findings as follows:

- (1) The appellant was not a member of OAUS and that he was not involved in the petitioning process.
- (2) It was not accepted that the appellant was assaulted and beaten by the police on 25 November 2014.
- (3) The appellant's reasons for seeking entry clearance to the UK for a graduation ceremony and his reasons for delay in leaving Zimbabwe were neither genuine nor reliable and further undermined his credibility.
- (4) It was not accepted that on three separate occasions members of the CIO visited the appellant's home to seek his whereabouts and/or that his wife was threatened or tortured.
- (5) The FTT found the appellant's account to have signed a petition to be odd. The FTT reasoned that the appellant's name on the petition appeared in bold upper case lettering in order to highlight that he had signed the petition.
- (6) The FTT made reference to a Google search of the appellant's name which revealed a link an (OAUS) petition endorsed with the appellant's full name with a time reference of nine months ago [27]. The FTT stated
"I am uncertain as to what such a Google search entry precisely denotes, although it does show the appellant's name and the OAUS petition and a specified time frame. However, looking at all the evidence in the round I am not satisfied that this appellant was engaged in political activities with OAUS as he has claimed."
- (7) The FTT found the appellant's explanation for leaving his family in Zimbabwe where they would be at risk due to his political activities to be lacking in credibility and implausible.
- (8) The FTT did not believe that any COI officers called at the appellant's home or searched his house and/or threatened or tortured his wife. The FTT found it implausible that the appellant's wife would obtain a letter from the vice chairman of OAUS regarding the appellant's membership, firstly because of the different font sized lettering shown in the document and secondly, it was not accepted that the appellant would have left his phone with his wife in Zimbabwe rather than taking it with him to the UK. If his phone had been left at his home it would be expected that the COI would have found it when searching the premises.
- (9) The FTT did not accept that the appellant was an active member of the OAUS or that since his arrival in the UK he was sought by the Zimbabwean authorities. It was not accepted that he had been a political activist as claimed and/or that he would be at real risk on return.

Grounds of Application

4. In the grounds of application for permission to appeal the appellant argued that the FTT failed to have regard to issues of risk on return based on the second limb of his claim whether having regard to his circumstances he would be at risk on return to Zimbabwe on account of association with the UK based civil and human rights groups organisations which continued to demonstrate support for the OAUS i.e. imputed political opinion.
5. It was contended that the FTT confined its considerations to the evidence as to whether or not the appellant was a member of OAUS and/or whether his family had come to the adverse attention of the CIO. The FTT failed to consider the relevant question in relation to risk on return, namely whether the existence of the appellant's name associated with the OAUS would make him a person of adverse interest to the CIO on arrival at the airport given the relevant Google search results show the appellant's name as the signatory of a petition in the name of OAUSC.
6. The second limb of his claim was set out in the grounds of appeal and skeleton argument and referred to background material in relation to OAUS. In that context the FTT failed to have regard to the risk category "being those seen to be active in association" with human rights or civil society organisations where evidence suggests that the particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwe regime" (**HS (Returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094**). Reliance was placed on **AA (Zimbabwe) CG UKIAT 00061** at paragraphs 348 - 251.

Permission to Appeal

7. Permission to appeal was granted by First-tier Tribunal Judge McDade on 7 April 2016 on the grounds that the FTT's decision failed to include consideration of the relevant country guidance case law particularly **HS (Returning asylum seekers) Zimbabwe**.

Error of Law Hearing

8. Miss Muzira relied on the grounds of application and expanded on the same, arguing that the FTT in effect appeared to have accepted that the appellant had signed the petition which was in the public domain by carrying out a Google search of the appellant's name. Accordingly the FTT erred by failing to consider the position in those circumstances vis-à-vis the risk of return to Zimbabwe. The appellant could not be expected to lie and he would have to admit that he had signed the petition. In any event the state authorities by reason of the Google search entry would perceive the appellant as being someone in opposition to the current regime. The FTT erred by failing to consider this evidence in light of the risk category identified in **HS**. The FTT should have considered what would happen at the airport in view of the background evidence linking OAUS with various civic groups. The appellant faced a real risk of being associated with and perceived to have links with that organisation in the UK.

9. Mr Bramble relied on the Rule 24 response. He submitted that the FTT's consideration had to be looked at in light of its overall findings that the account in every respect lacked credibility. The FTT made a clear finding that the appellant was not engaged with OAUS as claimed. The references made to the Google search and the FTT's uncertainty as to what that search denoted had to be considered in the light of the FTT's finding that the appellant was not involved in any activities or organisation at all. Irrespective of what the Google search revealed there was no evidence that the appellant was active in the group. Mr Bramble submitted that the grounds had no merit and the decision should stand.
10. Miss Muzira agreed that the FTT's credibility findings as to past activities remained unchallenged. The FTT failed to consider the issue of future risk and it was the perception of the authorities rather than the activities that formed the argument that the appellant faced risk on return for imputed political opinion. She relied on the COIR at paragraphs 1.3.7 to 1.3.9 in concluding that the appellant would be perceived as being critical of the Zimbabwean regime.

Error of Law Decision

11. Having considered the evidence and heard submissions I found that there was a material error of law in the Decision and Reasons. Whilst accepting that the FTT properly found all aspects of the appellant's claim to be lacking in credibility, I took the view that the FTT failed to go on to fully determine all of the relevant issues, in particular the second limb of the appellant's claim given the inconclusive finding about the Google search and the petition. At [27] of the Decision and Reasons the FTT acknowledged that a Google search reveals the appellant as a signatory to a petition by the OAUS. The FTT failed to consider this issue in terms of future risk on return and the perception by state authorities of the fact that the appellant had signed a petition. I set aside the decision and reasons. I preserve the findings of fact made by the FTT as summarised above. I heard submissions on risk on return.

Submissions for remaking the decision

12. Both representatives addressed the particular issue of risk on return having regard to the evidence of the Google search and the country guidance case of **HS**. Miss Muzira submitted that whilst the appellant was not found to be active in Zimbabwe, there was every reason that he would be called to the attention of the authorities at the airport. It was known that the authorities obtain the flight passenger lists in advance and persons of interest are diverted to the CIO for questioning. The authorities would therefore have access to a Google search which revealed the appellant's name in association with OAUS, a group which has substantial support in the UK and is perceived to be a critic of the regime. The appellant would face ill-treatment contrary to Article 3.
13. Mr Bramble submitted that the Google search evidence could not be relied on in isolation. All of the findings made by the FTT had to be taken into account in considering risk on return. The FTT made clear findings that the appellant had no involvement in any activities and there was no reason why he should come to the

attention of the CIO as they had no previous interest in him. There could be no expectation that the appellant should have to lie to the authorities as it was found that he was not associated with that group and therefore this was not an issue. In the light of the clear findings that the appellant was not a member of OAUS nor associated with the petition there could be no argument that the security searches would solely on the basis of the Google search reach a conclusion that the appellant was acting against the regime.

14. Miss Muzira responded that the fact that the appellant had signed a petition was sufficient to lead to a real risk of ill-treatment.
15. At the end of the hearing I reserved my decision.

Remaking of decision

16. I rely on the main findings made by the First-tier Tribunal that the appellant was found to be totally lacking in credibility as to his membership of or involvement in OAUS and that he was not involved in the petitioning process as claimed [25]. I find that having made those clear findings the evidence of a Google search revealing the appellant as a signatory to the petition by OAUS must be assessed in that context and not in isolation. The FTT failed to consider the impact that a Google search would have in terms of risk on return but simply concluded that it was not satisfied that the appellant was engaged in political activities as claimed.
17. The head note in HS states
“The Tribunal identifies one further risk category, being those seen to be active in association with human rights or civil society organisations where evidence suggest that the particular organisation has been identified as a critic or opponent of the Zimbabwean regime.”
18. The FTT found that the appellant was not a member of OAUS and had not suffered any ill-treatment as a result of any claimed activities as a member of that group. The FTT further found that the appellant had no involvement with any petition. It is accepted that the COI take steps to identify in advance from the passenger list those persons who may be of any possible interest. It must be accepted that if a Google search is conducted the appellant's name will appear as a signatory alongside many other signatories. However, there is no other credible evidence that the appellant was involved in anti regime activities in the UK or Zimbabwe. There was no evidence before the FTT that the i-petition actually existed and/or had in fact been handed in in October 2014 as claimed and/or that how and if the appellant would be identified from the name appearing as a signatory. The authorities search would extend beyond that entry and reveal no political connection or profile. Of significance is the fact that the appellant left Zimbabwe legally using his own passport with a visit visa and would have come to the attention of the authorities at that stage. I find that the Google search entry is insufficient on its own given the negative findings of credibility and would not give rise to referral onto the CIO where a real risk of ill treatment arises. As indicated in the security screening

process is intelligence led and if there was any initial questioning of the appellant this would not reveal any political profile as a leader, activist or active supporter of the MDC. Further **HS** concluded that the fact of having made a claim for asylum abroad is insufficient to lead to adverse interest, as is a return from the UK.

19. Accordingly I am satisfied that the appellant does not face a real risk of a second stage interrogation which would lead to serious mistreatment to constitute a breach of Article 3 (**AA (Zimbabwe) CG UKIAT 00061**). I am further satisfied that there is no evidence to indicate that having passed through the first stage interview at the airport the appellant would be subject to monitoring in his home area by the local police or the CIO. The Tribunal in **AA** further found "the evidence does not suggest that the CIO has any interest in manufacturing or fabricating evidence to create suspicion that is otherwise absent" [250].

Decision

20. I remake the decision of the First-tier Tribunal by dismissing the appeal on asylum and human rights grounds for the reasons given above.
21. The appeal is dismissed.

NO ANONYMITY ORDER MADE

Signed

Date: 2 June 2016

GA BLACK
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 2 June 2016

GA BLACK
Deputy Upper Tribunal Judge G A Black