Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00216/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23rd May 2017	**On 6th June 2017**

Before

MR. JUSTICE NICOL
DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

PC
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R. Chapman, instructed by Wilson Solicitors LLP
For the Respondent: Ms J. Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The anonymity order that has previously been made continues. We emphasise at the outset that no report of these proceedings shall directly or indirectly identify the appellant.

2. The appellant appealed a decision of First-tier Tribunal Judge Gaskell promulgated on 18th October 2016. For the reasons set out in the earlier decision of Deputy Upper Tribunal Judge Mandalia promulgated on 11th April 2017, he

found an error of law in the decision of First-tier Tribunal Judge. He set aside the decision of the First-tier Tribunal ("F*t*T").

3. At the conclusion of the resumed hearing before us, we announced that the appeal is dismissed. We said that we would give the reasons for our decision in writing. This we now do.

4. The error of law identified in the decision of the F*t*T was that the Judge had failed to make a clear finding as to whether the appellant's home area is Chingozi Krall or Harare. A finding is necessary to properly assess the risk upon return, and if necessary, whether it would be unduly harsh to expect the appellant to internally relocate. Having found an error of law, Deputy Upper Tribunal Judge Mandalia directed that the appeal will be re-heard on the material that was before the F*t*T and on submissions only, subject to any Rule 15(2A) application which should be made no later than 21 days prior to the hearing. The appellant served a short supplementary bundle of objective evidence comprising of 40 pages. We have taken that evidence into account in reaching our decision. No further evidence was relied upon by the appellant.

5. Ms Chapman submits the appellant's 'home area' is Chingozi Krall. She submits the appellant had spent most of the time whilst she lived in Zimbabwe, and prior to her arrival in the UK, in Chingozi Krall. She was born there in 1959, and lived there until she married in 1977. Between 1977 and 1982 the appellant had lived with her husband in Bulawayo, but she returned to Chingozi Krall when that marriage broke down in 1982. She remained at her parents' home in Chingozi Krall until she remarried in 1991. She then moved to Harare with her husband, and she remained there for 10 years until her arrival in the UK in 2001. Ms Chapman submits Chingozi Krall is therefore where the appellant spent her childhood, and the formative years of her life. She submits it is also the place where the appellant spent a large part of her adult life. Ms Chapman submits the appellant has no connection to Harare other than her previous residence there. Her husband passed away after her arrival in the UK, and the appellant's mother, sister and children are now in South Africa.

6. Ms Chapman relies upon headnote [2] of the country guidance set out in **CM (EM Country Guidance; disclosure) Zimbabwe CG [2013] UKUT 000591 (IAC)** and submits the appellant, as a person returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, Chingozi Krall, will find it difficult to avoid adverse attention, amounting to serious ill-treatment from ZANU-PF authority figures and those they control. She submits it would be unduly harsh for the appellant to relocate to Harare because of the socio-economic situation there, including the catastrophic downturn in the economy that is described in the objective evidence relied upon. Ms Chapman submits the appellant would also face difficulties in Harare with housing, and to access the medicines that she needs.

7. Ms Isherwood confirmed the chronology that we have outlined at [5] above is uncontroversial. She drew our attention to the appellant's evidence at paragraph [20] of her statement dated 30th August 2016. The appellant confirms that she met her second husband about eight years after she separated from her first husband. They married on 3rd August 1991 and had two children. They lived in Harare where the appellant's husband worked as a taxi driver. Ms Isherwood also drew our attention to the answers given by the appellant to questions put to her during her screening interview. The appellant confirmed that her last permanent address in Zimbabwe was in Harare. The appellant's parents were both born in Harare, her siblings were born in Harare and the appellant's children of her second marriage were born in Harare. Ms Isherwood submits this demonstrates the appellant's close and longstanding connection to Harare and establishes the appellant's home area is in fact Harare, and not Chingozi Krall.

8. In determining whether a person is entitled to asylum or other international protection, a person's home area must be established as a matter of fact. In many parts of the developing world, including Zimbabwe, there has been a process of urbanisation, whereby people from rural areas have migrated to the cities, for a whole range of reasons including, for the purpose of seeking work. A person such as the appellant here who was born in Chingozi Krall, and lived in Chingozi Krall during her childhood, and again following the breakdown of her first

marriage, may well look on her rural place of origin as her "home area". The fact that the appellant feels an attachment to Chingozi Krall, does not mean that that area falls to be treated as the 'home area' for the purposes of determining entitlement to international protection.

9. Having carefully considered the evidence before us and the submissions made, and in particular the appellant's own evidence of her most recent history between 1991 and 2001, her place of residence, and family and social connections, we have no hesitation in finding that the appellant's home area is Harare. It is clear from the appellant's own account of her parents and siblings having been born in Harare that at some point in the past, the appellant's forebears migrated from the countryside to Harare. The appellant does not know the dates of birth of her parents, but her sister was said to be in her 70's at the time of the screening interview in May 2007, indicating that she was born in Harare in the 1940's. The appellant's brother was said to be 50 years old, indicating that he was born in Harare, in or around 1957. By the time of the appellant's birth in October 1959 the family were living in Chingozi Krall. We find that the appellant's family therefore has historical connections to Harare. More importantly however, it is clear that the appellant lived with her husband in Harare following her second marriage in 1991. The appellant's husband worked in Harare as a Taxi Driver and they had two children, both of whom were born in Harare. The appellant had lived in Harare for the ten years between 1991 and 2001, and it was from her home in Harare, that the appellant left Zimbabwe to arrive in the UK in April 2001.

10. Having found the appellant to be someone who has for many years before leaving Zimbabwe made her home in Harare, we must assess her claim to international protection by reference to whether the appellant is at real risk of persecution in Harare.

11. We pause at this juncture to note the relevant findings that have been made previously.

12. The appellant's claim for international protection was previously considered by F*t*T Judge Law and Mr A. Armitage in a decision promulgated on 1st August 2007. That was an appeal against the respondent's decision to make a deportation order against the appellant, following the recommendation of a Judge at Lewes Crown Court. On 13th February 2007, the appellant had been convicted of using a false instrument with intent, and obtaining a pecuniary advantage by deception. She had been sentenced to twelve months' imprisonment. In response to a notice that the appellant was liable to deportation, the appellant had made a claim for asylum and that claim had been refused by the respondent on 21st June 2007. In its decision promulgated on 1st August 2007, the Tribunal made adverse credibility findings against the appellant that we need not set out in full here. At paragraph [41] of the decision, the Tribunal stated:

> *"We are not satisfied that the appellant has given a truthful account of her and her husband's experiences in Zimbabwe. We are prepared to accept that she and her husband were supporters of the MDC and that she has obtained an undated membership card, but we note that by her own admission the appellant never went to any rallies or demonstrations (paragraph 5 of her first statement). For the reasons given above, we regard as not credible her claim that her husband was so active for the party that he came to the attention of ZANU PF and was beaten. We find that he was "just a supporter", as she told Mr Evans in cross-examination. There is no medical evidence to suggest that her husband's death was in any way caused by this alleged beating and we find that he died from natural causes. We find that the most which can be said is that the appellant sympathises with the aims of the MDC, something which she has in common with millions of ordinary Zimbabweans, judging from election results. This is a profile which would not, by itself, have put her at risk of persecution if she had remained in Zimbabwe."*

13. The appellant's claim for international protection was also considered by F*t*T Judge Pirotta in a decision promulgated on 25th August 2010. That was an appeal against the respondent's decision of 14th June 2010 to refuse the claim for asylum and make a deportation order. The respondent had undertaken to withdraw her earlier decision to deport the appellant and to reconsider her claim in light of new country guidance. F*t*T Judge Pirotta referred to the findings previously made by

the Tribunal in its decision promulgated on 1st August 2007. She also considered the evidence given to her by the appellant through a Shona interpreter. F*t*T Judge Pirotta noted, at paragraph [54] of her decision, the adverse credibility findings made by the Tribunal previously. She noted "*..The appellant's account was found to be inherently implausible and that at most she was a sympathiser of MDC*". She went on to consider whether, on the evidence before her, she could depart from those earlier findings of fact. Again, we do not repeat the findings that were made by F*t*T Judge Pirotta but we note that at paragraph [58] of her decision, she states:

> *"The Appellant had not advanced any evidence or explanation which is capable of dislodging the findings of the previous Determinations and her credibility is still in issue….. It is not credible that the Appellant would still have the MDC card issued to her in Zimbabwe if it had been found by ZANU PF Youths who, for a considerable period, searched her home twice a week and who found and threatened her husband. It is not credible that the Appellant was anything but a MDC sympathiser. She did not attend any rallies or demonstrations, the previous findings on her earlier evidence were that her husband did not attend any either. It is not credible that her husband was as active as she asserted, because of these inconsistencies…."*

14. Most recently, F*t*T Judge Gaskell considered the appellant's appeal against a decision of the respondent dated 21st December 2015 to deport the appellant and to refuse a Humanitarian Protection claim and to refuse a Human Rights claim. The Judge considered the submission made at that hearing, and repeated before us by Ms Chapman that the objective evidence reports show that there has been a catastrophic downturn in the Zimbabwean economy since **CM** was decided. The Judge considered the submission that it is reasonably likely that the appellant will not be able to find work to support herself. The Judge found, at [19]:

> *"I am in no doubt that the appellant faces difficulties upon her return to Zimbabwe. But, in my judgement, it is safe for her to return to Harare. (Or alternatively to internally re-locate there). She no doubt faces poverty and a standard of living below that which is available to her even as an asylum seeker in the UK; she may also suffer discrimination as a lone woman who is HIV-positive. But, in my judgement, she does not face persecution*

in Harare; and, although she faces poverty and discrimination, in my judgement, the Article 3 threshold is not crossed…."

15. It is against that background that we now turn to consider whether the appellant is at real risk of persecution in Harare. We remind ourselves of the country guidance set out in **CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC)**. Having found that the appellant's home area is Harare, we reject the submission made by Ms Chapman that we should assess the risk upon return by reference to what is said at paragraph [2] of the headnote. Headnote [2] is concerned with a person without ZANU-PF connections, returning from the UK after a significant absence to a rural area of Zimbabwe. The appellant would in fact be returning to her home area of Harare.

16. In **CM**, the Tribunal found, having considered a wealth of evidence 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. At headnotes [5] and [7] of the decision in **CM**, the Tribunal states:

"(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PT connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANUPF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.

(7) The issue of what is a person's home for the purposes 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 centre 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. "

17. The appellant has been found to be a person having no significant MDC profile. In fact, the Tribunal has found on two previous occasions that the most that can be said is that the appellant sympathises with the aims of the MDC. The Tribunal in **CM** confirmed that a returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. It noted that whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there, unless he or she has a significant MDC profile. The appellant does not have such a profile.

18. We have no reason to depart from the findings of F*t*T Judge Gaskell that we have set out at paragraph [14] above. We find that the appellant would not be exposed to inhuman or degrading treatment contrary to Article 3on return to Harare.

19. It follows that the appellant's appeal against the respondent's decision of 21st December 2015 to deport the appellant, and to refuse her protection and human rights' claims is dismissed.

Signed Date 6/6/2017

Mr. Justice Nicol
Deputy Upper Tribunal Judge Mandalia

FEE AWARD

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

Signed Date 6/6/2017

Mr. Justice Nicol
Deputy Upper Tribunal Judge Mandalia