



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/06474/2016
PA/06480/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast
On 15 May 2018

Decision & Reasons Promulgated
On 05 June 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

PHILANI DUBE
NOBUKHOSI MOYO
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr McTaggart, instructed by Andrew Russell & Co Solicitors
For the Respondent: Mr Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, Philani Dube and Nobukhosi Moyo, were born on 20 November 1977 and 3 July 1980 respectively and are uncle and niece. Both are citizens of Zimbabwe. They claim to have arrived in Northern Ireland on 7 March 2016 and claimed asylum the following day. By decisions dated 17 June 2016, the Secretary of State refused their applications for international protection. The appellants appealed to the First-tier Tribunal (Judge Gillespie) which, in a decision promulgated on 30 November 2017,

dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. There are several grounds of appeal but the grant of permission (by Designated Judge Shaerf) limits the grounds. Mr McTaggart, who appeared for the appellants before the Upper Tribunal, accepted that the grounds which may be argued before the Upper Tribunal were those at paragraphs [5–6] of the application for permission:

5. This linking (of the two appeals) leads onto the IJ's finding at para 57 that Mr Dube left on his own passport and entered the UK using same. Again there was no evidence of any UK visa in his name produced to the court and Mr Dube specifically explained this at para 2(iii) of his statement.

6. Further this flawed reasoning leads the IJ (paras 56, 57 and 59) to find that the appellant can return without problems due to how he left irrespective of his political work here. Given his party is pro-secessionist for Matabeleland and would be perceived as anti-ZANU PF as a result this is unsustainable and a material error of law as a result.

3. The grant of permission reads as follows:

At para 38 and 39 of his decision the judge set out the evidence about the second appellant's passport. At para 41 he referred to interview reply 202 in which the appellant confirmed she left the country using her passport but it is clear from the interview reply 201 that the passport may not have been issued by any official authority. The judge did not seek expressly to address para 33 of the respondent's reasons for rejecting the claim of the first appellant which relate to the nature of the passports both appellants used to leave Zimbabwe. The lack of any further explanation why the judge came to the conclusion that the second appellant had left on her own passport is an arguable error of law and the failure to address the issues of paragraph 33 of the reasons are arguable errors of law. The grant of permission on this ground in respect of each of the appellants is no indication that the arguable error was material.

4. Judge Gillespie at [38] records that the second appellant claimed to have obtained her passport through the agency of the Mthwakazi Party (MRP). The judge notes that at her asylum interview she had "said something different". The judge notes that, "firstly she made no mention of the MRP obtaining the passports". At [39], the judge records that, in her witness statement, the second appellant said that there were "visas to enter in the United Kingdom in these passports and although the passports had their photos they were not in their names". The judge found that the second appellant's evidence was "materially at variance and that again calls into question her reliability as a witness". At [41], the judge wrote:

In summary, Ms Moyo confirmed that she left Zimbabwe on her own passport (question 202). She originally made no mention of any irregularity in the passports and I find the latest explanations have been fabricated to address the Section 8 consideration. If she had travelled to the United Kingdom on her own passport there was no justification for failing to claim asylum at the airport and her failure to do so leads to the legitimate inference to be drawn in regard to her credibility as directed by Section 8. She never

came to the attention of the CIO/authorities on departure and a return is not in my judgment likely to excite any adverse interest.

5. The various accounts given of the appellants' evidence regarding their passports is somewhat confusing. However, if one returns to the record of the second appellant's interview, matters become clearer. Her answers to questions 201, 202 and 203 were as follows:

Question 201:	If you were really a wanted woman in Zimbabwe why would the authorities issue you with a passport and let you leave the country?	Answer:	I didn't obtain a passport from the party - when you apply for a passport if it is different offices then they assume you want to go on holiday.
Question 202:	But you left the country using your passport?	Answer:	Yes.
Question 203:	So you were a wanted person - would you not have been stopped at the airport?	Answer:	This was a problem that was helping in rural area I don't know if they had the capability that problem up there at the airport. (sic)

6. The second appellant's answers, especially to question 203 is not entirely clear. What is, however, clear is that the second appellant has given evidence in her interview that she did not obtain her passport "from the party" ("the MRP people"). That is the very discrepancy which Judge Gillespie highlights at [38]. Secondly, I disagree with Designated Judge Shaerf who granted permission that the answer to question 201 is clearly that "the passport may not have been issued by an official authority". With respect to Judge Shaerf, I can see nothing in the answer to question 201 which indicates the second appellant used anything other than an official passport office to obtain her passport. She appears instead to be making a distinction between documents which could be obtained by the MRP and those for which she had to apply to a government office. I find that Judge Gillespie has not misunderstood the evidence but has identified discrepancies in the second appellant's account which are apparent on the face of her evidence.
7. Mr McTaggart submitted that there was no evidence from the Home Office regarding the visas which may have been endorsed in the appellants' passports. I am reminded that the burden of proof in the appeal lay upon the appellants and not upon the respondent. Mr McTaggart said that the appellants claimed that they had genuine Zimbabwe passports but which bore false names and false photographs. That is not what the second appellant has stated in her evidence. I agree with Mr Duffy who submitted that the second appellant's own evidence was that she left on her own passport which appears to have been issued by an official authority. It was not her evidence before the First-tier Tribunal that she had a genuine passport which, for some reason, so happened to contain a false photograph. Further, as Mr Duffy pointed out, the two appellants had given conflicting evidence in their appeals which had led Judge Gillespie to disbelieve both appellants. I agree with Mr Duffy that the appellants have advanced no arguments which should displace that important finding.

8. In conclusion, I am satisfied that Judge Gillespie has properly understood the evidence presented to him, albeit that that evidence was, in parts, both confusing and discrepant. It was open to the judge to find that neither appellant's evidence was reliable because they had given inconsistent accounts; truthful witnesses would have been able to have given the same account of the same events when required to do so on different occasions. Consequently, I find that Judge Gillespie did not err in law for the reasons asserted in those grounds of appeal for which permission has been granted or at all. The appeals are dismissed.

Notice of Decision

9. Appeal dismissed.
10. No anonymity direction is made.

Signed

Date 2 June 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

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

Signed

Date 2 JUNE 2018

Upper Tribunal Judge Lane