



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

Appeal Number: PA/08812/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 1 July 2019**

**Decision & Reasons Promulgated
On 8 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**M A N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Easton, Counsel instructed by Leonard Cannings
Solicitors

LLP

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

DECISION AND REASONS

1. The Appellant is a citizen of Zimbabwe born on 2 January 1973. Her application for asylum and ancillary protection was refused by the Respondent on 24 August 2017. Judge Skehan (“the Judge”) dismissed the appeal at a hearing on 19 March 2019. Judge Hollingworth granted permission to appeal on 17 May 2019 in essence on two points: firstly, that inadequate weight was given to the ongoing threat RS said through WhatsApp messages he was going to do to the Appellant and why; and

secondly, his interest in and ability to trace her as a result of his links to the authorities and her family relationships with her brother MC.

2. Having heard detailed submissions, I indicated at the hearing that I am satisfied that there is a material error of law and I do so for the following four reasons.
3. Firstly, at the end of [22] the Judge said,

“I conclude that the appellant’s case at its highest relies upon what she was told by a man who consistently lied to her through their relationship”.

The Judge had accepted that the Appellant had been in a relationship with a man who perpetrated domestic violence towards her whilst they had been in South Africa. The Appellant’s evidence recorded at [10 aa] states:-

“The appellant told me that she had been told by her mother in law” two “people came looking for the appellant after she left Zimbabwe, a woman and a man. The appellant’s mother in law gave them the appellant’s mother’s number. They phoned the appellant’s mother asking if she knew where the appellant was. The appellant had told her mother not to tell anyone where she was. They told the appellant’s mother they would find her through Interpol”.

4. That evidence is not evidence of the Appellant simply relying on what she was told by RS. It is evidence that comes from somebody else. The exclusion of that by the Judge from his/her consideration of the evidence taking the Appellant’s case at its highest is factually incorrect because the Appellant’s case at its highest is that not only were there WhatsApp messages, but also that there was an ongoing interest that she had been told by somebody else from RS towards her.
5. Secondly, the Judge quoted some but not all of the WhatsApp messages. Whilst a Judge does not have to recite every piece of evidence, some additional points had been made in the WhatsApp messages that went beyond what had been identified and took it into a different category of threat. Those are, “You’ll be my whore until I am tired of you”, and, “As for me, I haven’t even started”. Those indicate an ongoing interest in her contrary to the finding at [23] of the decision that RS had no “ongoing interest in maintaining any relationship with her” and the rejection of that evidence requires an explanation. That explanation was absent.
6. Thirdly, the Judge was not satisfied the Appellant had established that RS had the relationship with the authorities claimed as it is stated at [22]:-

“The appellant produced pictures that she says shows” RS “in close proximity to the President. I am unable to make any independent verification in relation to” RS’s “identity in these pictures provided by the appellant”.

That is not sufficient as the Appellant had given evidence as to who he was and the Judge gave no reason as to why her oral evidence was disbelieved.

7. Fourthly, there was evidence before the Judge of MC being Secretary-General of Zunde which is an organisation opposed to Zanu PF. For example, there is an article written by him. The finding that it had not been established that MC had links to those opposed to Zanu PF was not one available to the Judge without an explanation and consideration of the article.
8. Accordingly, for all these reasons, I am satisfied that the Judge materially erred in law.
9. Having heard submissions, I am satisfied that the fact-finding defects were such that this is a matter that should be remitted to the First-tier Tribunal. In doing so I am going to preserve three findings that have not been challenged by the Respondent and should not have to be reproved.
10. The first preserved finding is that the Appellant was the victim of domestic violence perpetrated by RS in South Africa. That is because it says specifically at [23], "I accept that the appellant had a relationship with a violent man". There is no evidence anywhere within the decision that that man was anybody other than RS.
11. The second preserved finding is that the Appellant is the half-sibling of MC.
12. The third preserved finding is that MC has a political profile adverse to Zanu PF being the Secretary-General of Zunde.

Notice of Decision

13. The matter is remitted to the First-tier Tribunal at Hatton Cross where such directions as are required will be made. It will not be heard by Judge Skehan.

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 her or any member of her 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.

Deputy Upper Tribunal Judge Saffer



Dated 4 July 2019