



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

Appeal Number: PA/11413/2017

THE IMMIGRATION ACTS

Heard at Bradford

On 14th January 2019

**Decision & Reasons
Promulgated**

On 6th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**CHINEDU [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown of Counsel instructed by Parker Rhodes
Hickmotts

For the Respondent: Mr M Diwnycz, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Dearden made following a hearing at Bradford on 6th December 2017.

Background

2. The appellant is a citizen of Zimbabwe born on 15th September 1999. He arrived in the UK on 27th July 2016 on a visit visa because he was to take part in a football tournament in the UK, and claimed asylum two weeks later.
3. The appellant's claim is based upon his association with his mother whom he said had had a number of difficulties with the police because of her membership of the MDC. She had been questioned and subject to violence; the appellant believed that his mother had died as a result of having been assaulted. He also raised a sur place claim saying that in the summer of 2017 he discovered that he had sexual feelings towards his own sex and believed that he was bisexual.
4. The judge disbelieved the appellant's claim. He noted that the death certificate indicated that his mother had died of chronic kidney disease and there was no evidence to establish that she had died from trauma. He observed that the appellant had left the country on a valid visa and on his own passport. He did not accept that the appellant had been able to do so because his mother had changed his name shortly before he departed. There was no documentary evidence of such a name change.
5. The appellant had given discrepant evidence in relation to whether he himself had had any difficulties. The judge applied the country guidance case of CM [2013] UKUT 00059 which held that as a general matter there was significantly less politically motivated violence in Zimbabwe compared to the situation considered in RN and that the evidence did not show that as a general matter the return of a failed asylum seeker from the UK, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to ZANU-PF.
6. Although the appellant said he had no relatives in Zimbabwe, the judge concluded that he could set himself up in Harare or Bulawayo. He was now an adult, and educated, and he could rebuild his life there.
7. So far as the appellant's claim to bisexuality was concerned the judge noted that the author of the letter from Yorkshire MESMAC, a sexual health organisation was not present to give evidence and in any event the claim had not been made until November 2017, very late in the process.
8. At paragraph 32 the judge wrote:

"In the alternative and without prejudice of the foregoing even if the appellant's assertion as to his bisexuality is true it is apparent (following HJ (Iran)) that the appellant has been very discreet in his dealings with MESMAC since the summer of 2017. He has had a one to one support session and been to a private meeting of people who identify as LGBT. He has therefore chosen of his volition whilst in this country to be discreet rather than overt and open about his sexuality. If he wished to do so in a free and liberal country like the United Kingdom the appellant could have been open and overt about his

bisexuality but he has chosen not to do that because he chooses to be a private person and because he is not even sure of his own feelings rather than because he fears persecution in the UK if he is openly and overtly bisexual. If he is discerning and discreet in private in his dealings with his sexual feelings in the UK where there is no chance of him being persecuted, then in my conclusion he would choose to behave in the same way in Zimbabwe.”

9. He applied the country guidance case of LZ [2011] UKUT 00487 which held that there was no general risk to gays and lesbians and that there was a gay scene in Zimbabwe, within limitations. He declined to depart from the country guidance and dismissed the appeal.

The Grounds of Application

10. The appellant sought permission to appeal on three grounds.
11. First the judge had made a factual mistake in that the appellant had produced evidence of the name change at E2 and E3 of the respondent’s bundle. He clearly has a different name to his mother.
12. Second, the judge failed to adequately engage with the impact of political change in Zimbabwe.
13. Third, the judge had not given proper reasons for considering that the claim of bisexuality was merely an attempt to bolster his case. It was understandable that the appellant would only have realised his sexuality whilst in the UK given the deeply homophobic attitudes in Zimbabwe. Furthermore the judge had misunderstood the evidence in relation to discretion. The appellant had attended one to one sessions for support which was in fact indicative of a person being open about their sexuality.
14. Permission to appeal was granted by Deputy Upper Tribunal Judge Saini on 26th February 2018 for the reasons stated in the grounds.

Submissions

15. Mr Brown submitted that the judge had made a factual error in relation to the name change. He made no further submissions in relation to ground 2 but said that the judge’s consideration of the bisexual claim was not properly reasoned. He had not explored the consequences of the appellant’s late realisation of his bisexuality. There was no proper basis upon which he could have concluded that the appellant would act discreetly on a return to Zimbabwe.
16. Mr Diwnycz submitted that the decision was wholly sustainable and that the judge had properly dealt with the evidence which was before him.

Consideration of Whether there is a Material Error of Law

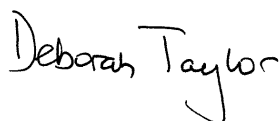
17. I am not persuaded that the judge erred in law for the following reasons.

18. First, in relation to the name change, although it is apparent from the documents in the respondent's bundle that the appellant had a different name from his mother, that is not evidence, as the appellant claimed, that the name was changed fairly shortly before he left Zimbabwe. In any event the point is immaterial. On the judge's sustainable findings the appellant's mother died from kidney disease and not from trauma associated with having been beaten as a consequence of her support for the MDC.
19. There is no possible error in the judge applying the country guidance case of CM, which held that the situation in Zimbabwe was now much improved. There was no reason to believe that the appellant would be at risk on return on account of any imputed political opinion.
20. So far as the claim to bisexuality is concerned, it is not quite clear whether, on the evidence before the judge, the appellant had decided that he was in fact bisexual. He had had a single one to one support session and had been to a private meeting of people who identify as LGBT. He has entered into no gay relationships here. He has not entered into a gay lifestyle. It is therefore difficult to understand what else the judge could have done with the evidence other than to conclude that there was no real risk that he would wish to enjoy an overt and open gay lifestyle in Zimbabwe.

Notice of Decision

The original judge did not err in law. His decision stands. The appellant's appeal is dismissed.

No anonymity direction is made.



Signed

Date 4 February 2019

Deputy Upper Tribunal Judge Taylor