Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04932/2019**

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 5th December 2019	**On 2nd January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

F M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Shea (Solicitor)
For the Respondent: Mrs H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Fowell, promulgated on 12th August 2019, following a hearing at Birmingham Priory Court on 30th July 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Zimbabwe, aged 30, having been born on 10th November 1998, and is a female. She appealed against the decision of the Respondent Secretary of State, which is dated 12th May 2019, on the basis that she had a well-founded fear of persecution on account of her

political opinion and activities, particularly the sur place activities in the UK.

The Appellant's Claim

3. The essence of the Appellant's account is that her father was active in the Movement for Democratic Change (MDC) and was last heard of about two years ago before going into hiding. He had long been active in politics. She was 15 or 16 when her family home was vandalised by a group from the ZANU-PF group. In 2009, when she was about 21 years of age, her mother and gender siblings were granted asylum in Australia. She, on the other hand, obtained a student visa to come to the UK in 2012, and this student visa expired on 7th November 2017. In September of that year, just two months after expiry of her student visa, she heard from her father who warned her against returning to Zimbabwe, and this was shortly before he himself disappeared. She has now been living in the UK for seven years. During that time she has been involved with opposition groups in the UK. This is in addition to having been politically active from the age of 16 or 17 in South Africa.

The Judge's Findings

4. The judge began the determination by setting out the background to the Appellant's appeal and observing that, although the Appellant was originally from Zimbabwe, "she has not really lived there since she was about 13 when she went off to boarding school in South Africa" (paragraph 2). The judge went on to note that the Appellant's original home was in Ruwa, which is about 25 minutes from Harare, the capital city of Zimbabwe, and is not a rural area, "and hence without a significant MDC profile she would not face a real risk of having to demonstrate loyalty to the ZANU-PF" (paragraph 21). The judge also observed that the Appellant's "evidence fell along way short of demonstrating that in her own right she had a significant MDC profile."

5. The judge had regard to the leading decisions (see paragraphs 24 and 27) in coming to his conclusion, and went on to note how the Appellant could not produce a membership card at the time of her interview showing her to be a member of the MDC (see paragraph 29), before concluding that the Appellant could not succeed in her appeal.

The Grounds of Application

6. The grounds of application state that the judge failed to have proper regard to the Appellant's claim of having imputed political opinion on account of her sur place activities in the UK. These have not been evaluated and have not been properly addressed. Secondly, the judge wrongly concluded that there would be no "very significant obstacles to integration of the Appellant in Zimbabwe, because his focus had been very much on the Appellant having lived in South Africa (see paragraph 33), and so paragraph 276ADE(1)(vi) had not been properly analysed at all.

Submissions

7. At the hearing before me on 5th December 2019, Mr Shea, appearing on behalf of the Appellant stated that the judge had wrongly concluded that the Appellant was not at risk when stating that,

> "More generally, she clearly has had sufficient family support to send her to boarding school in South Africa than to live in South Africa for several years before coming to the UK to study for a further five years. All this supports the view that she has been financed to do so and so would have family support available to her on return" (paragraph 33).

8. Mr Shea submitted that this was fundamentally wrong because the Appellant's boarding school had been in Zimbabwe. She had not been to boarding school in South Africa. Therefore the conclusion that the Appellant had been sent away to a boarding school in the neighbouring country of South Africa, which was demonstrative of the fact that the family had the sufficient financial means and wherewithal to give and to support her, was simply wrong. They were not actually a wealthy family.

9. Second, the judge had failed to consider the Appellant's sur place activities as a supporter of the MDC while she had been in the UK for the last seven years.

10. For her part, Mrs Aboni submitted that even if the judge had made an error in relation to which country the Appellant had undertaken her boarding school education, this was not a material error. Being able to afford to send a child to boarding school was still a sign of wealth, in a country like Zimbabwe, where the economic situation had for a long time been a difficult one, and where the state school system was the system that was predominantly used by most people.

11. Secondly, as far as the Appellant's claim to have been an active member of the MDC was concerned, the judge had stated (at paragraph 21) that, "without a significant MDC profile she would not face a real risk of having to demonstrate loyalty to the ZANU-PF" if she came from Ruwa, which was not a rural area, but was just 25 minutes away from Harare (paragraph 21).

12. In reply, Mr Shea submitted that more than half of the Appellant's evidence at the hearing below concerned her sur place activities and yet the judge had not dealt with this and therefore this must plainly be an error of law.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCA 2007) such that I should set aside the decision. My reasons are as follows. This is a case where, as the judge found, the Appellant's witness statement "was relatively brief, at two pages, and simply commented on some

aspects of the refusal letter", so that she was unable to make good her claim that she would be at risk in the manner that she alleged with respect to her personal history (see paragraph 9).

14. Furthermore, regardless of whether the Appellant had been to boarding school in Zimbabwe or in South Africa (and I am prepared to accept here that the judge erred in concluding that she had gone to boarding school in South Africa when in fact it had been Zimbabwe), the judge's note that "when I asked what she was doing in South Africa from 18 to 23 she said 'nothing'. She also said that she left Zimbabwe when she was 17, just after she finished boarding school, so she returned home briefly before going to live in Johannesburg" (paragraph 9). There is here a reference to the Appellant having finished boarding school in Zimbabwe. It does not really matter insofar as the material circumstances of her claim are concerned because in either case, the judge has to find that the Appellant is at risk for the reasons that she alleges, and in this regard the judge has been entirely clear that the Appellant has not been able to demonstrate such risk.

15. Second, insofar as it is said that the Appellant's sur place activities have not been properly considered, the judge did observe that "her political activities involved monthly meetings in London with ROHR or Vigil, and meeting protests at the embassy." (Paragraph 12). The judge went on to say that, "I asked why she did not have an MDC membership card at the time of her interview and she said that she was waiting for her new card to come in the post and did not arrive in time" (paragraph 12). However, the judge did not find this to be credible. He was of the view that,

> "The fact that she was not able to produce a membership card at the time of interview, nearly eighteen months after she first claimed asylum, also strikes me as significant. The suggestion that she was waiting for a replacement card was not one she gave in interview – she simply said that she could get something to show her membership" (paragraph 29).

16. It is clear here that the judge did not believe that the Appellant was engaged in any significant MDC activities in the United Kingdom. Indeed, the judge was clear that,

> "Her evidence fell a long way short of demonstrating that in her own right she had a significant MDC profile. In her screening interview she was asked if she had been involved in politics and said 'just briefly' (at Q4.1) and mentioned previous posts online" (paragraph 22).

17. In fact, the extent of the Appellant's claim of her involvement with the MDC was that she was an active member and a supporter of MDC through her involvement with ROHR, but the judge concluded here that "but membership and participation would not suffice, and it has to be remembered that the MDC is a lawful, democratic party in Zimbabwe, enjoying wide support" (paragraph 22). Clearly, therefore, the judge did

consider the Appellant's claim of being politically active both in Zimbabwe and in the UK and rejected it outright.

18. Finally, in an appeal where both the Appellant and her sister gave evidence, it was significant that "the main piece of evidence relied on in this appeal is a letter from her father, but on examination, neither of the two sisters were able to explain what this was about", as the judge explained (at paragraph 25). The letter was one which, as the judge found "made little sense on its own terms" and neither of the two sisters addressed their minds to the importance of the letter "which would be remarkable if they were genuinely receiving a letter from their father telling them that he was going on the run because of the danger he faced" (paragraph 25). Neither sister chose to reply to their father either.

19. I should just add that although the judge's observation towards the end is that "given that what appears to be a substantial degree of family support in the past and the presence of her father in the country, it does not seem that anything approaching this degree of difficulty would be encountered" (paragraph 36), this is in no way entirely dependent upon the suggestion that the Appellant's boarding school education was in South Africa (rather than in Zimbabwe). The judge was entitled to conclude that the Appellant was a person who was receiving "a substantial degree of family support" on the entirety of the evidence before him. It was not dependent upon a mistake of fact that the boarding school had been in South Africa, when in fact it had been in Zimbabwe.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

This appeal is dismissed.

An anonymity order is made.

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 him or any member of their 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.

Signed Date

Deputy Upper Tribunal Judge Juss 30th December 2019