



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

**Appeal Number: PA/11475/2019 (P)**

**THE IMMIGRATION ACTS**

**Decision Under Rule 34  
Without a hearing  
7<sup>th</sup> September 2020**

**Decision & Reasons Promulgated  
On 11<sup>th</sup> September 2020**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**YJ  
(anonymity order made)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DETERMINATION AND REASONS**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as YJ. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

1. FtT Judge Juss dismissed YJ's appeal against the refusal of her international protection and human rights claim for reasons set out in a decision promulgated on 4<sup>th</sup> February 2020. Permission to appeal was granted by FtT Judge Bird on 16<sup>th</sup> March 2020. Directions for the further conduct of the appeal were sent on 17<sup>th</sup> April 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if

so whether the decision of the FtT judge should be set aside to be determined on the papers.

2. The appellant's representatives sought an extension of time to early July 2020 to make submissions. That has now passed, and no submissions have been received by the Upper Tribunal from the appellant and no further request for time submitted. There has been no objection to a decision being taken on the papers by either party. The respondent made written submissions on 6 May 2020. The respondent did not object to a decision being taken on the papers. The appellant has not responded, as she was provided with the opportunity to, to those submissions. The appellant was, on the date of the making of this decision, aware of the respondent's position but has not chosen to respond.
3. I am satisfied that the submissions made on behalf of the respondent together with the papers before me<sup>1</sup> are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

#### FtT Decision

4. The First-tier Tribunal judge set out in the appellant's evidence and refers to her having returned to Zimbabwe three times after she first arrived in the UK and that she had not had any problems on her arrival or stay in Zimbabwe. He sets out that she last went to Zimbabwe in 2008 and that she joined ROHR in November 2019 and that the evidence of attendance at demonstrations was all from 2019 onwards. In reaching his decision the judge concluded that although she had previously claimed previous political activity from 2002 she had been able to travel to Zimbabwe without any risk. The judge addressed her *sur place* political activity and concluded this was opportunistic. He refers to *Danien* [2000] Imm AR and that the commission of activities in bad faith had to be understood in the context that nothing in it should be read as giving any kind of green light to bogus asylum seekers. The judge found that she was neither a prominent member of ROHR or Zimbabwe Vigil and that she had not received any threats at any stage even after embarking on her *sur place* activities.
5. The judge endorsed paragraph 34 of the reasons for refusal letter which reads as follows:

"You claimed that you began to be politically active whilst you were residing in the UK. You stated that in 2016, you began following discussions on the situation in Zimbabwe and began to become interested. You were asked what specifically happened that brought out your political interest to which you stated "well you know, just how you see a lot of innocent people being persecuted and being killed just for expressing their views and not agreeing with the current government and just, you know, wanting it for a lot of things". You further stated, when asked how you started to become active, "well, on Facebook, some activists used to share a lot about what's going on at home and encouraging fellow diaspora Zimbabweans to take part and take back and support those who are home from here so I just felt I needed to do my part as well". When asked why you had not become involved

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<sup>1</sup> (a) the respondent's bundle; (b) the bundle filed on behalf of the appellant received by the Tribunal on 28<sup>th</sup> January 2020; (c) the decision of FtT Judge Juss; (d) The application for permission to appeal; and (e) the grant of permission to appeal.

earlier to which you responded that you were mainly focused on your son and that you weren't really interested. Your reasoning for your political investment in 2016 is considered vague, as it is unclear what specifically motivated you to become involved in 2016, considering you displayed awareness for demonstrations and political activity in the UK since 2002. Furthermore you were requested numerous times to provide more detail into what raised your interest yet failed to do so."

#### Error of law

6. The appellant sought and was granted permission to appeal on the grounds that it was arguable the First-tier Tribunal judge erred in his definition of "bad faith" and that the core of the appellant's claim was the *sur place* activities and whether there would be a risk of persecution on return. It was submitted that the Court of Appeal in *Danian* found no basis for applying the principle of good faith in asylum claims and that the Court of Appeal concluded that if there was a real chance of persecution then the Convention applies even if an asylum seeker had fabricated a claim. The grounds refer to relevant factors for determining *sur place* activity and submit that the First-tier Tribunal judge failed to address these in the context of Zimbabwe.

#### Consideration and findings

7. The appellant made a number of trips to Zimbabwe between 2002 and 2008. She was not at risk on those trips despite claiming at some point to have been involved politically prior to those trips. This is a matter the FtT judge is entitled to take into account in assessing the impact of her *sur place* activities, which consisted of some attendance at some demonstrations after 2019. The letter dated 14<sup>th</sup> December 2019 is a general letter which in so far as it refers to the appellant, states that she signed the register in September 2008 although she may have attended prior to then without signing in. The evidence before the First-tier Tribunal judge of her attendance dated from November 2019. Although the letter states that "supporters such as [Y] help draw attention... She comes early to help set up and stays to the end to help pack up...". the letter is non-specific and vague as to the number of times the appellant attended; if there is a register it is difficult to understand on what basis it was not produced. The First-tier Tribunal judge refers in his decision to the evidence produced from the writer of that letter and in particular refers to that evidence as general and speculative. It is incorrect, as submitted by the appellant in the grounds of appeal, that the First-tier Tribunal made no reference to the corroborative letter. In any event the judge states that he is taking account of all the evidence and that letter is listed as one of the documents before him, it being on pages 37 and 38 of the bundle. Furthermore it is to be noted that the appellant did not in her previous appeal in 2019 make any reference to any political activity whatsoever.
8. As identified in the grounds seeking permission to appeal, *sur place* activity, even if undertaken for opportunistic reasons may still lead to a real risk of being persecuted. The essential issue is the identification of the activity and the risk posed by that activity in the context of the country conditions. The First-tier Tribunal judge identified clearly and plainly the very limited activity of the appellant in terms of her recent attendance at demonstrations and her lack of any real political understanding or commitment. The skeleton argument relied

on by the appellant at her hearing before the First-tier Tribunal judge, draws attention to the current country guidance case and submitted that the appellant's *sur place* activities were likely to be known by the CIO on return because surveillance at the airport was an intelligence lead process. Reference was made in the skeleton to the military coup and a change of President but that there was nothing to suggest that there has been a change in the attitude of the authorities to those who opposed Zanu-PF. Although the country guidance case relied upon is nearly 10 years old and although the military coup is far more recent, there was no evidence put before the First-tier Tribunal to support the submission that a person as low-level in activity of this appellant whose credibility is significantly damaged through her previous claims and whose understanding and activity within the Zimbabwean diaspora is generalised and very limited, would now be at risk on return to Zimbabwe particularly given that she had previously travelled to Zimbabwe at a time of heightened threat to political activists.

9. That is not to say that an appellant in this appellant's circumstances cannot rely upon the country guidance case but, given the time that has elapsed and the nature of her activity, the First-tier Tribunal judge was correct in concluding that her activities were not such as to place her at risk of being persecuted on return to Zimbabwe. Given the appellant's lack of ideological understanding, commitment and the low level of opportunistic political activity against the government, her response to any questioning whatsoever is likely to be that she has been in the UK because of failed family and private life applications and appeals. She cannot with any real accuracy describe herself as a political activist. The possibility of her attendance at a few demonstrations being noted, recorded and identified as antagonism to the government is remote.
10. The conclusion by the First-tier Tribunal judge that the appellant was not at risk of being persecuted is not infected by error of law. The judge has considered *Danian* and although he refers to "bad faith" that is in the context of an assessment of the totality of evidence before him.

#### Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the FtT stands and the appeal is dismissed.

#### Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Jane Coker  
Upper Tribunal Judge Coker  
Date 07 September 2020