



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

Appeal Number: RP/00018/2020

THE IMMIGRATION ACTS

Heard remotely via Teams

On 16 June 2021

**Decision & Reasons
Promulgated
On 25 June 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**PM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karnik

For the Respondent: Mr McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Zimbabwe who was born in 1986. He appealed to the First-tier Tribunal against a decision of the Secretary of State made on 2 March 2020 to refuse his claim for international protection, to invoke section 72 of Nationality, Immigration and Asylum Act 2002 and, by way of a separate decision letter, to revoke his refugee status. The appellant had been granted leave as a refugee on 3 April 2009. A decision by the Secretary of State in 2013 to revoke the appellant's refugee status and to deport the appellant had been successfully appealed to the First-tier Tribunal by the appellant in February 2014. That First-tier Tribunal decision and the second revocation decision of March 2020 are not on the Tribunal file; their absence has clearly caused problems for Judge Malik who dismissed the appeal in the First-tier Tribunal by a decision promulgated on 17 November 2020. It is against that decision that the appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant has been convicted of several sexual offences since 2011. Most recently, on 8 January 2015, the appellant was sentenced to 10 years' imprisonment for rape of a male.
3. Mr McVeety, who appeared for the Secretary of State at the initial hearing in the Upper Tribunal, told me that the Secretary of State accepted that the judge had fallen into error by failing to apply the appropriate cessation provisions in deciding the appeal against the decision to revoke the appellant's refugee status.
4. The judge refers to the revocation of asylum status very briefly in her chronology at [13] but thereafter that element of the appeal is conspicuous by its absence. The judge refers to a change in circumstances at [57] but only as regards the circumstances of the appellant's family members who had revisited Zimbabwe and only in order to reject the findings of the previous Tribunal in 2014. At no point does the judge properly address the test of durable change of circumstances in Zimbabwe whilst she only refers to the appellant having failed to discharge the burden of proof; she does not appear to recognise that, in the cessation appeal, the burden of proof is on the Secretary of State and that the standard of proof is the balance of probabilities. Her analysis of the evidence is detailed and thorough; however, if, at least in one part of the appeal, she has not applied the correct law to her findings of fact, her decision falls to set aside for legal error. Findings based on the application of the incorrect burden of proof also infect her assessment of the expert evidence. The judge has approached the report only having rejected the credibility of the appellant's evidence on the basis that the burden of proof throughout was on the appellant and without considering the report as part of the whole evidence (see *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367)).
5. In the circumstances, I set aside the decision. I stress again that the absence of important documents may have hampered Judge Malik. Mr McVeety told me that the Home Office cannot locate a copy of the First-tier Tribunal's decision of 14 May 2014 although he did helpfully file and serve a copy of the 2009 asylum grant minute. I shall try to locate the previous file (DA 015852013) in the Tribunal's archives so that it is available for the next judge to hear the appeal. The decision will need to be remade in the First-tier Tribunal after a hearing *de novo*.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Signed

Date 16 June 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.