



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

Appeal Number: DA/01585/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
on 14<sup>th</sup> May 2014**

**Determination  
Promulgated  
On 14<sup>th</sup> May 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**O M**

**(Anonymity order in force)**

Respondent

**Representation:**

For the Appellant: Mr Mills Senior Home Office Presenting Officer.

For the Respondent: Mr Lane instructed by Rodman Pearce Solicitors.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of a panel of the First-tier Tribunal composed of First-tier Tribunal Judge PJM Hollingworth and Mr GF Sandall who allowed the appeal on the basis OM fell within one of the exceptions to automatic deportation; for the reasons set out in the determination.
2. The Secretary of State sought permission to appeal on the basis the Panel had failed to have due regard to the country guidance case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 and did not find that OM fell within one of the categories contained in that case as being at risk on return. There is also a challenge to the finding OM is entitled to succeed under Articles 2 and/or 3 of the ECHR which are said to be fundamentally flawed.

3. Whilst I accept there is arguable merit in the assertion there was insufficient evidence and inadequate findings made to support the Panel's conclusion that the high threshold of Article 2 will be breached, I do not find that the Secretary of State has established any arguable legal error material to the decision to allow the appeal.
4. The Panel clearly considered the evidence with the degree of care required in an appeal of this nature, that of anxious scrutiny, and made findings in relation to key elements which have been adequately reasoned. The test is not whether every judge would make a similar finding but whether the findings made are within the range of findings the Panel were entitled to make on the basis of the evidence they were asked to consider. The Panel made findings relating to the nature and extent of the relationship between OM and his aunt Adela which are at the core of the assessment as to risk. The grounds do not challenge such findings.
5. The grounds also fail to challenge the conclusion in paragraph 46 of the determination that the familial relationship will be established at the point of return at Harare airport, as a result of which a direct risk will rise. This is a finding in accordance with the country guidance case of HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 which was reaffirmed in CM. As there is an unchallenged finding that OM faces a real risk of harm that will engage Article 3 and which arises on the basis of an imputed or actual adverse political opinion, the decision to allow the appeal under the Refugee Convention or Article 3 cannot be said to be outside the range of permitted findings. It was therefore not necessary for the Panel to consider the prospects for OM outside the airport even though they did. On the basis of the pleaded grounds upon which permission to appeal was granted the Secretary of State has not discharged the burden upon her to the required standard to establish that the Panel made any legal error material to the decision to allow the appeal.

## **Decision**

6. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

7. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....

Upper Tribunal Judge Hanson  
Dated the 14<sup>th</sup> May 2014