IAC-AH-LEM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07989/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 1 June 2015	**On 12 June 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SIPHITHIPHITHI MABHENA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Patel, instructed by Parker Rhodes Hickmotts, Solicitors
For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Siphithiphithi Mabhena, was born on 2 December 1976 and is a citizen of Zimbabwe. The appellant had appealed to the First-tier Tribunal (Judge T Jones) against the decision of the respondent dated 12 December 2014 to refuse him asylum and to refuse him leave to enter the United Kingdom. The First-tier Tribunal dismissed the appellant's appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal deal, *inter alia*, with the judge's analysis of the evidence and his assessment of credibility of the appellant. I was grateful to Ms Patel, Counsel for the appellant, for her helpful submissions. I am satisfied that the judge made a series of mistakes in his treatment of the evidence;

   (i) At [21], the judge wrongly referred to the respondent's refusal letter as having identified "inconsistencies in the appellant's account" to which Judge Jones "subscribed." A reading of the refusal letter of 17 September 2014, shows that, in relation to MDC (Movement for Democratic Change) activism and membership and in respect of a claimed arrest in January 2013, the respondent considered that the appellant's claims were internally consistent but not "corroborated by external evidence." Applying paragraph 339L of HC 395 (as amended) this had led the respondent to consider the claim to be "unsubstantiated." What the refusal letter did not do is to identify inconsistencies in the appellant's account.

   (ii) Dealing with the appellant's interview record (questions 95 – 97) the judge wrongly stated that the appellant had been unable to "mention when the elections took place." The appellant had stated [95] that the election had been conducted in July; the remainder of his answers to the questions specified by the judge do not concern the date of the election.

   (iii) At [22] the judge wrote that "there was no medical evidence (I note there is no need legally for the appellant to corroborate his claim) which attributes the weakness he reports in his hand to "ill-treatment." At [9(5)], the judge had noted the contents of a GP's letter which had dealt with the weakness in the appellant's left hand and, whilst that letter does not confirm that the weakness was as a result of physical ill-treatment, the judge here appears to have been seeking evidence which the appellant had been in no position to provide. It was unclear from the judge's remarks whether he gave any weight at all to the appellant's claim to have suffered ill-treatment to his hand.

   (iv) The judge deals with a letter in support of the appellant's claim from the MDC [at 23]. He writes, "the information as to an internet link said to give the letter provenance is of limited weight." I am not certain what that sentence means. He proceeds in the same paragraph to note that "Mrs Patel (*sic*) was careful to say she had no submissions to make or assert that an arrest warrant is part of her client's claim." The refusal letter records that the appellant claimed to have been arrested and detained for 30 days in January 2013.

3. Much of the judge's analysis of the evidence is expressed in convoluted language which it is difficult to understand. Likewise, I also find that the refusal letter of the respondent to be somewhat unsatisfactory where it deals with the credibility of the appellant's claim. The repeated refrain of "this part of your claim is internally consistent but not corroborated by external evidence" is, in my opinion, a rather lazy approach to the

assessment of credibility; the letter makes no attempt properly to apply paragraph 339L or to give coherent reasons for rejecting the truth of the appellant's account. If this appeal turned on the judge's assessment of credibility, then I find that I would set aside the determination. However, both the refusal letter and Judge Jones have gone beyond an assessment of the credibility of the evidence and have assessed whether the appellant is at real risk on return to Zimbabwe in the alternative basis that his account of past events in Zimbabwe is true and accurate. At [13], Judge Jones noted that the appellant is from Bulawayo. He considered the extant country guidance case of *CM* [2013] UKUT 00059 (IAC) and recorded that, "… even taking the appellant's claim at its height, it is submitted [by the respondent] that the claim should fail. Reference is also made [in the refusal letter] to the option of relocation available to the appellant with his wife as to relocation without the same being unduly harsh (*Januzi* [2006] UKHL 5)." The judge returns to the country guidance of *CM* at [25]:

> "Even if I were in error as to my rejection of the appellant's claim concerning the claim arising to his fears on return (*sic*) the respondent's position as to return with regard to the appellant's return is still sound (*sic*) I find taking account of the decision in *CM* as recounted by the respondent in the refusal letter."

4. Once again, the prose is somewhat garbled but it is clear that the judge has taken the view that the appellant could not succeed in his claim, even if his account of past events was true and accurate.

5. Risk on return is dealt with in the refusal letter at [6]. The letter quotes from a Country of Information (COIS) Report for Zimbabwe dating from 12 September 2014 (that is postdating *CM*). The report notes that Zimbabwe Human Rights NGO Forum had not "come across any cases of returnees from the UK being mistreated and would expect to know of any such cases because its member organisations are represented across the country." The report goes on to note that "the forum considers that the abolition of hate speech against asylum seekers returning from the UK is central to creating a more conducive environment." Quoting from *CM*, the letter notes that "a returnee to Bulawayo will in general not suffer the adverse attention of Zanu-PF including the security forces even if he or she has a significant MDC profile." The appellant claimed that he had been local chair in 2011 of a youth group of the MDC, and organisation which he claimed to have joined in 2007. Whilst the appellant claims to have had a profile within the MDC, it is difficult to see how that might be described as "significant". Following the guidance of *CM*, it would appear that the appellant would not be at real risk upon return to his home area of Bulawayo. If he were at risk there, then, as the refusal letter notes, the appellant would be able to relocate to Harare where he would not face any "significant difficulties". *CM* is also significant in noting the general disappearance in Zimbabwe of the so-called "loyalty test" which might expose a stranger relocating outside his or her home area to possible persecution at the hands of Zanu-PF or the need to dissemble in order to avoid such persecution.

6. I raised this point with Ms Patel at the Upper Tribunal hearing. She said that the appellant relied on material in his bundle of documents which indicates that the security position for returning asylum seekers/members of MDC has deteriorated since the assessment made in *CM*. She was unable to take me to specific examples in this background material which had been raised directly with Judge Jones in the First-tier Tribunal. I have considered the evidence myself and I am not persuaded that the risk which this appellant would face either upon return to Bulawayo or elsewhere within Zimbabwe is such that I should depart from the current country guidance of *CM*. More importantly, I find that Judge Jones, notwithstanding the errors and lack of clarity of his analysis, was correct to find that the appellant's claim, taken at its highest, did not establish that the appellant would face a real risk of ill-treatment upon return to Zimbabwe. Because he made that alternative finding, I have decided to refrain from setting aside the determination because of Judge Jones's errors and omissions are not material to the outcome of the appeal. In consequence, the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed Date 10 June 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 10 June 2015

Upper Tribunal Judge Clive Lane