



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08272/2015

THE IMMIGRATION ACTS

Heard at: Field House
On: 6th June 2016

Decision & Reasons Promulgated
On: 11th July 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

VM
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S. Muzenda, Longfellow Solicitors

For the Respondent: Mr L. Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a female national of Zimbabwe born in 1979. As this case concerns a claim for international protection I make an order for anonymity in the following terms:

“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 Respondent (original appellant) in this

determination identified as VM. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings”

2. The Appellant appeals with permission the decision of the First-tier Tribunal (Judge Knowles) to dismiss her appeal against the Respondent’s decision to reject her protection claim.

Basis of Claim and Matters in Issue

3. The basis of the Appellant’s claim was that she had a well founded fear of persecution in Zimbabwe for reasons of her political opinion. She is an ardent supporter of the MDC but her problems in Zimbabwe stem principally from her family relationship with a man named A. He is her husband’s brother, and is a prominent member of ZANU-PF. Her problems with her brother-in-law began sometime after she and her husband attended a training course under the auspices of the ‘Community Health and Empowerment Network’. She did not appreciate at the time, but now knows, that this organisation was an MDC sponsored programme created in order to parallel the ZANU-PF’s ‘Empowerment and Indiginisation Programme’. One of the participants only came to two meetings and it later transpired that he was a CIO informant. Towards the end of February 2012 [her] brother-in-law came home speaking of “betrayal” by members of his family. He said that he had seen the Appellant and her husband’s names on a list of the participants in a course run by the MDC. He had been called in and “grilled” about this and had assured his superiors that he would “deal with it”. He told the Appellant that she had to immediately disassociate herself from the MDC or she would face consequences beyond his control. The Appellant describes her brother-in-law as “zealous, irrational, uncontrollable and dangerous”. She has heard that he has been accused of a number of atrocities including murder and she is afraid that he would not balk at killing his own brother or sister-in-law if he had to. In the months that followed she and her husband tried to avoid A. He called them on a number of occasions asking them to attend ZANU-PF events with him but they managed to avoid it.
4. In November 2012 A convened a family meeting where he publicly condemned the Appellant and her husband for a lack of loyalty. He demanded that they openly condemn the MDC. At this point the Appellant had already applied for a visa to come to the UK. Her husband had also wanted to leave with her but had not applied in case her application was prejudiced. They managed to avoid A but in January the election campaigns were in full swing and he was insisting that they accompany him canvassing support from ZANU-PF. The Appellant and her husband went away so that they did not have to take part: he telephoned them and was “livid”. He threatened them. The Appellant bought a ticket and flew to the UK.

5. Since her arrival here she has continued her involvement in the MDC. She has attended meetings, organised fundraising events and is a member of the [] Branch. She was told that her husband was beaten up during 2013, an event which caused him to flee Zimbabwe. As far as she is aware he is now in Mozambique. He has left their children with their grandmother in a rural area.
6. The Respondent accepted that the Appellant was a member of the MDC and that she continues to be politically active in the UK. It was also accepted, with reference to country background material, that a man sharing the same name as A is the ZANU-PF Secretary for Information. The Respondent was not however satisfied that this gentleman is related to the Appellant, that he has threatened her, or that he presents a real risk to her upon return to Zimbabwe.

The Decision of the First-tier Tribunal

7. The First-tier Tribunal heard live evidence from the Appellant, and from an additional witness, a Mr DC. DC is married to the Appellant's cousin. She further relied on a number of documents including her MDC membership cards, a certificate relating to the course she attended, and a letter from her MP at home, who confirmed that A is an active member of ZANU-PF and that he is related as claimed to the Appellant.
8. The First-tier Tribunal accepted, as had the Respondent, that the Appellant was a member of the MDC before she left Zimbabwe and that she continues to be involved today. Other than that very little of the account was accepted. There were "serious concerns" about the credibility of the claim to have attended the training course since there was no trace in the background material of this organisation existing, and the tribunal did not accept that the government would allow it to operate. Further the certificate bore the date of February 2011 when the narrative indicated that she had attended in 2012. If A was as ruthless as the Appellant claims it was not clear why he would not have enforced the Appellant's loyalty to ZANU-PF earlier. It was not accepted that A is in fact the Appellant's brother-in-law. The evidence of DC and the MP could not be accepted because they were "not sufficiently independent". Since the Appellant's account was not credible, little weight could be placed on their evidence. It is "not credible" that the Appellant has lost contact with her husband and her overall credibility was damaged by the fact that she did not claim asylum as soon as practicable after her arrival in the UK. The Appellant had not shown it to be reasonably likely that the ZANU-PF official known as A is her brother-in-law, or that she came to the adverse attention of the authorities for attending a course.

9. The determination then deals with risk on return. The country guidance case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC) is summarised [at 71]:

“the Upper Tribunal held that the evidence did not show that, as a general matter, the return of a failed asylum seeker from the UK, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to ZANU-PF. In particular the Upper Tribunal found *inter alia* that a returnee to Harare (where the appellant states that she lived) would face no significant difficulties if going to a low or medium density area. The Tribunal went on to say that in a high density area a person without ZANU-PF connections would not, in general, face significant problems unless he or she has a significant MDC profile which might cause him or her to feature on a list of those targeted for harassment or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF or would be reasonably likely to engage in such activities but for a fear of thereby coming to adverse attention”

10. Applying this guidance the Tribunal finds that the Appellant participates in meetings, demonstrations and fund raising activities in common with many other Zimbabwean nationals in the UK. She does not have profile such that she would be at risk on return. She can continue to support the MDC in Harare as she has done since 1999.

The Appeal

11. The Appellant submits that the First-tier Tribunal erred in the following material respects:

- i) Failure to make findings on material matters

The determination fails to assess what is reasonably likely to happen upon the Appellant’s arrival in Zimbabwe. The appeal is dismissed on the basis that she does not have a “significant” MDC profile. This is not the only test established in the case-law. The question was whether the Appellant, a person accepted to have been a member of the MDC in Zimbabwe and the UK, would be at risk during the intelligence-led screening at port. There was no consideration of the second limb of risk in CM.

It was the accepted evidence that the Appellant had been a member of the MDC in Zimbabwe for 1999. She had continued her involvement in the UK. It was incumbent on the Tribunal to

consider what her profile/level of activity *would* have been on return. Whilst the assessment of this question was informed by her past behaviour, it was a forward looking assessment.

ii) Failure to give adequate reasons

The consistent evidence of the Appellant, a live witness and the MP for Glenview in Zimbabwe was that the ZANU-PF activist named A is in fact the Appellant's brother-in-law. It is submitted that the reasons given for rejecting that evidence were inadequate and/or irrational.

12. In response the Respondent submits that the risk assessment was lawful. The Judge was obliged to consider the matter of the Appellant's profile. It was for the Judge to assess the evidence of the witnesses. If there was an omission to expressly consider how the Appellant would behave on return home, this was not material.

My Findings

13. The current country guidance is set out at paragraph 3 of the headnote to CM:

- (1) *As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.*
- (2) *The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).*
- (3) *The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not*

do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.

- (4) *In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.*
- (5) *A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.*
- (6) *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.*
- (7) *The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.*
- (8) *Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.*
- (9) *The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders*

to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.

(10) *As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.*

(11) *In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN ... and remains valid.*

14. Whilst it is clear that the regard was had to this country guidance, I am nevertheless satisfied that the Tribunal erred in two material respects. Firstly, I was not able to understand, upon reading the determination, why the Tribunal had reached the conclusion that the Appellant did not currently have a 'significant' profile such that she might face problems on return, or in Harare today. It was accepted that she had been a member of the MDC since 1999 and had been committed enough to continue her participation in the UK, described as "active" at paragraph 71 of the findings. The Respondent suggested that the term "significant" required the individual to have a leadership role [at 24] but this test would not appear to be borne out by the decision in CM, or the earlier decision in EM & Others (Zimbabwe) CG [2011] UKUT 98 (IAC). The conclusion that she does not have a "significant" profile appears to be based on her failure to demonstrate that she is the Branch Treasurer in the UK. That does not seem to me to be a complete assessment of whether she would have a profile to adversely associate her with the MDC. The determination notes that the Upper Tribunal has in the past drawn a distinction between "high level" and "low level" activity. It might be presumed that the term "low level" would include, for instance, someone who carried a membership card but rarely attended meetings, or someone who from time to time signed a petition; at the other end of the spectrum there would be full time workers for the party or candidates for official office. The question of risk correlates to where the individual is found on that spectrum. For my part I do not understand how the Tribunal reached the conclusion that active participation in meetings, demonstrations and fund raising events over a 16 year period should be classed as "low level".

15. Secondly, and most fundamentally, the determination gives no consideration at all to how the Appellant *will actually act* upon return to Zimbabwe. I reject the Respondent's submission that this omission is not material. Risk assessments must be forward looking. It being accepted that she held political views fundamentally opposed to the oppressive government in office, it was incumbent on the Tribunal to consider whether the Appellant would in the

future behave, or to put it another way, whether she might *develop* a significant profile such as to attract adverse attention.

16. I am not persuaded that the Tribunal erred in finding the Appellant's home area to be Harare. Although Mr Muzenda is no doubt correct to say that her origins lie in a rural area (in common with many city dwellers) it was clear from the evidence that she had lived in Harare for some 10 years [see for instance the screening interview]. As paragraph (7) of the headnote in CM makes clear, the Tribunal cannot be expected in these circumstances to embark on an artificial analysis of what might happen if she "returned" to a village she had not in fact lived in. I accept that in this case there is something of a nuance to that since it is the Appellant's evidence that her children are now in the rural area with their grandmother, and that it is to them that she would return, but since the Tribunal appears to have rejected the evidence about the whereabouts of her husband and children it can hardly be criticised for failing to consider that matter.
17. The final submission turned on the approach taken to the evidence, and in particular that given by the live witness DC. It would appear from the summary of the evidence given that his testimony was entirely consistent with that given by the Appellant, and indeed in the letter from the MP. This evidence is dealt with as follows:

"Given my concerns over the credibility of the appellant's account, however, I am not satisfied that the accounts of the MP, or [DC] represent sufficiently independent evidence on which I can rely"

18. Mr Tarlow did not attempt to defend that reasoning which any great enthusiasm. It is incumbent on the Tribunal to analyse and weigh all relevant evidence but that is particularly so where it has come from a live witness. It is not enough to dismiss evidence out of hand because the Appellant's evidence had already been rejected. Whilst the Tribunal may have reached the conclusion that she had been exaggerating or telling outright untruths about some matters, DC spoke directly to a central matter in issue: the Appellant's relationship with A. His evidence required more attention than it received in this determination.
19. The parties were in agreement that if the grounds were made out the decision in this appeal would need to be wholly remade. Due to the nature and extent of the fact finding required it was agreed that this would best be done in the First-tier Tribunal.

Decisions

20. The decision contains an error of law and is set aside.

21. The matter is to be re-made in the First-tier Tribunal.

Upper Tribunal Judge Bruce
5th July 2016