



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/08737/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 20th July 2016

**Decision &
Promulgated
On 27th July 2016**

Reasons

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MISS EULITER ZVINAVASHE KAREN MUTAMI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy (Senior Home Office Presenting Officer)
For the Respondent: Mr D Neale (instructed by Fadiga & Co, Solicitors)

NOTICE OF DECISION

1. This is a resumed hearing in the Upper Tribunal in relation to Miss Mutami's asylum appeal. The matter first came before me on 8th June 2016 when I found an error of law. On that date I decided as follows:-
 - (a) "This is an appeal to the Upper Tribunal by the Secretary of State in relation to a decision and reasons promulgated on 4th April 2016 of First-tier Tribunal Judge Kaler. It followed a hearing on 29th February 2016 at Taylor House. It related to a female citizen of Zimbabwe born on 18th June 1994 who had

arrived in the UK in December 2013 and claimed asylum. It was her appeal against the refusal of that claim which was before the First-tier Tribunal.

- (b) In the appeal the Judge considered the Appellant's claims as to what had taken place in Zimbabwe and found them without credibility. At paragraph 26 she said in conclusion that while it is accepted that the Appellant was and is now a member of the MDC she did not accept that the events of 18th October 2014 or 5th November 2014 occurred. She did not find that the Appellant had been targeted or detained by anyone in Zimbabwe. Those findings remain unchallenged.
- (c) The issue before me today relates to the claim of sur place activities, the nature of which have not been challenged and therefore must have been accepted by the Secretary of State. These are set out by the Judge at paragraph 27 where she says:-

"I turn to her sur place activities. The Respondent accepts that the Appellant has demonstrated to the requisite degree that she attends every week. She has not been consistent in the frequency of attendances. The Appellant has provided undated photographs of herself at vigils. The letter from Zimbabwe Vigil (page 10 of the Appellant's bundle) states that she attends vigils on a regular basis and welcomes new supporters. Surprisingly the writer of this letter was not present to be cross-examined and so his evidence has not been tested. Nor is there any presence of the person who wrote the letter from the MDC (page 14)".

- (d) The Judge goes on at paragraph 28 to say that:-

"The Appellant has provided copies of posts on twitter (page 17 to 63) which show recent messages from October 2015 onwards in support of the MDC, minutes of MDC meetings from July 2015 where the Appellant was present and the Appellant's lengthy blog. All this is highly political in content. They all postdate the date of Decision to refuse her asylum claim so I approach them with a degree of scepticism.

The Appellant has I find enhanced her profile within the MDC in the UK since the Decision was made to refuse her application and I find this has been done to secure her stay in the UK rather than any political motivation. What I must consider is how this would be viewed by the authorities in Zimbabwe".

- (e) The Judge then goes on to refer to the country guidance cases of CM (EM Country Guidance disclosure) Zimbabwe [2013] UKUT 00059, EM & Ors (Returnees) Zimbabwe CG [2011] UKUT 98, RT (Zimbabwe) [2012] UKSC 38, and HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 and she recites the head note to EM.
- (f) Having done all that the Judge, in one paragraph, says at paragraph 34:-

" Given this Appellant's circumstances, what is the risk of her being subjected to ill-treatment on return. That depends on whether she has a significant profile according to the case above. She has been a member of a branch of the MDC in the UK since May 2015. She has welcomed new potential members of vigils. She attends committee

meetings as shown in the minutes. She has been photographed outside the Embassy and it would appear that those photographs are available on various websites. She has since May 2015 been an active supporter of the MDC, has carried out many activities to demonstrate her commitment to them and her name appears on their records as a committee member. She is not just an ordinary member but an active one and she has been responsible for publishing anti-government blogs. I find that she is at risk of being a person whom the authorities may have some interest and so may wish to question her further.”

On the basis of that and quoting the country guidance cases the Judge allowed the appeal.

- (g) I am persuaded by arguments on behalf of the Secretary of State that the Judge’s consideration of risk on return on account of her sur place activities is inadequate and focuses more on her being an active member and the Judge conflates being an active member with being a person with a significant profile. I agree with the Secretary of State’s representative the two are not the same.
- (h) I have been directed to the country guidance cases of CM and HS and it is of note particularly that at paragraph 205 of CM the Tribunal expressed itself:-
- “fully satisfied that the fresh evidence completely failed to disclose any change in the position described in HS as tending to suggest any heightened scrutiny of returnees. On the contrary the evidence of Ms Scruton, together with that of the 7 returnees who featured in the 2010 FFM Report clearly shows no justification for regarding low level MDC supporters as the sort of activists who the HS Tribunal thought likely to fall foul of the CIO”.
- (i) Whilst it is at this juncture not clear whether the Appellant would or would not succeed on the basis of her sur place activities I am satisfied that the Judge’s scrutiny of that risk is inadequate. Not only do we have the two country guidance cases I have already mentioned but there is also a case ,relied upon today by the Secretary of State, BA (demonstrators in Britain risk on return) Iran CG [2011] UKUT 36 (IAC) and the question arises whether the matters that are to be looked at in assessing risk on return to Iran should be extrapolated and taken into a consideration of risk on return to Zimbabwe.
- (j) That was not considered, indeed it was not put before the First-tier Tribunal, but is a matter which needs to be decided. Therefore for inadequacy of consideration of risk on return as a result of her sur place activities I set aside the decision and reasons in that regard to be re-decided in the Upper Tribunal.
- (k) **I direct skeleton arguments from both sides in relation to the relevance of the various cases relied upon so to that extent the appeal to the Upper Tribunal is successful in that there is an error of law and the Decision set aside. However it will be re-decided by in the Upper Tribunal.**

Notice of Decision

The appeal is allowed to the extent that the conclusion on risk on return due to the app's sur place activities is set aside to be redecided in the Upper Tribunal "

2. By the resumed hearing Miss Mutami (who I shall refer to as the Appellant) had changed representatives. Those representatives had sought an adjournment prior to the resumed hearing which was refused.
3. Mr Neale renewed his application for an adjournment on the basis that he wanted to instruct an expert to advise as to whether having a profile on social media amounted to a significant profile for the purpose of the country guidance. Mr Neale had also submitted a substantial supplementary bundle running to 100 pages and also submitted a further document being a printout of a Google search against the Appellant's name.
4. I refused the adjournment application on the basis that I was able to determine for myself whether the Appellant's activities on social media would amount to her having a significant profile and put her at risk on return to Zimbabwe on the basis of the current country guidance. In short, if the Appellant's sur place activities, albeit entered into for the sole purpose of enhancing her asylum claim, would in fact give her a significant profile then in accordance with the country guidance cases she would be at risk on return and entitled to succeed.
5. Mr Duffy had not seen the supplementary bundle. It had not reached his file and so I allowed him the time he needed to peruse it.
6. It was deemed unnecessary by either representative to hear oral evidence and the matter proceeded on submissions. Both representatives had provided skeleton arguments.
7. The evidence of the sur place activities shows that the Appellant has attended the Zimbabwe vigil on several occasions. She has attended demonstrations. She has welcomed others to the vigil and to MDC meetings. She has attended MDC meetings. She is described as an activist at those meetings. Of greater significance are the Appellant's activities in her Blog and what I find the decisive factor is that a Google search against her name reveals her as a blogger and someone actively criticising the regime in Zimbabwe.
8. Mr Duffy relied on the skeleton arguments and queried whether her activities on behalf of the MDC and online would raise her to the position of a person with a significant profile. He indicated that it is accepted and known that the CIO have infiltrated the MDC in the UK and on that basis it was reasonable to assume they would know that she had in fact carried out her activities purely to boost her asylum claim; they would know she was not genuine and tell the authorities that was the case.

9. Mr Duffy's argument is firstly, speculative in the extreme and secondly, raises the standard of proof too high. It is entirely reasonable to assume that when carrying out checks on returnees the first port of call would be an Internet search. That would reveal the Appellant's profile and activities which would place her at risk.
10. While it gives me no pleasure to find in favour of this Appellant, who has deliberately set about sur place activities for the sole purpose of enhancing what was a wholly unmeritorious asylum claim, on the evidence before me she is entitled to succeed.
11. Having previously set aside the First-tier Tribunal's decision, in re-deciding the appeal, the Appellant's appeal against the Secretary of State's decision to refuse her asylum claim is allowed on asylum grounds.

NOTICE OF DECISION

The Secretary of State's appeal to the Upper Tribunal is dismissed such that the Appellant's appeal against the refusal of asylum is allowed.

No anonymity direction is made.

Signed

Date 26th July 2016

Upper Tribunal Judge Martin