



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

Appeal Number: PA/08812/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd February 2018**

**Decision & Reasons Promulgated
On 6th March 2018**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**[A N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton of Counsel

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Mailer promulgated on 30 October 2017, in which the Appellant's appeal against the decision to refuse her application for asylum dated 24 August 2017 was dismissed.
2. The Appellant is a national of Zimbabwe, born on [] 1973, who claims to have arrived in the United Kingdom in September 2015 and subsequently claimed asylum on 1 March 2017. The basis of her claim was twofold, first, that she had been in a relationship with a married man who was part

of the security services in Zimbabwe and who had beaten her up and threatened her when she ended their relationship; and secondly, that her half-brother was a well-known political activist against the current regime in Zimbabwe.

3. The Respondent refused the application on 24 August 2017 on the basis that it was not accepted that there was a credible claim on either basis, in particular, there was a lack of supporting evidence which was reasonable to expect and overall the Appellant would not be at risk on return to Zimbabwe.
4. Judge Mailer dismissed the appeal in a decision promulgated on 30 October 2017 on all grounds, concluding that there was no risk on return to Zimbabwe and no arguable Article 8 claim.

The appeal

5. The Appellant appeals on two grounds. First, that findings were made which were irrational and failed to take into account objective and witness evidence. In particular, although Judge Mailer accepted that the Appellant had suffered domestic violence, he found that there was no reason to support the authorities would not investigate and offer protection in the future. However, the following was not taken into account - the Appellant had reported previous abuse to the police and no action was taken; there was objective evidence showing problems of gender-based violence in Zimbabwe and the Appellant's former partner worked within the security services. Secondly, when making findings about risk for the Appellant due to her half-brother, Judge Mailer failed to take into account the evidence of his experiences in Zimbabwe prior to 2011; that the Appellant had been questioned about him by her former partner; that there were articles critical of the current regime written by the Appellant's half-brother and finally that there was a failure to apply EM & Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC).
6. Permission to appeal was granted by Judge Murray on all grounds.

Findings and reasons

7. At the hearing, the Home Office Presenting Officer accepted on behalf of the Respondent that there had been material errors of law by the First-tier Tribunal such that the decision should be set aside and the appeal remitted to the First-tier Tribunal for a de novo hearing. I agree for the reasons given in summary below.
8. Having set out the detailed facts and history of the Appellant's claim, Judge Mailer concluded as follows in relation to the Appellant's claim to be at risk because of her brother:

"112. With regard to her claim based on the perception arising from Mr [C]'s political publications, I note that he left Zimbabwe in about 2011. There is however no evidence that he had any problems with the authorities prior to that. In fact he visited Zimbabwe in 2015 for a few weeks. On that occasion he experienced no problems.

113. It is contended in the skeleton argument produced by ICN that whilst it is true that her half-brother visited Zimbabwe in 2015, he travelled under the protection of a New Zealand passport. However, to assume from that he “could not be touched” as a result of having a New Zealand passport, is speculative.

114. Nor did the appellant ever claim that the authorities ever approached her regarding her brother’s activities between 2011 when her brother left, and 2015 when he returned for about two weeks.”

9. I find that in reaching these conclusions, Judge Mailer has materially erred in failing to consider evidence about the Appellant’s brother’s experience prior to 2011; that she was asked questions about him by her partner and failed to consider his level of criticism against the current regime. In failing to do so, unsustainable findings were reached on the evidence before him which amount to an error of law.

10. Judge Mailer’s conclusions on the other part of the Appellant’s claim were as follows:

“119. In the circumstances there is no evidence that Mr Saidi has sought to continue any relationship with the appellant or that he wishes to remain a part of her life. Her last physical contact with him was in or about September 2015 shortly before she came to the UK. She has not maintained any contact with him since they communicated in October 2015.

120. Nor has there been any attempt by him to contact her. She claimed that she fears him because he is ‘above the police’. There is no reason to suppose that the authorities would not properly investigate any threat that he would make against her should she return.

121. Moreover, the appellant expressly stated that she is not a political person.

122. Having regard to the evidence as a whole I find that the appellant has not shown that she faces a real risk of persecution based on either of the grounds she relied on. ...”

11. I find that in concluding in paragraph 120 that there was no reason to suppose the authorities would not properly investigate any threat to the Appellant from her former partner, Judge Mailer erred in law by failing to take into account material evidence about the Appellant’s past experiences, her former partner’s position nor background country evidence about the lack of protection or enforcement in situations of gender-based violence. Again this makes the findings made unsustainable on the evidence before the First-tier Tribunal.

12. In conclusion, the making of the decision of the First-tier Tribunal involved material errors of law and as such it is necessary to set aside the decision and remit it for a de novo hearing before the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is necessary to set aside the decision.

The appeal is remitted to the First-tier Tribunal (Hatton Cross hearing centre) to be heard by any Judge except Judge Mailer, for a de novo hearing.

No anonymity direction is made.



Signed
2018
Upper Tribunal Judge Jackson

Date 28th February