



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

Appeal Number: PA/11861/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 5th March 2019**

**Decision & Reasons Promulgated
On 15th March 2019**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

**A C
ANONYMITY ORDER MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Habte Mariam (legal representative)

For the Respondent: Mr S Kandola (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First Tier Tribunal (Judge Watson) (FtT) promulgated on 26.11.2018 in which the appellant's protection claim was dismissed.

Background

2. The appellant is a citizen of Zimbabwe who claimed to have entered the UK in 2002 and claimed asylum in 2018 based on political grounds as a member of the MDC. The respondent accepted that her mother was a longstanding and active member of the MDC and a councillor but did not accept that she has been in hiding since 2013. Reliance was placed on external evidence to show that her mother was active as a councillor (Refusal letter paragraph 43). The appellant claimed that she had been victim to the dealings of an unscrupulous lawyer in the UK who had obtained a working visa stamp in her passport enabling her to work as a carer in the UK. This stamp dated 10.9.2003 was counterfeit [5] but the appellant was unaware of this at the time.

FTT decision and reasons

3. The FtT found that section 8 Asylum & Immigration (Treatment of claimant's etc.) Act 2004 applied as her claim was delayed. The FtT found that she had knowingly obtained and used a fraudulent stamp in her passport to obtain employment, her claim for asylum was made on 1.2.2018 after she was arrested and served with a removal notice dated 15.5.2017 [15]. The FtT did not accept that the appellant's mental health difficulties had impacted on the timing of her decision to apply for asylum [15] & [22].
4. The FtT found that the appellant's mother was politically active in the past but found that she was not presently in hiding and that the appellant was in contact with her [21]. The FtT found that the appellant had little political interest and was not an MDC member [23].
5. The FtT found no significant obstacles to reintegration in Zimbabwe [31]. She had lived in the UK since 2002 and throughout she was aware of her precarious status. The appellant's private life based on her long residence and work as a carer carried little weight. She had family contacts in Zimbabwe.
6. The FtT carried out a balancing exercise and concluded that the decision was proportionate. The appellant had worked in the UK but this was unlawfully [32] and contrary to the public interest in immigration control.

Grounds of appeal

7. In grounds of appeal the appellant argued that the FtT erred by failing to properly consider Articles 3 and 8 ECHR.

Permission to appeal

8. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Foudy on 27.12.2018. In granting permission the FTJ considered that it was arguable that no reference was made to Article 3 and that it was just arguable that the Article 8 claim was not adequately considered.

Submissions

9. At the hearing before me Mr Habte Miriam representing the appellant argued that the failure to consider Articles 3 and 8 had infected the decision as a whole. There had been no consideration of the appellant's membership of a particular social group as a family member of an MDC member. Mr Habte Miriam went into detailed submissions as to the circumstances of the appellant's arrival in the UK and her past mental health problems, which arguably had not been considered by the FtT nor her account of dealing with the lawyer, rendering the findings made by the FtT unsafe. The FtT failed to evaluate the evidence correctly and consequently its assessment under Article 3 was defective. It was submitted that the FtT wrongly cited what was stated to be the respondent's position on risk on return from the CPIN, whereas in fact the reference was from **CM** (EM country guidance; disclosure) Zimbabwe January 2013 (at 2.2.7). There was no proper assessment of risk on return given the mother's MDC involvement. Article 8 was not considered outside of the rules; her length of stay in the UK for 17 years was an exceptional factor.
10. In response Mr Kandola contended that there was no error of law in the decision. The FtT considered Article 3 in its assessment of risk on return and took into account the activities and political past of her mother as a member of the MDC. The assessment was consistent with the respondent's policy on returns to Zimbabwe. The finding that the mother was not in hiding was open to the FtT on the evidence. The FtT considered paragraph 276ADE (albeit briefly) but the findings were sustainable. Article 8 was adequately considered and there was nothing exceptional. The submissions made by Mr Habte Miriam failed to adhere to the grounds of appeal.

Discussion and conclusion

11. At the end of the hearing I reserved my decision which I now give with my reasons. The appellant's grounds of appeal complained that the FtT failed to properly consider Articles 3 and 8. I found the submissions made by Mr Habte Miriam tended to go astray from those grounds and at times were really a disagreement with the findings made by the FtT. There was no application to revise or amend the grounds of appeal.
12. The FtT concluded that the appellant faced no risk on return because of any links with her mother who was an MDC activist. It found that in the alternative internal relocation was a viable option [29] given that the claim related only to a fear of return to Chitungwiza. Whilst not specifically referring to Article 3 I am satisfied that this was not a material error in light of the assessment of risk on return. The FtT's assessment of the respondent's current guidance in CPIN and the country guidance case applicable to Zimbabwe was correct [26 & 29]. Mr Habte Miriam was unable to identify any aspects or evidence that the FtT failed to consider that would have had any relevance under Article 3. This was a case where the human rights stood or fell along side the asylum claim. The FtT considered paragraph 276ADE and found that as the appellant's mother

was in Zimbabwe and they were in contact so that she could assist with the reintegration.

13. As to Article 8, although there was no reference to any compelling considerations to justify consideration of Article 8, the FtT considered the appellant's private life in [32] and concluded that the public interest in removal was proportionate given the appellant's private life was established when her immigration status was precarious and she worked unlawfully, a deception of which she was aware. The appellant is aged 35 years and would be able to obtain employment in the caring field having trained as a nurse in Zimbabwe and since worked as a carer in the UK. Whilst acknowledging that the FtT could have provided more detailed reasoning and analysis in particular having regard to the length of residence in the UK, I am satisfied that Article 8 was adequately considered and that there was no evidence that the FtT failed to take into account and none has been put to me at the error of law hearing.
14. There is no material error of law disclosed in the decision which shall stand.

Decision

15. The appeal is dismissed.

Signed

Date 13.3.2019

GA Black
Deputy Judge of the Upper Tribunal

NO FEE AWARD

Signed

Date 13.3.2019

GA Black
Deputy Judge of the Upper Tribunal