IAC-BH-PMP-V2

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08799/2018
RP/00168/2018

THE IMMIGRATION ACTS

Heard at Bradford by Skype for business	**Decision & Reasons Promulgated**
On the 4 September 2020	**On 16 September 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

DM
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H. Sarwar, Counsel instructed on behalf of the appellant
For the Respondent: Ms. R. Petterson, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Zimbabwe, appeals with permission against the decision of the First-tier Tribunal Judge Thomas (hereinafter referred to as the "FtTJ") who dismissed his appeal against the decision of the respondent to revoke his refugee status (made on 26 January 2018) and the decision to refuse

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his human rights claim in the context of his deportation. The decision of the FtTJ was promulgated on the 24 April 2020.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or his family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The hearing took place on 4 September 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video as did the appellant. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

4. I am grateful to Mr Sarwar and Ms Petterson for their clear oral submissions.

Background:

5. There is a lengthy procedural and factual history which is summarised in the the decision letters and the decision of the FtTJ.

6. The appellant is a citizen of Zimbabwe and entered the UK at age 16 in September 2002 along with his sister having fled Zimbabwe because of their father's political activities. They were granted refugee status on 16 June 2003 and indefinite leave to remain following successful appeals to the Tribunal.

7. The appellant has a long history of criminal offending which is set out in the decision to refuse his human rights claim at paragraphs 14 onwards and in the decision of FtTJ Chapman at paragraphs 24-38. From 2007 he began committing offences including road traffic, battery and criminal damage offences interspersed with failing to comply with bail and community orders. On 15 August 2008 he was issued with a warning letter as a result of his conviction advising him that he may be considered for deportation should he come to the adverse attention of the Home Office. Again, a similar letter was issued on 12 June 2009 following further convictions.

8. In October 2009 he was convicted of actual bodily harm against his former partner (and mother of his four children) and was sentenced to two years imprisonment .The previous suspended sentence for assault was activated to be served consecutively which gave an overall sentence of two years and six months imprisonment. In his sentencing remarks, the judge noted that the offences were of domestic violence towards his partner and that the previous offence of violence also related to her. This was a brutal and sustained assault

upon her and that the suspended sentence had been imposed only a few weeks before the offence.

9. His ILR was revoked in 2010 and his appeal against revocation was dismissed by the First-tier Tribunal in a decision promulgated on 29 October 2010 (Judge Frankish). He was granted six months discretionary leave to remain.

10. In January 2015 the appellant was sentenced to 3 years imprisonment for assault occasioning actual bodily harm. An indefinite restraining order was made to prevent the appellant contacting his ex-partner. In his sentencing remarks the judge noted that the assault was on an ex-partner who was particularly vulnerable. He was released from this sentence on 20 July 2016.

11. In February 2015 whilst in prison, the appellant applied for discretionary leave to remain claiming that he not been aware that his indefinite leave to remain had been revoked. His application was not progressed because it was invalid.

12. On 14 February 2015, notification of liability to deportation was served following his conviction in January 2015. His solicitors responded saying that his life would be at risk if returned to Zimbabwe and that he had a family life with his partner and four children.

13. On 12 April 2016, a referral was made to the UNHCR inform it of the respondent's intention to cease his refugee status due to his criminality. Their comments were received on 5 May 2016 and they were told on 26 October 2016 that the respondent had decided to cease refugee status.

14. On 26 January 2018, the decision was made to revoke the appellant's refugee status.

15. On 4 April 2018, the appellant's human rights claim was refused.

16. His appeal came before the First-tier Tribunal on 28 February 2019 and his appeal against the decision of the respondent to r revoke his refugee status was allowed and the FtTJ failed to determine his appeal against the decision to refuse his human rights claim. The Secretary of State sought permission to appeal that decision and permission was granted on 28 May 2019 by the Upper Tribunal. In a decision promulgated on 13 January 2020 the Upper Tribunal reached the conclusion that the FtTJ had erred in law and set aside the decision for it to be determined again in the First-tier Tribunal.

17. The appeal therefore came before the First-tier Tribunal again on the on the 27 February 2020 and in a decision promulgated on the 24 April 2020 Judge Thomas dismissed his appeal.

18. In that decision the FtTJ considered the basis of the appellant's claim which was set out at paragraphs 4 – 11. This included his early life in Zimbabwe and his grant of status in 2003, his criminal offending, and his lack of ties to Zimbabwe. Reference was made to family life with his current partner with whom he had lived since 2014 and their two children and that it would be unduly harsh for

the children and his partner to remain in the UK without the appellant or for the children and his partner to return to Zimbabwe with him.

19. The FtTJ and set out the respondent's case and that in the decision of 26 January 2018, the respondent revoked the appellant's refugee status because his fear of persecution was no longer applicable because the background information had shown that there had been a fundamental and non-temporary change in Zimbabwe and that the appellant no longer continued to be a category of individual who would face persecution in Zimbabwe. The Respondent relied on the case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC). The appellant left Zimbabwe in 2002, and there is no evidence of high-profile opposition activity. He is unlikely to be perceived to be active member of any political organisation on return. He does not fall in a category of those likely to be targeted, as in general, the return of a failed asylum seeker, having no significant adverse political profile, is not likely to face a risk of having to demonstrate loyalty to Zanu-PF. The appellant would not be specifically targeted because of his political beliefs or lack thereof and return to Zimbabwe would not breach Article 3 ECHR.

20. The FtTJ concluded at [30] that on the basis of the appellant's personal characteristics and that he was not personally involved in politics and that he was persecuted because of his father's activities, that he would return to Zimbabwe as an adult with no personal political profile and no history or membership or support for the MDC or any other political party, either in Zimbabwe or in the UK and that there had been a durable change in his circumstances. The judge considered the background material showed that the circumstances remained difficult in Zimbabwe that having taken into account the regime change, and that a return to Bulawayo which was identified at his home area was possible, the judge concluded that the appellant, who had no critical profile and was no longer at risk in Zimbabwe led to the conclusion that Article 1)(C) (5) applied and that the respondent had discharged the burden of proof in revoking refugee status under paragraph 339A(v).

21. As to his family life the judge observed that it was common ground that in relation to his four children from his previous relationship, he had no parental relationship or contact with these four children for the reasons set out at [18]. However, it was accepted that the appellant had a genuine and subsisting parental relationship with his two children and that he had a genuine and subsisting relationship with his partner, all three were British citizens. At paragraph 34 of her decision, the judge addressed the best interests of the children and reached the conclusion that it would be unduly harsh for them to leave the UK to live in Zimbabwe. On her factual assessment, the judge also found that whilst the appellant's deportation would be harsh for the children, the level of harshness identified from the facts did not go beyond that which would be inevitably suffered by any child whose father was deported such as it to be unduly harsh. Thus at [35] the judge concluded that it would not be unduly harsh for the children to remain in the UK without the appellant.

22. At paragraph 36, the FtTJ considered the relationship between the appellant and his partner. They had met in 2014 at a time when he had refugee status. At paragraph 38 the judge noted that whilst it would be difficult for the appellant's partner to remain in the UK without the appellant, in the light of her assessment at paragraph 34 it would not be unduly harsh for her to do so.

23. At paragraphs 39 – 41 the judge assessed the appellant's private life under paragraph 399A, finding that he had been lawfully resident in the UK for more than half his life and that he was socially and culturally integrated (paragraphs 39 and 40). At paragraph 41 the judge set out her reasons for reaching the conclusion that there were no very significant obstacles to his integration in Zimbabwe. At paragraphs 42 – 45 judge considered whether there were any compelling circumstances over and above those described in the rules to outweigh the public interest in the appellant's deportation. However at paragraphs 44 – 45 the judge took into account the relevant factors which included the appellant's offending history (started when he was 23 and increased in seriousness from March 2007 to April 2014, there was no evidence of further offending and he was considered a low risk to the community, he lived in the UK for seven years without offending. The judge took into account that he and his partner engaged in a relationship in the full knowledge of his offending and the real possibility of deportation and that knowing this they had had two children. The judge placed reliance upon her assessment of whether there were very significant obstacles to his reintegration as set out at paragraph 41, finding that he retained cultural knowledge of Zimbabwe, was in good health and that he had educational qualifications and work experience gained in the UK to assist him to secure employment upon return and therefore he would be able to forge a private life in Zimbabwe. Having considered the evidence in the round, the judge concluded that there were "no factors identified of such force, whether by themselves, or taken in conjunction with any other relevant factors not covered by the exceptions to satisfy the "very compelling" test". The judge therefore dismissed both appeals.

24. Permission to appeal was issued and on 11 June 2020 permission was granted by FtTJ Keane for the following reasons:

> "The grounds disclose arguable errors of law but for which the outcome of the appeal might have been different. First, the judge arguably acted irrationally in finding that the appellant could reasonably relocate to Bulawayo in circumstances where it was not in dispute at the hearing that the appellant did not have ties to Zimbabwe, would not have recollection of life in Zimbabwe and would be destitute upon his return. Second, the judge arguably acted irrationally in finding that it would not be unduly harsh in the appellant's children to be separated from him in circumstances where the appellant's removal would mean for their mother, his partner, that she either stopped work or found alternative childcare but in circumstances where her immediate family, comprising her parents and a sister resident in the United Kingdom, was able to provide practical or emotional support to her and to her children. The judge arguably acted irrationally in failing to find the best interests of the appellant's children lay

with him remaining with them in the United Kingdom. The application for permission is granted."

25. Insofar as the grounds refer to "irrationality", Mr Sarwar on behalf of the appellant made it clear that he was not asserting that the judge had made any irrational findings but that he relied upon the grounds as drafted.

The hearing before the Upper Tribunal:

26. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

27. Mr Sarwar, Counsel on behalf of the appellant, who appeared before the FtTJ relied upon the written grounds of appeal. There were no further written submissions.

28. There were also written submission filed on behalf of the respondent in the form of a Rule 24 response.

29. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

30. There are two grounds advanced on behalf of the appellant. I will set out the relevant aspects of those submissions when dealing with the grounds advanced on behalf of the appellant and my consideration of those issues.

Ground 1:

31. Mr Sarwar began his submissions by referring to the written grounds. He submitted that the FtTJ had made a material misdirection in law by failing to reach reasoned findings as to why Bulawayo was considered the appellant's "home" area, and/or a failure to consider the socio-economic impact of relocation.

32. He submitted that as part of the FtTJ's analysis and applying the decision CM (Zimbabwe), that the political circumstances in Zimbabwe had changed such that the appellant may now return to Bulawayo, the FtTJ at paragraph 30 referred to the durable changes in general political conditions in Zimbabwe and that his return to Bulawayo, a predominantly MDC area was now possible. However, the judge failed to apply headnote 7 of CM. The judge was required to consider the home area of the appellant as a matter of fact and submitted that headnote 7 stated "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 auroral homeland". Furthermore if relocation to Bulawayo applied, then the judge was bound to apply headnote 8 of CM (Zimbabwe) which made

reference to the socio-economic circumstances which would need to be considered to determine whether or not it would be unreasonable or unduly harsh to expect such a person to relocate.

33. Thus he submitted that the judge failed to reach reasoned findings as to the appellant's "home" area as being Bulawayo for the purposes of internal relocation (as set out at headnote 7) and secondly, in circumstances where the appellant had been absent from Zimbabwe for 17 years (since he was aged 16), the judge failed to conduct any analysis as to the socio-economic circumstances in which the appellant will be reasonably likely to find himself on return (applying headnote 8).

34. The appellant's position insofar as Bulawayo not being his "home area" is because he had not lived in Zimbabwe since he was 16 nor had he visited the country since leaving as a child. His father was no longer in Bulawayo and there is no suggestion of the home resided in as a teenager being available. Therefore, in view of the length of time and asserted lack of connection to the country, the judge should have assessed the appellant's position as though the appellant were "relocating" to Bulawayo.

35. Furthermore, insofar as the impact of internal relocation apply to the appellant socio-economic conditions (headnote eight) appellant had no ties Zimbabwe or recollection of life there and asserted he would be destitute upon return.

36. It was therefore submitted that had the judge properly directed herself to CM the appellant may have demonstrated that it would be unduly harsh him to relocate to Bulawayo and the secretary of state could not succeed in revocation and the appeal would have been allowed.

37. Ms Petterson relied upon her Rule 24 response. She submitted that the first ground of appeal which goes to the current risk on return to Zimbabwe is simply a disagreement with the FtT Judge's conclusion that the situation in the appellant's home country has changed and there is no realistic prospect that his father's historic MDC connections would pose any risk to the appellant over 15 years later.

38. In her oral submissions Ms Petterson submitted that the FtTJ properly considered the issue of return at [30] where the judge concluded that there had been a durable change in Zimbabwe and that Bulawayo was the appellant's home area. The judge took into account that the appellant was an adult but that he could re-establish himself with or without support.

39. She submitted that the judge did deal with headnote 7 at paragraph 30 and gave sufficient reasons as to why the appellant who originated from Bulawayo would not be at risk.

40. In his reply, Mr Sarwar submitted that no reasonable reading could it be concluded that paragraph 30 assessed the question of where the appellant's home area was and read as a presumption of a return to Bulawayo. When

looking at headnote 7 of CM, the judge did not address the question properly and determining that the home area as a matter of fact and there was nothing in the assessment of the FtTJ in this regard.

41. Having had the opportunity of hearing and considering the submissions of the parties, I am not satisfied that the judge erred in law as asserted on behalf of the appellant. I shall set out my reasons for reaching that decision.

42. The thrust of the submissions made on behalf the appellant are that the judge made a material misdirection in law by failing to reach reasoned findings as to why Bulawayo was the appellant's home area and the judge failed to apply headnote 7 of CM.

43. The country guidance in *CM (Zimbabwe)* so far as relevant is as follows:

> "*(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 an 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.

44. The judge considered the appellant's personal circumstances and set out his omnibus findings at [30] as follows:

> "30. To assess whether Article 1(C) is effective, I must consider (a) the changes in the general political conditions in Zimbabwe and (b) changes in this Appellant's personal circumstances. The Appellant left Bulawayo as a 16-yearold child. He was not personally involved in politics but was persecuted because of his father's MDC activities. The Appellant would return to Zimbabwe as adult man with no personal political profile and no history of membership or support for the MDC or any other political party, either in Zimbabwe or in the UK. His father is no longer in Bulawayo, and the two have had no contact since 2002. The Appellant believes his father

> has `disappeared'. These factors amount to a durable change in the Appellant's personal circumstances. The background information shows the situation in Zimbabwe remains difficult and protection concerns for some remain. However, the durable changes in general political conditions in Zimbabwe, namely (a) a regime change and (b) return to Bulawayo a predominantly MDC area is now possible; lead me to find this Appellant, who has no political profile, is no longer at risk in Zimbabwe on account of his father's political activities in 2002. There is no likelihood the Appellant will be identified on as a political opponent, political activist or threat to the current government, and no likelihood of him having to show loyalty to the ZANU- PF, on arrival in Zimbabwe or thereafter. I take account of the Appellant's claim his criminal conviction was published in an article in the Zimbabwe Weekly online. There is no evidence of this before me, and no evidence it is known in Zimbabwe or would cause problems for him now. It is also said headnote 7 of CM applies. There is no evidence the Appellant suffered discrimination on account of his ethnicity in Bulawayo in the past, and I do not find he is likely to encounter such discrimination on return. On the totality of the evidence, I find Article 1C (5) applies and the Respondent has discharged the burden of proof in revoking refugee status under paragraph 339A(v) of the Immigration Rules.

45. There is no dispute that on the evidence before the FtTJ the judge was entitled to find that the appellant had left Zimbabwe at the age of 16 and that he had not personally be involved in politics but his claim had arisen as a result of his father's MDC activities. This was set out in the decision of adjudicator Kirvan promulgated on 6/5/2003 at paragraph 38.

46. It was therefore open to the judge to find that the appellant would return to Zimbabwe as an adult man with no personal political profile and no history or membership or support for the MDC or any other political party, either in Zimbabwe or in the UK. Furthermore, his father was no longer in Bulawayo and they had no contact since 2002.The judge made reference to the background evidence as showing that the situation in Zimbabwe remained difficult and that protection concerns for some remained. The grounds do not challenge this assessment and there has been no objective material cited in the grounds or before this tribunal in the submissions advanced to demonstrate any error in the general assessment made of the country conditions.

47. Consequently the judge was entitled to rely upon his assessment of the appellant's particular personal circumstances that he was someone with no political profile and would no longer be at risk in Zimbabwe on account of his father's political activities in 2002 nor that he would be identified as a political opponent, activist or threat to the current government nor that there was any likelihood of him having to show loyalty to Zanu-PF on arrival in Zimbabwe or thereafter. That latter finding is consistent with the decision in CM as to screening at the airport. At paragraph 181 CM examined evidence and made findings about the risk arising from the screening procedures at Harare at paragraphs 202 – 205. The Tribunal confirmed country guidance given in HS (at paragraph 203) but that there was no scrutiny at the airport for positive

indications of loyalty to ZANU- PF (2004) and that "low-level MDC supporters" are not the sort of activists who the Tribunal in HS thought likely to fall foul of the authorities at the airport (paragraph 205). The general guidance finding CM at paragraph 211 is in line with this. The tribunal in HS (risk of return at airport) did not say that any level of involvement with the MDC in the past gave rise to a risk of ill treatment at the airport.

48. It is submitted by Mr Sarwar that the judge failed to address headnote 7. However, in my judgement the decision of the judge should be read as a whole. It is plain from the decision letter of the Secretary of State and the decision of the FtTJ that the appellant's return to Zimbabwe was based on him being able to return to his home area which was identified as Bulawayo. Paragraphs 22-26 of the decision letter expressly considered the appellant's home area as Bulawayo and considered return to that area in the light of the improved situation for returnees and his own circumstances and in light of the decision of CM. It was not suggested that relocation should be to any other area in Zimbabwe and the judge found that he could return to Bulawayo which was identified as his home area and therefore internal relocation did not arise. As set out above, the situation and return to Bulawayo was addressed at paragraph 30 and in my judgement the FtTJ was not required to consider any other area.

49. Nor do I accept the submission made by Mr Sarwar that in view of the appellant's lack of ties and length of absence from Bulawayo that the judge should have assessed his position as though he was "relocating" to Bulawayo.

50. In my judgement, paragraph 30 should be properly read in light of the judge's findings set out at [41] which related to whether there were very significant obstacles to his reintegration to Zimbabwe. Those findings can be summarised as follows; the appellant had no cultural or linguistic difficulties in Zimbabwe where he was born and lived until he was 16. When assessing his ability to integrate, whilst there were no close family members there, the judge took into account that the appellant's father's business partner did live in Zimbabwe and had contact with the appellant's sister and thus it was reasonably open to the judge to find that this would offer some support for the appellant on return in the same way he did in assisting the appellant to come to the UK. In the alternative, the judge found that if the support was not forthcoming, the appellant was in good health and would return to Zimbabwe with educational qualifications and work experience gained in the UK to assist him to secure employment, which in turn, would enable him to obtain accommodation and to forge a meaningful private life.

51. When paragraph 30 is read in the light of those findings, the judge gave adequate and sustainable reasons for reaching the conclusion that he would be able to return to his home area which the judge properly identified as Bulawayo and took into account his personal circumstances when reaching the conclusion that he would be able to resume life there as there were no very significant obstacles to his reintegration.

52. Consequently, I am not satisfied that the judge erred in law as the grounds assert.

Ground 2:

53. As to ground 2, this related to the evidence of the appellant's partner. Mr Sarwar submitted that the judge had failed to give reasons for discounting the appellant's partner's account of her family's inability to provide care for the children. His partner had given evidence about the impact on children's best interests as to whether it would be unduly harsh to be separated from their father. Mr Sarwar submitted that in that evidence there had been emphasis on the inability of her family to provide assistance which had been recorded at paragraph 10. That evidence stated that she had parents, her sister and grandad living nearby but her sister had three children of her own so could not assist with childcare and her parents lived separately; have mother worked as a full-time carer and she did not see her father often. She could not afford to pay for childcare would not be able to work and would have to go on benefits.

54. Mr Sarwar submitted that despite her account of the inability of the wider family to assist in the caring of the children, the judge went on to conclude that it would not be unduly harsh for the children to remain in the UK without their father (see paragraph 34). He directed the Tribunal to that paragraph and where it stated in relation to the relatives "… Doubtless (they) will provide practical and emotional support to the appellant's partner and the children in his absence…". Mr Sarwar submitted that the judge fell into error by rejecting his partner's account of her circumstances but failed to advance any reasons for doing so. The judge did not say for example that her evidence was unreasonable or incredible and there was a lack of reasoning in dealing with that issue (see MK (Pakistan) [2012] UKUT 00641.

55. He further submitted that given the issue related to the best interests of the two British children, the judge failed to set out a clear idea of the child's circumstances and what was in their best interests (applying the decision in Zoumbas v SSHD [2013] UKSC 74 at paragraph 10.

56. Ms Petterson submitted that the second ground claimed that it was unfair for the Judge to find that the effect of the appellant's deportation on his children in the United Kingdom would not be unduly harsh, since he had found it would be unduly harsh for them or their mother to go to Zimbabwe. The respondent argues that these are two separate tests, and the FTT Judge treated them as such. Notwithstanding that the FTT Judge appeared to make no adverse credibility findings against the mother of the children, that does not mean he was not entitled to conclude that she had a family support network to assist her in the event of the appellant's deportation and / or could claim any benefits to which she is entitled if she had to give up work for childcare reasons.

57. In her oral submissions she submitted that at paragraph 34 the judge considered in the alternative that if there was no childcare support from family

members she would be entitled to assistance from the state. Therefore, the criticism set out in the grounds is not made out if paragraph 34 was read as a whole. The judge was aware of the potential emotional damage for the children if their father was deported but by way of the evidence whilst it might be harsh it was not unduly harsh and would not take it over the necessary threshold.

58. As to the best interests of the children, the judge did take account of their best interests and the reference is made to possible difficulties in relation to the appellant's partner (see paragraph 35). Consequently, it was submitted that there is no material error in the determination.

59. In his reply, Mr Sarwar submitted that the FtTJ rejected the appellant's partner's evidence but did not give any reasons. Furthermore, at paragraph 34, the judge did not say "in the alternative" and that on a natural reading of that paragraph the judge had referred to the assistance of the state as being an alternative fact to the familial support.

60. As to the children's best interests, it requires a careful examination of all the facts and in the light of the decision the judge failed to give reasons, and this was a material error of law.

61. I have carefully considered the submissions of the advocates as set out in the preceding paragraphs. The second ground relates to the FtTJ's assessment of the evidence of the appellant's partner which was relevant to the issue of undue harshness. The appellant had four children from his previous relationship but at [33] the FtTJ found that the appellant did not have a parental relationship or contact with those children. There is no challenge in the grounds to that finding. However, the appellant had two children with his current partner and with whom the FtTJ found he had a genuine and subsisting relationship. When considering their circumstances, the FtTJ reached the conclusion that it would be unduly harsh for them to leave the UK and live in Zimbabwe (at paragraph [34]).

62. The judge then went on to address the issue of whether it would be unduly harsh for the children to remain in the UK without the appellant.

63. On the grounds advanced on behalf of the appellant it is submitted that the judge failed to address the best interests of the children and failed to set out a clear idea of their circumstances.

64. By virtue of section 55 of the Borders, Citizenship and Immigration Act 2009, in making decisions on removal, the Secretary of State must have regard to the need to safeguard and promote the welfare of children who are in the UK.

65. The House of Lords, in ZH (Tanzania) v Home Secretary [2011]2 AC 166 , held that, in the application of article 8(2), the children's best interests should be treated as "a primary consideration", to give effect to article 3.1 of the UN Convention on the Rights of the Child. Nationality and the rights of citizenship are of particular importance in assessing the best interests of any child. Thus,

the decision-maker must ask whether it is reasonable to expect the child to live in another country, and to be deprived of the opportunity to exercise the rights of a British citizen. However, even if it is found to be in the best interests of the child to remain in the UK, that factor can be outweighed by the strength of "countervailing considerations" in favour of removal (per Lady Hale at [29] - [33]).

66. In Zoumbas v Secretary of State for the Home Department [2013] UKSC 74, Lord Hodge, delivering the judgment of the Court, summarised the principles to be applied, at [10]:

> "(1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR.
>
> (2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;
>
> (3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;
>
> (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;
>
> (5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;
>
> (6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and
>
> (7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

67. It is plain from reading paragraph 34 that the FtTJ began her assessment by expressly considering section 55 of the BCIA 2009 and stated that "it is well established children fare better in the care of both parents, wherever possible." The FtTJ then went on to address the particular circumstances of the children taking into account their respective ages (two years 10 months and aged one) stating "the children are very young and at the early stages of developing parental bonds with the appellant." The judge considered their age and development stating, "they are entirely dependent on their parents and have not established social ties of their own." And in terms of a change in the circumstances the judge stated, "they are young enough to adapt to changes in their lives." Further reference was made to their nationality as British citizens and the issue of their welfare and safety concluding that it was in the children's

best interests to remain in the UK with the mother and if appropriate for the appellant to remain (at [34]).

68. In my judgement the FtTJ carried out the evaluative exercise in accordance with the case law and properly did so by reference to these children's particular circumstances as outlined above. I find no error of law in the judge's approach to the assessment of the best interests of the children.

69. The thrust of ground two relates to the FtTJ's assessment of the evidence of the appellant's partner and that the FtTJ failed to give reasons for rejecting her evidence concerning the inability of her family to assist with the care of the children. No other aspect of the FtTJ's decision is challenged.

70. The evidence of the appellant's partner was summarised by the FtTJ at paragraph 10 where it was stated that the appellant looked after the children whilst his partner worked and also took care of the home and cooked for the family. Her evidence was that her parents could not assist as they lived separately, her mother worked full time and that her sister had the care of her own three children. She could not pay for childcare.

71. I do not accept the submission made on behalf of the appellant that the FtTJ did not address the evidence in her assessment of the issue of whether it would be unduly harsh for the children to remain in the UK without the appellant. The FtTJ expressly considered this in the context of the children's safety and welfare. At [34] the judge took into account the children's young ages and their dependency on their parents and that the removal of the appellant would have a greater impact on the eldest child whom he took and collected from nursery. The judge expressly took into account the evidence of the appellant's partner that if the appellant would be deported "that would necessarily require his partner, the children's mother to either stop work or find alternative childcare. The latter would be possible and reasonable." I see no error in the judges' assessment that it would be possible and reasonable to find alternative childcare as a general finding.

72. Furthermore, as submitted on behalf of the respondent, whilst the FtTJ did not appear to make any adverse findings as to the appellant's partner's evidence that did not mean that the judge was not entitled to conclude that she did have a family support network to assist her. The evidence before the judge was that the appellant was close to the appellant's parents and family and was involved in the life of her nephews (paragraph 8) and therefore it demonstrated that support and contact between the children and the family members had taken place and that such support (whether emotional or practical) was likely in the circumstances to continue in the event of the appellant's deportation.

73. In any event, even if it could be said that the appellant's partner would not have any assistance from her family, the judge considered that in the alternative that as a British citizen she would be entitled to state assistance, whether financial or practical, which would be available to single parents and that her situation did

not differ from others in a similar position. The judge therefore made a reasoned finding that in the event of the lack of familial support, the children's safety and well-being would be safeguarded by assistance that the appellant's partner would be able to take advantage of.

74. I therefore find no error in the judge's assessment of the appellant's partner's evidence.

75. The grounds do not challenge the overall assessment of whether it would be unduly harsh for the children to remain in the UK with the appellant and as set out above the only challenge was in the context of the assessment of the evidence of the appellant's partner.

76. I remind myself as to the law and the guidance as to the meaning of the expression "unduly harsh" was provided by the decision of the Supreme Court in *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53; [2018] 1 WLR 5273. At [22]-[23] Lord Carnwath said:

> "On its face [Exception 2] raises a factual issue seen from the point of view of the partner or child: would the effect of C's deportation be "unduly harsh"? Although the language is perhaps less precise than that of exception 1, there is nothing to suggest that the word "unduly" is intended as a reference back to the issue of relative seriousness introduced by subsection (2). Like exception 1, and like the test of "reasonableness" under section 117B, exception 2 appears self-contained.
>
> 23. On the other hand the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in *IT (Jamaica) v Secretary of State for the Home Department* [2016] EWCA Civ 932, [2017] 1 WLR 240, paras 55, 64) can it be equated with a requirement to show "very compelling reasons". That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more."

77. Subsequent decisions of this Court have emphasised that "unduly harsh" requires the court or tribunal to focus on whether the effects of deportation of a foreign criminal on a child or partner would go beyond the degree of harshness which would necessarily be involved for any child or partner of any foreign criminal faced with deportation: see for example per Holroyde LJ at [34] of

Secretary of State for the Home Department v PG (Jamaica) [2019] EWCA Civ 1213.

78. On the facts of the appeal as found by the FtTJ, she accepted that the impact of the Appellant's deportation on his wife and children would be adverse, in terms of the likely impact on their emotional well-being. However, the evidence did not show that the effect of the Appellant's deportation would reach the high threshold of being unduly harsh on his children.

79. The evidence relied upon by the Appellant, and his partner concerning her lack of child care / assistance did not go beyond what would reasonably be expected or necessarily be involved for any child faced with the deportation of a parent or a partner faced with the deportation of their partner. It was also open to the FtTJ to find that she could obtain if necessary assistance from the state, whether practical or financial to which she would be entitled to. Consequently it was open to the FtTJ to reach the conclusion that whilst the family situation after deportation would undoubtedly be difficult or as the FtTJ stated " harsh" that was insufficient to meet the high threshold of deportation being unduly harsh on the children to satisfy the exception to deportation.

80. For those reasons, I am not satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law. The decision of the FTT shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtTJ shall stand.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*
Dated 7 September 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as

follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email