Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00132/2016**

THE IMMIGRATION ACTS

Heard by Skype for Business	**Decision & Reasons Promulgated**
On 11th August 2020	**On 1st October 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Holt, Counsel instructed by Paragon Law
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

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

An anonymity direction has been made previously. As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. 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 any member of his family. This direction

applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appeal was listed before me as a resumed hearing following my decision promulgated on 30th April 2020 setting aside the decision of First-tier Tribunal Judge Clarke promulgated on 29th May 2019. A copy of my error of law decision is attached for ease of reference. In this decision, I continue to refer to MS as the appellant and the SSHD as the respondent. I preserved the finding by Judge Clarke that the appellant has rebutted the presumption that he is a danger to the community for the purposes of s72 Nationality, Immigration and Asylum Act 2002.

2. The hearing before me on 11th August 2020 took the form of a remote hearing using skype for business. The appellant was able to attend the hearing remotely but was not called to give evidence. Neither party objected. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the public. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

3. In readiness for the hearing the appellant's representatives had prepared a consolidated appellant's bundle comprising of some 211 pages. The bundle had not been received by the Tribunal prior to the hearing, but Mr Holt was able to email a

copy to the Tribunal and refer to it during the course of the hearing. The majority of the material within the consolidated bundle was the evidence and background material that was previously before the First-tier Tribunal. The bundle contained some further background material, and more importantly, an expert report from Hazel Cameron dated 3rd August 2020, that I shall return to in the course of this decision. For the avoidance of any doubt, I have carefully considered the evidence set out in the consolidated bundle, including the witness statements and background material, whether expressly referred to in this decision or not.

The issues

4. The issue before me is whether the appellant has, as the respondent contends, ceased to be a refugee. If he has, whether the deportation of the appellant would be in breach of Article 8.

5. At the resumed hearing before me, the parties focused entirely upon the question of 'cessation'.

The Background

6. The appellant arrived in the UK in February 2004, aged 14, with indefinite leave to enter for family reunion to join his mother. The appellant's mother arrived in the UK in March 2002 and claimed asylum. She was granted indefinite leave to remain as a refugee on 13th September 2002 following a successful appeal. In her decision First-tier Tribunal Judge Clarke summarised the position as follows:

> "25. The appellant's family home is near Bulawayo. The appellant's status in the United Kingdom is linked to his mother's status as a refugee in the United Kingdom as a result of her political opinion. The appellant's mother was granted asylum on the basis that she was a supporter of the Movement for Democratic Change ('MDC') and it was accepted at the time of her application for asylum that even low-level MDC supporters were likely to be at risk."

7. I pause to note that although the appellant appears to have been granted indefinite leave to enter the UK on the grounds of family reunion with his mother, the respondent has throughout proceeded upon the basis, and appears to accept, that a

grant of refugee status was made to the appellant. It is not clear from the information before me when such a grant of refugee status was indeed made to the appellant.

8. In SSHD v- JS (Uganda) [2020] Imm. A.R 258, the Court of Appeal held, at [126] to [147], that the status of 'refugee' under Article 1A of the Convention relating to the Status of Refugees 1951 can only be accorded to a person who themselves had a well-founded fear of being persecuted, not one derived from or dependent on another person. If the appellant is not a refugee as set out in Article 1A of the 1951 Convention Relating to the Status of Refugees, the cessation provisions set out in Article 1C(5) have no relevance. As far as I can see from the papers before me, there is no express reference to the appellant having been granted refugee status himself. The correspondence and decisions sent to the appellant refer to the grant of refugee status to the appellant's mother and record that on 13th January 2004, the appellant's Zimbabwean passport was endorsed with a multi-visit family reunion Visa with indefinite leave to enter the UK. The subsequent correspondence and decisions imply that the appellant has been granted refugee status. It forms no part of the respondent's case before me that the appellant was not granted refugee status or that the respondent has mistakenly proceeded upon the premise that the appellant has refugee status.

9. Since his arrival in the UK the appellant has been convicted on three occasions. On 27th November 2007, he was convicted at Leicester Magistrates Court of using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence. He was given a conditional discharge and ordered to pay costs of £300. On 16th August 2010, he was convicted of possession of a controlled drug – Class B – cannabis/cannabis resin and of failing to surrender to custody at an appointed time. He was fined £175, and ordered to pay a victim surcharge and costs. On 11th June 2012, the appellant was convicted at Leicester Crown Court of Robbery, and, on 28th September 2012 he was sentenced to an 8-year term of imprisonment. In his sentencing remarks, His Honour Judge Pert QC said:

> "I have to sentence on your plea of guilty for an offence of robbery. You and another man went into someone else's home late at night where the occupant and two other people were present. You and your accomplice were armed. It was plainly a planned intervention by you…. it matters not in the slightest who did what. You had between you an extendable baton and a knife.
>
> It was also planned, because of what you perceived to be available in the premises because immediately, the occupant was asked to identify the whereabouts of the safe and then the contents of the safe were taken and shared out, stolen and he was prevented at knifepoint from leaving the apartment.
>
> You have to your advantage the fact that you do not have a particularly bad record. You have to your advantage a plea of guilty. The benefit of that has been significantly diminished by the fact that you conducted or you had conducted on your behalf a Newton Hearing, which was an utterly hopeless venture from your point of view and you did yourself no favours at all by pursuing that course, but it nonetheless still affords you some credit for your plea of guilty.
>
> It cannot be stressed highly enough, indeed, the Lord Chief Justice has referred to it again yesterday, the sanctity of the home and the intervention in someone else's home, particularly a violent intervention, and armed intervention such as occurred here, and that is the context in which I have to deal with you for the offence of robbery.
>
> Had the matter gone to trial, without a shadow of a doubt, the sentence would have been one of 10 years imprisonment at least. I will accede to Mr Cox's submission and reduce that by 20 per cent, not because I regard that as the appropriate reduction in all cases where a Newton Hearing had been conducted and lost, but in the particular circumstances of your case I will do it, which takes the sentence down to 8 years imprisonment and that is the sentence that I pass."

10. The appellant appealed against the sentence but permission to appeal was refused by the Court of Appeal on 19th March 2013. Following that conviction for robbery, the appellant was invited to set out any reasons he relied upon as to why he should not be deported from the UK. The appellant claimed his removal would be in breach of his human rights and in breach of the Refugee Convention.

11. On 26th March 2015, the appellant was notified of the respondent's intention to cease his refugee status. No representations were made in response by the appellant. The UNHCR made representations in relation to the proposed cessation by letter dated 3rd July 2015. The UNHCR referred to the country guidance relied upon by the respondent, and based upon other background material, urged the respondent to carefully consider whether the appellant may be at risk of harm if returned to Zimbabwe. The respondent was urged to assess whether fundamental and durable changes have indeed occurred in Zimbabwe.

12. On 12th May 2016, the appellant's refugee status ceased. On 16th August 2016, the respondent made a decision to refuse a human rights claim made by the appellant and to deport the appellant.

The evidence

13. The appellant has made three witness statements. The first dated 1st May 2014 (pages 1 – 8 of the consolidated bundle), the second dated 23rd March 2017 (pages 9 – 13 of the consolidated bundle) and the third dated 18th February 2019 (pages 14 – 17 of the consolidated bundle).

14. In his first statement the appellant confirms that following his mother's departure from Zimbabwe he continued to live with his father, sisters and brother. He confirms that when he arrived in the UK in February 2004, aged 12, his father remained in Zimbabwe. His father died in early 2012 and the appellant went to Zimbabwe for five days for the burial. The appellant states that he stayed in a hotel as there was no family home or family in Zimbabwe to reside with. He is scared about the thought of having to return to Zimbabwe. The appellant believes that he will be in trouble because of the political issues that his mother had before she left Zimbabwe. In his third statement, the appellant states that he has been watching the news regarding what has happened in Zimbabwe. He claims there would be a language barrier and that Zimbabwe has not changed since the government has changed. He has no idea what he would do there. The appellant was not called to give evidence before me. Mr Holt submitted that broadly put, the appellant has a subjective fear that he will be at risk upon return because of an imputed political opinion. Mrs Aboni confirmed that she did not challenge the appellant's subjective fear, but will submit the subjective fear is not objectively well-founded.

15. In her statement dated 26th October 2014, the appellant's mother, [EN], states that she did not agree with the regime that was in power in Zimbabwe at the time. As a result of her activities, her life was at risk and she had to flee the country and she arrived in the United Kingdom in March 2002. She confirms her children remained with their father in Zimbabwe and after she was granted refugee status, she made

applications for her children to join her under the family reunion provisions. She first made an application for her daughter and when that application was successful, she made similar applications for her three remaining children. She confirms the appellant arrived in the UK on 21st February 2004. She confirms that at the age of 19 the appellant moved out of the family home into his own flat in Leicester. She continued to see the appellant regularly and she states that as her eldest son, the appellant assumed a 'father' role in the household and everyone looked to him for guidance and support. She was unaware initially about the problems the appellant had "with the police", and she felt lost when she heard that the appellant had been sentenced to an eight-year term of imprisonment. She confirms that the appellant's father died in 2012 and the appellant flew to Zimbabwe to attend the funeral. She states that the appellant did not stop in Zimbabwe and did not explore the country. She claims the appellant has nothing to return to in Zimbabwe, and there is no one left in Zimbabwe to help him. She claims she does not have anyone in Zimbabwe, there is no family home and the appellant has nowhere to go. In her second witness statement [EN] confirms that she was a local town chairperson for the MDC and her role was to talk to people about how things could change. She claims she gave many speeches at events but also to people in the street and it was because of her activities that she was 'wanted' by Zanu PF. She states that it is because of her role in politics that she is afraid for her son because the families of those involved are also targeted. She confirms that the family is originally from Bulawayo, but that is not a place that the appellant is familiar with now. She confirms the appellant "is not political", but if Zanu PF see him there, they will suspect him because of his accent and because he has not lived in Zimbabwe for some time. She believes the appellant will be perceived as a spy and once it becomes known that the appellant is connected to her, he will be in even more danger. She claims the appellant could not live elsewhere in Zimbabwe because he does not know anyone and they have no property or anyone to turn to for help.

16. There are also before me, two statements made by [CS], and two statements made by [MS], the appellant's sisters. There is also a statement made by [NS], the appellant's brother. They refer to the close relationship that they enjoy with the appellant and

the impact the appellant's removal will have upon the family. [CS] states in her second statement:

> "The only contact we have had with Zimbabwe since we came to the UK is when we went to Zimbabwe as a family in 2015. This was only because we wanted to show our youngest sister the location of our father's grave. We did not stay in Zimbabwe, but had a hotel in South Africa. We had made very careful plans beforehand but we still had to bribe people at the airport to get entry into the country. I worry that, if [the appellant] is not able to pay when asked to, he might face danger of being mistreated or even being sent to jail. When we went there, we were not recognised as Zimbabweans. We were laughed at because of our accents."

17. The appellant's sister [MS] confirms she has been back to Zimbabwe once in 2015 for 10 days to visit her father's grave. She states:

> "The only time I have been back, we faced problems at the airport and because we have British passports they were trying to take money and belongings from us and we have to pay. We were there for a good few hours trying to sort things out."

18. In his statement, [NS] states:

> "8. Personally, I do not know that much about Zimbabwe. The last time I was there was in 2015 with my sisters for a visit to our father's grave. We only went there for a few days. I was treated terribly at the airport because I had a British passport. We as a family were not recognised as Zimbabweans.
>
> …
>
> 11. When I visited Zimbabwe, we had no family to help us so it was my sister, Cindi, who told us how to go on. The airport was scary because we were questioned quite heavily. Luckily, we managed to pay and get out of there but if we had not paid then I hate to think what might have happened.".

19. The appellant relies upon a report by Dr Hazel Margaret Cameron, a full-time lecturer within the School of International Relations, University of St Andrews, whose area of academic expertise is in Rwandan, Ugandan and Zimbabwean social and political matters. Since 1999 she has undertaken intensive study of Zimbabwean affairs including fieldwork in Zimbabwe and its bordering nations, investigating cycles of violence in the country throughout history. Her most recent Zimbabwean fieldwork was between October and November 2019. Dr Cameron was instructed by the appellant's representatives to address the risks the appellant may face upon his return to Zimbabwe as a result of current political and socio-economic conditions,

including the risks of the appellant being required to demonstrate loyalty to Zanu PF on his return. She sets out a brief summary of her findings and opinions at the beginning of her report at [A] to [O]. It serves no purpose to recite each of those conclusions in this decision, but I will return to some of the opinions expressed in the course of this decision. At section 2 of her report, Dr Cameron summarises the relevant factual matrix. She addresses the political country conditions in Zimbabwe at section 3 of her report, drawing upon relevant background material particularly in relation to events between 2017 and 2020. At section 4 of her report, Dr Cameron addresses the position the appellant would find himself in, upon return to Zimbabwe. In section 5 of her report, Dr Cameron addresses the socio-economic conditions in Zimbabwe as they now are. I stress that I have carefully considered her report, and the matters set out in the report that lead to her conclusions and the opinions expressed by her, whether directly referred to in this decision or not. It would simply be impractical for me to set out in the course of this decision my observations in relation to each of the claims made and the opinions set out.

Legal Framework

20. I have already set out the relevant legal framework at paragraphs [15] to [24] of my error of law decision. Where a person has been recognised as a refugee as set out in Article 1A of the Refugee Convention, that status can only be lost in accordance with Article 1C of the Convention. For present purposes it is sufficient to note that Article 1C provides that the 1951 Convention shall cease to apply to any person falling under the terms of Article 1(A) if:

> (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1)of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;"

21. The Qualification Directive establishes a common framework for EU Member State in applying the Refugee Convention, and, as set out in paragraph [16] of my error of law decision, Article 11(1)(e) of the Directive, reflects Article 1C(5). Article 1(C)(5)

requires an examination of whether there has been a relevant change in the circumstances in connexion with which the person has been recognised as a refugee.

22. In EN (Serbia) v SSHD [2009] EWCA Civ 630, Stanley Burnton LJ, confirmed that a durable change in conditions in a country of nationality that results in a refugee having no genuine fear of persecution on his return will qualify as a relevant change in circumstances for the purposes of Article 1C(5), [95] – [96]. The requirement is not one of "fundamental change", although Stanley Burnton LJ noted that what may fairly be considered to be a durable change in conditions in a country of nationality that results in a refugee having no genuine fear of persecution on his return, may fairly be regarded as fundamental.

23. The onus is on the respondent to show that there has been a change in circumstances such that the refugee convention ceases to apply to the appellant.

Cessation of Refugee Status

24. As I have already set out, the respondent has throughout proceeded upon the basis, and appears to accept, that a grant of refugee status was made to the appellant. I accept the appellant has a subjective fear of return to Zimbabwe. I must consider whether the respondent has established that the appellant can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

25. The circumstances in connection with which the appellant has been recognised as a refugee comprise of a combination of the general conditions in Zimbabwe and aspects of his personal characteristics. The appellant was born in Zimbabwe and he accepts that he spent his early childhood years there. He arrived in the UK in February 2004, aged 14. The appellant confirms that his mother left Zimbabwe when he was only a very young child, and she claimed asylum in the United Kingdom. The appellant continued to reside with his father. The appellant states, and I accept, that after his mother was recognised as a refugee, she wished to make a better life for her

children and she therefore made applications for the appellant and his siblings to join her in the United Kingdom under the family reunion provisions.

26. The appellant's mother arrived in the United Kingdom in March 2002 as a visitor and claimed asylum on being refused entry as a visitor. The appellant's mother was granted refugee status and indefinite leave to remain on 13th September 2002, following a successful appeal. A copy of the determination of Adjudicator, Ms C Pugh promulgated on 7th August 2002 is in the respondent's bundle. At paragraphs [17] to [24], Ms C Pugh referred to the background to the claim for international protection made by the appellant's mother. At paragraphs [26] to [28] of her decision, she stated:

> "26. I will first address the question of credibility. I believe that the appellant was credible when she recounted how she had been attacked by Zanu-PF youth. However, Zanu-PF youth together with the war veterans went all over Zimbabwe before the elections, terrorising neighbourhoods. They would pick on anyone who could not produce a Zanu-PF card. The fact that they stopped her and took her Mealie-meal does not seem to me to be a specific targeting of the appellant as chair lady for her district. Nor does the fact that they took exception to her throwing away their posters. The ZANU-PF youth would attack and bully anyone. However, it does show that she was targeted as an MDC supporter.
>
> 27 The appellant was not credible as chair lady of her area. I know that she claimed it was a small area, but she appeared to have very little political knowledge. The fact is that anyone who supported even in a small way the MDC might encounter such problems. I believe that the appellant has tried to make her case stronger by claiming to be an officeholder.
>
> 28 Nevertheless, this is not relevant at the present date. The respondent has said that he has ceased all removals to Zimbabwe for the time being. This is because the situation after the election remained volatile. This is largely because President Mugabe, having won the election, showed a great deal of annoyance about his treatment by the international community. In particular, the United Kingdom spoke out against the lack of fairness involved in the election."

27. Ms Pugh noted the respondent had announced on 15th January 2002 that he has ceased all removals to Zimbabwe and that remained the position as at the date of the hearing before her in July 2002. At paragraphs [31] and [32], she stated:

> "31. This creates something of a problem. It appears to me from the background material that anybody returning from the United Kingdom as a failed asylum seeker is likely to be judged as an MDC supporter. Even if they were very low level, they will still be in danger on return. Since the danger comes about because of their imputed

> political opinion, or thier actual political opinion, this brings them within the Refugee Convention. After the elections things did not settle. Mr Mugabe was outraged by the attitude of the international community, and in particular by Britain.
>
> 32. …. I must continue to look at the case as it would be if the appellant were now to be returned to Zimbabwe. If the appellant were now to be returned to Zimbabwe, she has produced sufficient evidence on the lower standard of proof to show that there are substantial grounds for thinking that she would be persecuted for her political opinion, or presumed political opinion."

28. Adjudicator Ms Pugh, therefore rejected the claim made by the appellant's mother that she was the chair lady for the local branch of the MDC, but accepted that she was credible regarding her claim to have been attacked by Zanu-PF youth. She found the appellant's mother had not been specifically targeted as chair lady for her district, but had been targeted as an MDC supporter.

29. In support of his claim to be at risk upon return to Zimbabwe because of his imputed political opinion, the appellant refers to the claim for asylum that was made by his mother. In his witness statement he claims his family history shows that he is at risk upon return and that the situation in Zimbabwe has not changed. The appellant's mother states she did not agree with the regime that was in power in Zimbabwe at the time she left. She claims she opposed the regime and as a result of her activities, her life was at risk and she had to flee the country.

30. The appellant's mother was not called to give evidence before me and in her witness statements filed in support of the appeal before me, she does not say anything that causes me to go behind the findings made by Ms Pugh in 2002. There is no evidence that the appellant was in any way targeted when the family lived together in Zimbabwe, or during the two-year period between March 2002 and February 2004, following his mother's departure from Zimbabwe and the appellant's arrival in the UK. It is against that background that I must consider whether the appellant's subjective fear is objectively well-founded.

31. It is convenient to begin with the country guidance decision in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC) ("CM"), which establishes that there have been some changes in the general political situation in

Zimbabwe since the appellant left the country in February 2004. In CM, the Upper Tribunal concluded there had been a durable change since RN (Returnees) Zimbabwe CG [2008] UKAIT 00083.

32. The guidance is as follows:

> (2) The Country Guidance given by the Tribunal in EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) on the position in Zimbabwe as at the end of January 2011 was not vitiated in any respect by the use made of anonymous evidence from certain sources in the Secretary of State's Fact Finding Mission report of 2010. The Tribunal was entitled to find that there had been a durable change since RN (Returnees) Zimbabwe CG [2008] UKAIT 00083….
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> (3) The only change to the EM Country Guidance that it is necessary to make as regards the position as at the end of January 2011 arises from the judgments in RT (Zimbabwe) [2012] UKSC 38. The EM Country Guidance is, accordingly, re-stated as follows (with the change underlined in paragraph (5) below):
>
> > (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.

33. I may depart from existing country guidance in the circumstances described in paragraphs 11 and 12 of the Upper Tribunal Immigration and Asylum Chamber Guidance Note 2011 No 2. On behalf of the appellant, Mr Holt submits the very strong grounds supported by cogent evidence for me to depart from the country

guidance in CM are to be found in the background material relied upon by the appellant and in particular, the expert report of Dr Cameron.

34. Dr Cameron notes at paragraph [10] of her report that the appellant's mother was granted asylum on the basis that she was a supporter of the MDC, and it was accepted that at the time of her application for asylum, even low-level MDC supporters were likely to be at risk. She confirms at paragraph [13], the appellant does not claim to be a supporter of the MDC himself and he does not claim that he has been involved in any political activity in the United Kingdom. At paragraphs [17] to [57] of her report, she refers to events in Zimbabwe, particularly between 2017 and 2020. At paragraph [58] of her report, Dr Cameron expresses the following opinion;

> "…current Zimbabwean state perpetrated violence is indiscriminate, targeting all opposition supporters with both low- and high level political profiles, as well as those without political profiles in both low- and high density neighbourhoods of Harare, and indeed throughout the entire country. MDC supporters, and those perceived to be supporters of the political opposition movement are at risk, reminiscent of country conditions in 2008. Persecution by state security forces (SFF) and supporters of ZANU-PF is countrywide, and as demonstrated above, has targeted members of the MDC and those with imputed political opinions in Bulawayo."

35. Dr Cameron refers to the Country Guidance decision of the Upper Tribunal in CM and at paragraph [60] of her report she expresses the following opinion:

> "…contrary to country guidance, the risk to supporters of the MDC and those with an imputed political opinion is of no lesser degree that *(sic)* conditions when the appellant's mother was granted refugee status and the appellant was granted indefinite leave to enter the UK, at a time, as is the case now, even low-level supporters of MDC and those with imputed political opinions were at risk."

36. She noted that since the country guidance set out in CM, there has been regime change in Zimbabwe and at paragraphs [62] to [64] she states:

> "62. It is my opinion that regardless of the country conditions in Zimbabwe when CM was promulgated, the current political situation within Zimbabwe, and the politically motivated violence in current day Zimbabwe is comparable with the situation considered by the Asylum Immigration Tribunal in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083, including paragraph 216:

> "those at risk are not simply those who are seen to be supporters of the MDC but anyone who cannot demonstrate positive support for Zanu-PF or alignment with the regime."
>
> 63. To demonstrate loyalty to ZANU PF, one must have a party membership card, be willing and able to chant Zanu PF slogans, sing ZANU PF songs on demand, own ZANU PF regalia with the portrait of Mnangagwa, attend ZANU PF rallies and disrupt rallies organised by the opposition or demonstrations against the poor governance that resulted in economic meltdown.
>
> 64. Contrary to paragraph 3(1) of CM, it is my opinion that the current country conditions Zimbabwe leave human rights campaigners, government critics, members and supporters of the political opposition, those perceived to be supporters of the political opposition, and those unable to demonstrate affiliation with ZANU PF, at high risk of state violence including torture, rape and death. The existing level of politically motivated violence throughout Zimbabwe, in both urban and rural settings countrywide, and is of greater brutality than that experienced in 2008, and of 2013, when CM was issued."

37. At section 4 of her report Dr Cameron addresses the position the appellant would find himself in, upon return to Zimbabwe. At paragraphs [69] and [70], she states:

> "69. It is my opinion that those who are at risk in contemporary Zimbabwe are akin to those categories that were set out at paragraph 43 of SM & Others (MDC – internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100, namely "those suspected or perceived of being associated with the opposition have included activists, campaigners, officials and election polling agents, MDC candidates for local and national government, MDC members, former MDC members, MDC supporters, those who voted or believed to have voted for the MDC and those belonging to the MDC, families of the foregoing, employees of the foregoing, those whose actions have given rise to suspicion of support for the opposition such as attending an MDC rally or wearing a T-shirt, attending a demonstration, teachers and other professionals, refusal to attend a ZANU PF rally or chant a ZANU PF slogan or not having a ZANU PF membership card.
>
> 70. Irrespective of country conditions when CM was issued, the current country conditions are, as previously noted, more akin to country conditions when RN (Returnees) Zimabwe CG [2008] UKAIT 00083 was issued. Paragraph 1 of RN states that "those at risk on return to Zimbabwe on account of imputed political opinion are no longer restricted to those who are perceived to be members or supporters of the MDC but include anyone who is unable to demonstrate support for or loyalty to the regime or Zanu-PF."

38. At paragraph [71] Dr Cameron confirms it is the CIO that remain responsible for monitoring returns to Harare airport. At paragraph [72] she states:

> "As was the case when paragraph 264 of HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 was issued, it is the COI who have responsibility for the operation of immigration control at Harare airport, and that the main focus of the operation is " to identify those who may be of adverse interest… those who are perceived to be

> politically active in support of the opposition." Those who the CIO have an interest in thereafter subjected to further interrogation."

39. She states that the authorities have acquired biometric scanners that use iris recognition and have introduced advanced passenger information systems to help increase security. The Zimbabwean Department of Immigration has developed a link between immigration and airline Departure Control Systems in order to facilitate data transfer that enables the CIO to receive data on all passengers several hours before their arrival in Zimbabwe. She confirms the CIO monitors every flight from London to Harare and the CIO meet flights arriving in Harare when British immigration officers or their representatives handover failed asylum seekers to their Zimbabwean counterparts. At paragraph [74], she states:

> "… It is my opinion that the country situation has changed since the reports dating back to 2002 and the CIO have continued to detain asylum deportees at Harare airport and interrogate them."

40. At paragraph [75] she concludes:

> "With due consideration to the profile of the appellant, the evidence available to me, and my own in-country knowledge, it is my opinion that it is plausible that the appellant will be identified as a person of adverse interest to SSF and a person with an imputed political opinion. It is my opinion that those who are identified at the airport as being of sufficient interest to merit further interrogation are at real risk of harm. As a person who had benefited from refugee status in the UK and who is the son of a political refugee, it is plausible that the appellant is at risk of persecution by the CIO upon his arrival at Harare International Airport, including arbitrary arrest, detention, torture and ill-treatment as result of his imputed political opinion and his inability to demonstrate loyalty to Zanu PF."

41. In section 5 of her report, Dr Cameron addresses the socio-economic conditions in Zimbabwe as they now are, against the conclusions set out in headnote 3(9) of the country guidance decision of CM.

42. In her opinion, the current unemployment rate of 95% in the formal sector and the near collapse of the country's economy mean that the appellant will face insurmountable obstacles in his effort to secure employment on return to Zimbabwe. In her opinion the appellant will become one of Zimbabwe's millions of urban or rural poor, and will find himself without employment and be destitute. She states

that Zimbabwe is currently in the midst of a disaster in terms of food and nutrition insecurity that is driven by climate change and hyperinflation. She refers to an announcement by the World Food Programme in December 2019 that Zimbabwe is facing its worst hunger crisis in a decade with half of the population – 7.7 million people – food insecure. She states that the crisis continues to worsen in 2020 due to poverty and high unemployment, widespread corruption, several price instabilities, lack of purchasing power, poor agricultural productivity, natural disasters, recurrent droughts and unilateral economic sanctions. She also refers to food aid being manipulated for political gain, whereby only those who are able to demonstrate loyalty to Zanu PF and membership of the party, have access to food aid. At paragraph [93] of her report, Dr Cameron concludes:

> "It is my opinion as substantiated by evidence provided, that as a result of the ongoing disaster of food insecurity in Zimbabwe, the appellant will be required to demonstrate loyalty to Zanu PF to benefit from the distribution of food aid if required on his return to Zimbabwe. This report has evidenced that those unable to demonstrate loyalty to Zanu PF are at risk of harm. It is therefore my opinion that the appellant may be at risk of harm if/when he seeks food aid but is unable to demonstrate loyalty to Zanu PF when questioned by Zanu PF supporters or SSF."

43. Amongst the background material relied upon by the appellant is a House of Commons Library debate pack titled 'Situation in Zimbabwe, 24th January 2019, that is intended to provide a summary of the situation in Zimbabwe. It is noted that elections in Zimbabwe in July 2018 were widely viewed as a significant moment in Zimbabwe's democratic transition, being the first elections after Mugabe's forced resignation at the end of 2017. The report notes that international election observers welcomed the peaceful election and although the EU Election Observer Mission's final report (10 October) concluded many aspects of the elections "failed to meet international standards", the author was positive about the future saying " there is a thirst for democratic change in the country and the people want to see democratic dividends delivering a better life for all Zimbabweans". The report refers to the use of unjustifiable force against opposition protesters after the election and notes that the economic crisis has deepened since October and clashes in January 2019 were prompted in part by a sharp hike in fuel prices.

44. I accept Dr Cameron has expertise in Zimbabwean social and political matters and I give due weight to the opinions expressed by her. Her opinion is that the current political situation within Zimbabwe is comparable with the situation considered by the Tribunal in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083, that those at risk are not simply those who are seen to be supporters of the MDC but anyone who cannot demonstrate positive support for Zanu-PF or alignment with the regime. I must consider whether there are strong grounds supported by cogent evidence for me to depart from the country guidance set out in CM, a decision in which the Tribunal considered a wealth of background material and evidence from a number of witnesses.

45. Having read the report of Dr Cameron, the background material cited in her report, and the background material relied upon by the appellant I accept that there is at least some evidence of spikes in violence around the elections and fuel protests in 2018 and 2019 and of random attacks on those without an MDC profile, but overall, I reject the claim that the current political situation within Zimbabwe is comparable with the situation considered by the Tribunal in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083, and that anyone who cannot demonstrate positive support for Zanu-PF or alignment with the regime, is at risk upon return to Zimbabwe.

46. The country guidance case RN, was removed from the list of country guidance cases on 14 March 2011, replaced initially by EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) (subsequently quashed by the Court of Appeal and referred to in RT (Zimbabwe) and others (Respondents) v Secretary of State for the Home Department (Appellant) [2012] UKSC 38 and CM.

47. The Tribunal in CM found that the level of politically motivated violence in Zimbabwe had fallen in comparison to the levels referred to in RN, albeit MDC supporters remained the main victims of those violations. Since CM was reported, the MDC has broken into factions, and in November 2017 former President Mugabe left power being replaced by President Mnangagwa.

48. I accept that there is evidence of a spike in violence around the time of the 2018 elections and that this in turn resulted in a crackdown on opposition leaders, but there is no evidence that the decline in violence reported in CM has reversed in the last six years. In my judgment, the spikes in violence around election times are nothing new in Zimbabwe and do not necessarily affect the overall downward trend identified in CM nor are they inconsistent with a finding of significant and durable change in Zimbabwe.

49. Dr Cameron states that state violence perpetrated against those who are perceived to be critics or opponents of the government of Zimbabwe has prevailed between 2018 and 2020. I am quite prepared to accept that Zimbabwe remains a society where brutality and human rights abuses continue to take place, but a common thread to many of the incidents referred to by Dr Cameron is that the attacks were upon supporters of the political opposition, leaders, and those perceived as critics of the government.

50. Dr Cameron states, at paragraph [22], that 2017 witnessed a wealth of reports of fear and intimidation from all levels of Zimbabwean society. She states regular political violence took place in both high-density and low-density areas of Harare, and throughout the country including Bulawayo and Matebeleland. She cites an article by Dewa Mavhinga, Director of Southern Africa, Human Rights Watch, titled 'Political Violence on the rise in Zimbabwe' published on 20th July 2017. The article related to incidents in which unidentified assailants burned down a bar in Harare owned by the deputy president of Zimbabwe's main opposition party, MDC-T, and the destruction of the house of an MDC-T local councillor believed to have been carried out by supporters of the ruling ZANU-PF party, an allegation rejected by Zanu-PF. The article states that Human Rights Watch research has shown that the police's failure to make arrests in these cases and the resulting impunity has helped fuel cycles of political violence in the country. The evidence is not necessarily indicative of ZANU-PF politically motivated human rights violations against simple supporters of the opposition or MDC.

51. As to the position in relation to the risk at the airport, in CM, the Tribunal considered what happens upon return at Harare airport, and in particular, the screening procedures. At paragraph [205] the Upper Tribunal said:

> "205. To return to the position at the point of return of the airport, we are fully satisfied that the fresh evidence completely fails to disclose any change in the position as 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. We will address this issue later, when considering the facts of the appellant's case. But it would be wrong not to observe here that there is no evidence to show the CIO are, for example, likely to detain at the airport and torture a person for having attended a MDC branch meeting in the United Kingdom."

52. Dr Cameron cites an article written by Paul Harris and Martin Bright published in The Guardian on Sunday 13th January 2002 titled "They flee here for safety but are sent back to face death", and an article by Severin Carrell and Sophie Goodchild published in the Independent on Sunday 3rd July 2005 titled "Tortured and dumped: the fate of those sent home to Mugabe by UK", to support her claim, at paragraph [74] of her report, that over the past 15 years there are reports of failed asylum seekers being victimised, including being beaten upon their arrival at Harare airport. The articles concern the danger that deportees are said to face when refused asylum and forcibly returned to Zimbabwe with little regard for their safety. The articles pre-date the country guidance now in force and Dr Cameron does not identify in her report the evidence that she relies upon to support her conclusion that over the past 15 years (*i.e. 2005 to 2020)*, failed asylum seekers have been victimised, including being beaten upon their arrival at Harare airport.

53. I do not accept the conclusion reached by Dr Cameron that those who are at risk in contemporary Zimbabwe are akin to those categories that were set out at paragraph 43 of SM & Others (MDC – internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100. In SM & Others, the Tribunal found that those deported from the United Kingdom to Zimbabwe are subject to interrogation on return and those who are suspected of being politically active with the MDC would be at real risk; [41] and [42]. The Tribunal went on to reject the submission that every former member of the

MDC faces a real risk of ill-treatment on return and concluded that each case must depend upon its own circumstances in order to see whether the background and profile of an individual is such as to make it likely that he would be of interest to the authorities.

54. In support of her opinion that the appellant may be at risk of harm if/when he seeks food aid, but is unable to demonstrate loyalty to Zanu PF, Dr Cameron refers, at paragraph [90] of her report, to food aid being manipulated for political gain throughout the post-independence history of Zimbabwe, whereby only those who are able to demonstrate loyalty to Zanu PF and membership of the party have access to food aid. She refers, at paragraph [91], to an incident in July 2019 in which a Zanu PF activist summoned villagers for a community distribution of maize, and when villagers assembled, they were told that only devoted ruling party supporters will receive the food aid and to return home and get ruling party regalia as evidence of their support for Zanu PF. That in itself is not evidence of a general and widespread requirement to demonstrate loyalty to Zanu PF.

55. I accept that there is evidence that the economic situation in Zimbabwe has worsened as set out in the report of Dr Cameron, but I am not satisfied that this represents a deterioration in the circumstances examined and found in CM. I note that there are several references in CM to the challenging economic circumstances in Zimbabwe in 2012 and I am satisfied that Zimbabwe was also suffering poor economic conditions then. It is not a new development.

56. I note the distinction in CM between those with and without, for example, a significant MDC profile and having considered the report of Dr Cameron and the background material relied upon by the appellant, I am not satisfied that the situation has changed materially for the worse since CM.

57. In reaching my decision, I have also had regard to the representations made by the UNHCR in the letter dated 3rd July 2015. The UNHCR draws attention to reports of politically motivated violence long after the 2013 elections and urged the respondent to carefully assess whether fundamental and durable changes have indeed occurred

in Zimbabwe. Based upon the background material cited in its report, the UNHCR claimed that protection concerns persist in Zimbabwe and should be taken into consideration before any decision is made to cease the appellant's refugee status. I agree respectfully with the UNHCR that the situation in Zimbabwe remains difficult and I agree that some people who have been recognised as refugees might still be in need of international protection. That is something to decide on a case-by-case basis when the need arises.

58. The appellant entered the United Kingdom in February 2004, aged 14, with indefinite leave to enter for family reunion to join his mother. At the hearing of her appeal, Ms Pugh found the appellant's mother had been targeted as an MDC supporter. The appellant has not been politically active himself, either in Zimbabwe or in the United Kingdom and has never indicated any intention to be politically active on return to Zimbabwe in the future. The appellant's inability to demonstrate loyalty to Zanu PF cannot be implied from the evidence before me.

59. I am not satisfied that 16 years after the appellant left Zimbabwe, anyone would have any particular memory of, or interest in the appellant by reason of his relationship with his mother. The appellant, even on his own account was able to return to Zimbabwe in 2012, albeit for a few days. In his second witness statement, the appellant states that when he last visited Zimbabwe in 2012, the airport staff were very aggressive with him and spoke in Shona. He was searched and they told him that he looked different and he spoke with a different accent. He describes there being regular roadblocks in the street that he had to pay money to go through. The evidence of the appellant's siblings regarding their experience when they returned to Zimbabwe for a short period in 2015 is to the effect that they had to pay bribes at the airport to get into the country. There is no evidence that the appellant or indeed his siblings, were in any way targeted because of an imputed political reason or by reason of their relationship with their mother, or her previous support for the MDC.

60. Having considered the evidence before me, I find that the respondent has discharged the burden of establishing that there has been a change in circumstances such that

the refugee convention ceases to apply to the appellant. I find that even on the lower standard, the appellant can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.

61. I do not consider that the appellant is at risk of a threat to his life or serious harm in the event of being returned to Zimbabwe. I am quite satisfied that there would be no breach of his rights under Articles 2 and 3 ECHR and the appellant is not entitled to humanitarian protection.

Article 8

62. Section 32 of the UK Borders Act 2007 defines a foreign criminal, a person not a British citizen who is convicted in the UK of an offence and, inter alia, sentenced to a period of imprisonment of at least 12 months. Section 32(4) of the 2007 Act sets outs out the clear proposition that deportation of a foreign criminal is conducive to the public good. That is a statement of public policy enacted by the legislature, which the courts and tribunals are obliged to respect. Section 32(5) of the 2007 Act requires the Secretary of State to make a deportation order in respect of every foreign criminal, subject to the exceptions set out in section 33. Insofar as is relevant that is:

> "(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–
>
> (a) a person's Convention rights, or
>
> (b) the United Kingdom's obligations under the Refugee Convention.
>
> …
>
> (7) The application of an exception—
>
> (a) does not prevent the making of a deportation order;
>
> (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;
>
> but section 32(4) applies despite the application of Exception 1 or 4.".

63. Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") informs the decision making in relation to the application of the section 33

exceptions. Section 117A in Part 5A provides that, when a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8, and, as a result, would be unlawful under section 6 of the HRA 1998, the court, in considering the public interest question, must (in particular) have regard to the considerations listed in section 117B and, additionally, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

64. The issue before me is whether the decision to refuse the human rights claim made by the appellant is a justified interference with the right to respect for family life, in the context of the appellant's conviction and the fact that he is a 'foreign criminal' as defined in s117D(2) of the 2002 Act. The Immigration Rules set out the approach to be followed by the Secretary of State where a foreign criminal liable to deportation claims that the deportation would be contrary to the United Kingdom's obligations under Article 8 ECHR. Insofar as is relevant here, paragraph 398 of the Immigration Rules state:

> "398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
>
> (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
>
> …
>
> the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A

65. Applying paragraph 398 of the immigration rules and s117C(6) of the 2002 Act, the public interest requires the appellant's deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2 of the 2002 Act.

66. In NA (Pakistan) -v- SSHD [2016] EWCA Civ 662, Lord Justice Jackson said:

> "28. … The new para. 398 uses the same language as section 117C(6). It refers to "very compelling circumstances, over and above those described in paragraphs 399 and

> 399A." Paragraphs 399 and 399A of the 2014 rules refer to the same subject matter as Exceptions 1 and 2 in section 117C , but they do so in greater detail.
>
> 29. In our view, the reasoning of the Court of Appeal in JZ (Zambia) applies to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that "there are very compelling circumstances, over and above those described in Exceptions 1 and 2". As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.

67. The deportation of foreign criminals is in the public interest as set out in s117C(1) of the 2002 Act. Furthermore, as set out in s117C(2), the more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal. I have already set out the appellant's criminal history and the sentencing remarks of His Honour Judge Pert QC following the appellant's conviction for Robbery, and which lead to an 8-year term of imprisonment at paragraph [9] of this decision. As His Honour Judge Pert QC noted, the appellant and an accomplice went into someone's home, armed, at night, where the occupant was present, taking the contents of the safe and preventing the occupant leaving the apartment, at knifepoint. The appellant has been convicted of an offence involving the use of violence in a place where an individual is entitled to feel safe and secure. The sentence imposed reflects the severity of the offence.

68. I have again considered the evidence set out in the witness statements of the appellant, his mother and his siblings. He claims, and I accept, that he is very close to his mother and siblings. The appellant attended Babington Community College and studied engineering and electronics. After completing college, he has gained some work experience including, as a packer, for Walkers crisps. The appellant moved out of the family home in Leicester because he felt that he needed his own space. It was during this period that the appellant was convicted of robbery. At the time, the appellant was in a relationship. The appellant and his then partner were planning a future together. That relationship broke down following the appellant's

conviction and whilst he was serving his sentence of imprisonment. In prison, the appellant completed a number of courses including courses around victim awareness, interview skills, and drug and alcohol misuse. He also completed vocational courses such as plumbing, painting and decorating, and an electricians course and an engineering course. He also completed an NVQ Level 1 in cooking. He describes his behaviour in prison as being 'impeccable' and he claims that was acknowledged by his classification as an enhanced prisoner with the benefits associated with that status. The appellant claims in his first witness statement that he is scared of the thought of having to return to Zimbabwe. He states he has no money or savings and would be unable to manage because there is nothing in Zimbabwe for him. There is no family home to return to, and he claims he would find it difficult to find work. He claims all of his qualifications and skills have been gained in the United Kingdom, and, are relevant to the United Kingdom job market. The appellant made his second witness statement following his release into the community and a successful application for bail. He states that he is now taking control of his own life and helps his mother with day-to-day tasks, together with assistance looking after his younger brother and providing guidance to him. The appellant is now in a new relationship. He claims he does not remember a lot about Zimbabwe because he was quite young when he came to the UK. He does not speak any Shona and although he speaks a little Ndebele, that is spoken with a British accent which would draw attention to him. He claims he has no communication with anyone in Zimbabwe and the family has no heritage or land in Zimbabwe, so he would be returning to destitution. He claims that his family in the UK would be unable to provide any financial support to him. He is concerned that he would be unable to maintain his relationship with his family because he would have to find somewhere to hide and the internet is not readily available. The cost of air travel is prohibitive. In his most recent statement, the appellant confirms that he remains heavily involved with his family and that he remains in a relationship with a British citizen.

69. In her statement, the appellant's mother states that the family are originally from Bulawayo, and although the MDC has a presence there, Zanu PF will suspect the appellant because of his accent and also because he has not lived in Zimbabwe for a

long period. She claims the appellant does not speak Ndebele and has spent too much time away from Zimbabwe to be able to pick it up properly. The appellant's siblings confirm the strong relationship they have with the appellant.

70. I have in the papers before the OASys assessment which confirms that the appellant has gained skills during his period in custody and that he displayed a good attitude during his imprisonment. I have a letter from his Offender Manager, Rod Mitchell dated 22nd May 2017, that confirms the appellant was released on licence on 25th October 2016 and his licence and sentence expiry date is 27th September 2020. Mr Mitchell confirms the appellant's compliance with his licence conditions has been faultless and he has engaged well with supervision. He confirms the appellant presents a low risk of reoffending overall, but is deemed to present a medium risk of serious harm to the public, having regard to the nature of the index offence. There is evidence from the Probation Support Officer, J Green confirming the appellant has fully engaged with probation staff and has been motivated to address his offending behaviour. He has been subject to random drugs testing and these have all come back with a negative result, including his most recent appointment on 14th August 2018.

71. I have also considered the letter from Arvin Chilupula, of Mail Boxes Etc dated 20th February 2019 confirming the appellant has completed voluntary work at the store on a part-time basis. The appellant is said to be very hard-working, good with timekeeping and getting along with others. There is also before me an email from Ben Tebbutt dated 20th February 2019, attesting to the character of the appellant and the assistance provided by him.

72. As to Exception 1 set out in s117C(4) of the 2002 Act, I find the appellant has been lawfully resident in the UK for most of his life. The appellant was born on 24th April 1989 and arrived in the United Kingdom lawfully in February 2004, aged 14. He is now 31 years old.

73. I am also prepared to accept that the appellant is socially and culturally integrated in the United Kingdom. The question is whether having regard to his upbringing, education, employment history, history of criminal offending and imprisonment,

relationships with family and friends, lifestyle and any other relevant factors, the appellant was at the time of the hearing before me socially and culturally integrated in the UK. I have borne in mind the offending history and the fact that the appellant received a lengthy term of imprisonment. However, he arrived in the UK as a child, has received education here, and has been employed. He has undoubtedly established a good relationship with his family and friends. He has extensive family ties to the United Kingdom including the ties that he has with his mother and siblings. There is evidence before me of the activities the appellant has undertaken in the community and the commission of the offences cannot by themselves extinguish the fact that the appellant has been involved in society and thereby integrated into society in the UK during the time that he has been here.

74. I turned to consider whether there would be very significant obstacles to the appellant's integration into Zimbabwe. In doing so, I remind myself that the assessment of 'integration' calls for a broad evaluative judgement. In SSHD -v- Kamara [2016] EWCA Civ 813, Sales LJ said, at [14]

> "In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

75. The appellant was born in Zimbabwe and lived there until February 2004. He received some education in Zimbabwe, and lived in Zimbabwe with his father following his mother's departure in 2002. The appellant's immediate family are now all in the UK. I find that it is reasonably likely that the appellant will be familiar with Zimbabwean culture and traditions. He confirms in his witness statement that he speaks a little Ndebele. I find he would undoubtedly acquire greater fluency in Zimbabwe. I accept his claim that all his qualifications and skills have been gained in

the United Kingdom, but they are in my judgement qualifications and skills that will assist the appellant to secure work and employment in Zimbabwe.

76. I have carefully considered the matters set out in the expert report of Dr Cameron regarding the economic circumstances in Zimbabwe and although there will inevitably be a good degree of disruption for the appellant to begin with, I find the appellant would be able, within a reasonable period, to find his feet and exist and have a meaningful life within Zimbabwe. The appellant is young and has no health conditions that will prevent him from engaging fully in life in Zimbabwe. Even though he does not have friends or immediate family in Zimbabwe, that does not mean that he would encounter very significant obstacles. There will inevitably be a period of adjustment, but in my judgement he could adjust to life there within a reasonable timescale. The appellant is of working age and he is in good health. I find he would be able to secure employment using the skills and qualifications he has now attained, within a reasonable timeframe. He has experience of working in the UK and has acquired transferable skills. He has the support of his mother and siblings who are clearly very fond of him, and I find, would provide some short-term support to the appellant. The appellant's education and knowledge of English will also help him get work although I do not for a moment suggest that it will be an easy task. Zimbabwe remains a difficult country emerging from the financial disaster associated with the Mugabe years. Life there will not be easy but I do not accept he could not cope. Having considered the evidence as a whole, I find there are no very significant obstacles to the appellant's integration in Zimbabwe.

77. As to Exception 2 set out in s117C(5) of the 2002 Act, the appellant does not have a subsisting parental relationship with a qualifying child and there is very little information before me regarding his current relationship. In his statement signed on 18th February 2019 the appellant states that he has been in a relationship with a British citizen, whose parents are not from Zimbabwe and who does not have any ties to to Zimbabwe. Whilst I accept the appellants girlfriend will be upset if the appellant has to leave the United Kingdom, I do not accept on the limited evidence

before me that the effect of the appellant's deportation on his partner, even if she is a "qualifying partner", would be unduly harsh.

78. I have carefully considered all the matters relied upon by the appellant collectively in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation. For the avoidance of doubt, although not repeated here, I have taken into account the evidence before me and the findings that I have made and set out in this decision. I have borne in mind the immediate difficulties that would be experienced by the appellant who left Zimbabwe as a child and the short-term difficulties he may experience in terms of finding work and reintegrating in Zimbabwe. I also bear in mind that the appellant would be leaving his wider family behind.

79. I accept the appellant has a private life in the UK given the length of time that he spent here. I also bear in mind that he has a close relationship with his family.

80. Following the decision of the Supreme Court in Hesham Ali v SSHD [2016] UKSC 60 I also adopt a "balance sheet" approach and consider the various factors that weigh both for and against deportation. As I have already set out, the starting point must be the very great public weight which must be given to Parliament's intention that absent "very compelling circumstances" it is very much in the public interest to deport foreign criminals. The following factors weigh in favour of the appellant:

    a. The appellant arrived in the United Kingdom lawfully, as a child and he has lived in the United Kingdom since the age of 14. He has not returned to Zimbabwe save for a short visit in 2012 following the death of his father, which only lasted a number of days.

    b. The appellant's mother and siblings live in the United Kingdom. There will inevitably be disruption to those relationships and it will be difficult for the appellant to maintain those relationships in the way currently enjoyed because of the distances involved.

c. The appellant is remorseful, and engaged well during his sentence of imprisonment. There is extensive evidence in the appeal bundle before me regarding courses and rehabilitation work that the appellant has undertaken. The appellant has complied with his licence conditions and he has engaged well with supervision.

d. The appellant presents a low risk of reoffending overall, but is deemed to present a medium risk of serious harm to the public, having regard to the nature of the index offence.

e. The appellant speaks English, is fit and healthy and has achieved qualifications and work experience in the UK.

81. The following factors weigh against the appellant and in favour of deportation:

a. The appellant has been convicted of a serious offence involving violence and received a sentence of imprisonment of four years or more.

b. The more serious the offence committed, the greater is the public interest in deportation.

c. Although the appellant is socially and culturally integrated into the UK, the strength of this integration must be viewed in the context of his serious offending.

82. My analysis of whether the deportation of the appellant breaches his right to respect for private and family life under Article 8, taking into account the public interest question as expressed in section 117C of the 2002 Act, lead me to the conclusion that there are no very compelling circumstances over and above those described in Exceptions 1 and 2.

83. Having carefully considered the evidence before me I conclude the decision to deport the appellant strikes a fair balance between the appellant's rights and interests, and

those of his family, when weighed against the wider interests of society. In my judgement it is proportionate to the legitimate end sought to be achieved and I find the appellant's removal in pursuance of the deportation order would not be a disproportionate interference with his right to respect for his family and private life.

84. It follows that the appeal is dismissed on all grounds.

NOTICE OF DECISION

85. The appeal is dismissed.

V. Mandalia

Date 26th September 2020
Upper Tribunal Judge Mandalia