Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/54337/2021
(UI-2022-002181); IA/12957/2021

THE IMMIGRATION ACTS

Heard at Bradford
On 5 October 2022

Decision & Reasons Promulgated
On 22 November 2022

Before

UPPER TRIBUNAL JUDGE REEDS

Between

S
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jagadesham, instructed on behalf of the appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

Anonymity :
Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:
Anonymity is granted because the facts of the appeal involve 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. This direction applies both to the appellant and to the respondent.

Failure to comply with this direction could lead to contempt of court proceedings.

Introduction**:**

1. The appellant, a citizen of Zimbabwe, appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 6 April 2022.

2. Permission to appeal was granted by Upper Tribunal Judge Gill on 14 August 2022.

Background:

3. The history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle. The appellant arrived in the United Kingdom in June 2012 and claimed asylum on 19 February 2014. The claim was refused on 7 January 2015 and the appeal against this refusal is dismissed by Immigration Judge Miller in a decision promulgated on 27 May 2015. The appellant was appeal rights exhausted on 8 July 2015.

4. Further submissions were made on 28 July 2015 which were refused on 21 August 2015.

5. On 14 August 2020 the appellant made an application by way of further submissions on protection grounds. The further submissions were contained in letter dated 11 August 2020. The basis of the appellant's claim was that he would be at risk of persecution in the event of return to Zimbabwe as the result of his political opinion based on his mining activities in Zimbabwe and risk from Zanu-PF and also would be at risk as a result of his sur place activities in United Kingdom.

6. The respondent considered the claim and refused it in a decision of 19 August 2021. The respondent referred to the previous decision of IJ Miller who had found the appellant's account of his original asylum claim not be credible and in accordance with the decision in Devaseelan, that decision was the starting point.

7. The respondent did not accept that the appellant would be known to the authorities in Zimbabwe or that his family had remained there and suffered persecution at the hands of the authorities.

8. As regards risk on return, the respondent referred to the country guidance case of CM (EM country guidance: disclosure) Zimbabwe January 2013, and that the evidence did not show that in general, the return of the failed asylum seeker from the UK having no significant MDC profile would result in a person facing a real risk of having to demonstrate loyalty to Zanu-PF. It was further stated that the objective

evidence had shown that there was significantly less politically motivated violence in Zimbabwe than when the situation was considered by the AIT in RN (returnees) Zimbabwe.

9. Consideration was given to the evidence provided including the photographs and it was considered that there was no evidence that any of the demonstrations that attracted media coverage in the UK or Zimbabwe. Thus it was unlikely that a person would be at risk on return purely having taken part in demonstrations. Prominent activists were vocal in their criticism of the government may be at risk of serious harm or persecution.

10. It is not accepted that the appellant would be known to the authorities in Zimbabwe or has a political profile. Nor was it considered that the appellant's activities in the UK and his attendance at demonstrations would demonstrate that he was a prominent activist or that his activities would bring him to the adverse attention of the authorities in Zimbabwe.

11. It was stated that internal relocation would be available to the appellant.

12. In summary, it was stated that there were no substantial grounds for believing that the appellant would be at a real risk of persecution or serious harm within the scope of paragraph 339 of the Immigration Rules in the event of return to Zimbabwe.

13. Consideration was also given to the appellant's right to respect his private life under Paragraph 276ADE (1) of Appendix FM of the Immigration Rules, but for the reasons given he could not satisfy the requirements of the rules, nor was it accepted that there would be very significant obstacles preventing his integration into Zimbabwe nor whether any exceptional circumstances in the case that would warrant a grant of leave to remain in the United Kingdom outside the requirements of the rules.

14. The appellant appealed the decision to the FtTJ. In a decision promulgated on the 6 April 2022 he dismissed the appeal. In the decision, the FtTJ set out that there were 2 limbs to the appellant's appeal. Firstly, there was new evidence which had not been taken into account in the previous appeal which had been determined in May 2015 and secondly, that the appellant would be at risk in the event of return to Zimbabwe as a result of his sur place activities since his arrival in the United Kingdom.

15. Dealing with the first limb of the appellant's claim, at paragraphs 39 – 50 the FtTJ set out his findings and reasons for reaching the conclusion that whilst the appellant had relied upon new evidence it was insufficient to depart from the earlier decision made by IJ Miller. The appellant does not seek to challenge that aspect of the FtTJ's decision.

16. At paragraphs 51 – 66 the FtTJ set out his assessment of the 2nd limb of the appellant's appeal namely the question of whether or not he would be at risk in the event of a return to Zimbabwe as a result of his sur place activities whilst in United Kingdom. From the evidence before him the FtTJ summarised the organisations that the appellant was involved in the UK at paragraphs [52 – 57]. It was noted that the appellant was either an officer, member or supporter of a considerable number of organisations, both charitable and non-charitable and included human rights organisations. They were set out at paragraphs 52 and 53. The FtTJ also referred to the appellant as being the treasurer of a human rights organisation. At paragraph 57, the FtTJ considered the activities undertaken by the appellant and observed that many of the activities in relation to the groups of which he was either a member or an officer and provided letters of support were either charitable or community organisations or in general in their support for refugees and asylum seekers. He found the organisation was the only organisation which the appellant would appear to be a member of, and which was directly referable to Zimbabwe.

17. The FtTJ rejected the respondent's suggestion that no evidence had been advanced to show that the appellant had been contacted by the Zimbabwe authorities as a result of his activities (at [57]). At paragraph [58] the FtTJ considered whether or not the appellant's activities had brought him to the attention of the Zimbabwe authorities. In this respect, the FtTJ recorded the appellant's evidence that he believed that his membership of the organisation would be known by the Zimbabwe authorities, but the judge found that he had not put forward any evidence that this might be the case. The FtTJ did refer to the evidence given by a witness that the organisation had a significant Twitter platform in Zimbabwe and a Facebook page with 65,000 followers. Reference was also made to the activities undertaken by the organisation and listed at paragraph 58, and the judge found that the witness fairly stated that it was difficult to answer the question of whether or not the Zimbabwe authorities were aware of the activities of the organisation. However the judge did accept that such evidence would be almost impossible to obtain (see paragraph 58).

18. The FtTJ took into account an article in 2 newspapers which referenced the named walks which the appellant had participated in, but found that neither the witness or the appellant were able to give any identification of the circulation or readership of those newspapers to give an indication of the extent of the publication of the participation of the appellant and the events that he had undertaken on 3 occasions.

19. The FtTJ heard evidence from a witness from the organisation who had provided a lengthy document of 60 pages which the judge found consisted of general issues relating to Zimbabwe rather than specific issues relating to the appellant. However the FtTJ accepted the evidence of the appellant's role in the organisation and the activities that he stated he had undertaken.

20. Paragraph 61 the FtTJ set out his conclusion on the second issue. Whilst finding the appellant had been and continued to be active in many organisations some of which were related human rights issues, he found there was nothing to suggest that he would have come to the attention of the authorities as a result of his activities in the UK. Whilst he accepted that he had taken part in some activities on behalf of the organisation, he did not find that having taken all the evidence into account and considering the same, that the appellant would be of such profile that he would be of any interest to the Zimbabwe authorities.

21. At paragraphs [62 –66], the FtTJ considered the submission made that the appellant would be reasonably likely to come to the attention of the authorities on return as an involuntary return who would be screened at the airport. At [63] the FtTJ referred to the country guidance decisions relevant to this issue noting that in AA (risk for involuntary returnees) Zimbabwe CG [2006] UKIAT 61 held that a failed asylum seeker who would be returned involuntary to Zimbabwe would not face a real risk of persecution or serious ill-treatment solely as a result of being a failed asylum seeker. Reference was also made to HS (returning asylum seekers) Zimbabwe CG [2007] AIT it was provided that one further risk category beyond those identified in SM and others (MDC internal flight-risk categories) Zimbabwe CG [2005] UKAIT and identified if the appellant were identified by the authorities as being a human rights activist, based on HS he would be in a potential risk category, but this would depend upon the evidence whether the appellant would be identified as a critic or opponent of the regime (see paragraph [64[).

22. The FtTJ set out paragraph 16.3 and 16.3.2 of the CPIN -Zimbabwe, opposition to the government, September 2021 and at [66] concluded " that there was nothing in the CPIN or the background evidence as a whole to suggest the attitude of the Zimbabwe authorities towards a low level human rights activists such as I have found the appellant would be subject to persecution or ill-treatment which breaches his rights under article 3." He further found that "any investigation by the Zimbabwe authorities into the appellant's activities in the field of human rights would not show the appellant to be a prominent human rights activist or critic of the Zimbabwe authorities, and I do not find the requisite standard of proof that there would be a risk of persecution." The FtTJ referred to the country guidance decision of CM (EN country guidance: disclosure) Zimbabwe CG [2013] UKUT which found that the country guidance given in EM and others (returnees) Zimbabwe CG [2011] still applied. The FtTJ concluded that the appellant had not undertaken political activities in the UK such that they will become apparent to the authorities. The FtTJ found that the appellant would be considered a low level human rights activist and that if that was discovered on return, the appellant would not be at risk of persecution or serious harm. He therefore dismissed the appeal on protection grounds. As to article 8, the assessment was set out in paragraphs [70 – 74].

23. The appellant appealed on three grounds and permission to appeal was granted by Upper Tribunal Judge Gill on 14 August 2022.

24. Mr Jagadesham of Counsel appeared on behalf of the appellant and Mr Diwnycz, Senior Presenting Officer appeared on behalf of the respondent. Mr Jagadesham relied upon the grounds and also his written submissions.

25. The written grounds provided 3 bases of challenge. The first ground related to the conclusion reached by the FtTJ concerning risk on return and the appellant's likely profile as set out in the assessment made in the conclusion at paragraph 61. The 2nd ground challenges the FtTJ's assessment of the country background evidence and that the FtTJ only cited the respondent's CPIN at paragraph 65 – 66 rather than considering the evidence as a whole and the evidence contained in the appellant's bundle/skeleton argument related to the government's increase in its online surveillance capabilities and targeting human rights defenders for online activities. The 3rd ground relied upon submitted that the FtTJ misapplied the CG case law in reaching the conclusions. Whilst the FtTJ referred to the decision in HS and at paragraph 64 identified that the appellant would potentially fall into this risk category identified in HS, that he erred in law by reaching the conclusion that a low-level activist such as the appellant would not be at risk. This was contrary to the country guidance decisions as it did not distinguish between high or low activities or background where the organisation was critical of the Zimbabwean regime. Looking at the evidence, the organisation that the appellant was involved with was critical of the regime and that the likely perception of the authorities when seen in the context of his activities were sufficient to meet the profile of someone who would be at risk of harm on return.

26. Mr Jagadesham's skeleton argument and the oral submissions concentrated on the 3rd ground and the arguments advanced there to demonstrate that on the evidence provided, the FtTJ erred in law when applying the country guidance decisions. He submitted that ground 1 should be seen in the context of ground 3.

27. Mr Jagadesham submitted that the appellant's case was that the FtTJ erred in law by failing to recognise that investigation by the "well resourced, professional and sophisticated intelligence service" in Zimbabwe would reveal the Appellant's activities in the UK, such that he would be "of interest". These activities included his profile and activities being described online, via a simple google search (see AB; A15 and 9). In his skeleton argument he set out the evidence in detail that had been in the appellant's bundle which had been documented to show the nature of activities, that he was expressly named in those activities, the nature of the documents online which publicly highlighted the human rights abuses in Zimbabwe. Mr Jagadesham took the tribunal through the evidence in the bundle in detail and submitted that the FtTJ's description of the appellant as a "low level human rights

activist" and not being a "prominent human rights activist or critic" (at paragraph 66) failed to properly take into account the evidence or address that evidence and failed to engage with the country guidance decisions specifically by reference to the appellant's personal profile.

28. Mr Jagadesham also addressed the CG decisions in his skeleton argument and by reference to the documentation that related to the appellant and his activities both online and in person whilst in the United Kingdom.

29. Mr Diwnycz did not seek to rely on the Rule 24 response filed, and he conceded that the decision of the FtTJ involved the making of an error on a point of law based on grounds 1 and grounds 3 when read together and as summarised above.

30. Both advocates were therefore in agreement that the FtTJ materially erred in law in the decision reached for the reasons set out in grounds 1 and grounds 3 as set out and amplified in the skeleton argument and the submissions made by Mr Jagadesham. In particular that the FtTJ erred in law by mis-applying the country guidance decisions which concerned the risk on return and also when assessing risk on return in light of those decisions, the judge failed to take into account the nature of the activities, and what would likely be known about the appellant on return when assessing his profile and consequent risk.

31. Both parties also agree that the decision should be set aside. As to the remaking of the decision, at first Mr Diwnycz submitted that a further hearing should take place by way of a remittal. However Mr Jagadesham submitted that there was real no dispute about the factual evidence and that the issue was the risk of return in the light of the documentary evidence when applying the country guidance decisions. He did not seek to call oral evidence as there was sufficient evidence and that on a proper application of the country guidance decisions, the appellant's appeal would succeed.

32. In light of those submissions, it was not necessary to hear further oral evidence as there is sufficient evidence to remake the appeal. Time was given to the parties to consider the documentation and make submissions on the relevant issues.

33. After having considered the position, Mr Diwnycz submitted that the evidence reinforced his view as given when considering the error of law and that on the evidence available to the CIO even on an unsophisticated search it would turn up information concerning the appellant and therefore when applying the country guidance decisions the appellant would be at real risk of harm. He conceded that he did not seek to resist the submissions made by Mr Jagadesham and that the appeal should be allowed.

34. In the light of the agreement between the parties it is not necessary for me to set out the reasoning and references to the evidence in any great detail. The parties agree that the FtTJ erred in his application of the CG decisions when considering the issue of risk on return and in light of the activities undertaken by the appellant, the nature of those activities, and what will be like to be known about the appellant when assessing his profile and consequent risk.

35. There are a number of country guidance decisions relevant to the appeal and they deal with a number of evidential issues and the issue of risk on return. They are as follows:

HS (Returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094

SM and Others (MDC - internal flight- risk categories) CG [2005] UKIAT 00100,

RN (Returnees) Zimbabwe CG [2008] UKAIT 00083,

EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC),and

CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC).

36. The relevant issue in this appeal relates to the risk at the airport. This was the second limb relied upon by the appellant before the FtTJ and the assessment of this issue was at paragraphs [62]-[66]. At paragraph [63] the FtTJ referred to the country guidance decisions and that the decision in AA (risk for involuntary returnees) Zimbabwe CG [2006] UKIAT 61 held that a failed asylum seeker who is returned involuntarily to Zimbabwe does not face a real risk of persecution or serious treatment solely as a result of being a failed asylum seeker. There is no dispute concerning that issue.

37. However whilst the FtTJ referred to the decision in HS and that there was a further risk category beyond those identified in SM and others, and that the appellant could be in a potential risk category, at paragraph [66], the FtTJ erred in applying the country guidance to the activities of the appellant. At paragraph [66] the FtTJ found that the more significant political activity the more likely that it will become apparent. He found that the political activism in the United Kingdom would not become apparent to the Zimbabwean authorities. As he had found the appellant to be a low level human rights activist, if that were discovered on return, the background evidence did not suggest that the consequences of such a finding would place him at risk.

38. It is necessary to follow the jurisprudence on the issue of risk on return at the airport before considering the evidence relating to this particular appellant.

39. In HS (Returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 the Tribunal the headnote at paragraphs 2 and 3 states as follows:

> "2. The findings in respect of risk categories in SM and Others (MDC – Internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100, as adopted, affirmed and supplemented in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 are adopted and reaffirmed. The Tribunal identifies one further risk category, being those seen to be active in association with human rights or civil society organisations where evidence suggests that the particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwean regime.
>
> 3. The process of screening returning passengers is an intelligence led process and the CIO will generally have identified from the passenger manifest in advance, based upon such intelligence, those passengers in whom there is any possible interest."

40. The evidence before the Tribunal in HS was that that there is a two stage process at the airport and that anyone identified during the initial questioning that takes place at the airport as being of interest will be taken for interrogation. At that second stage there is a real risk of serious harm, but not before (at paragraph 260).

41. When looking at those who will be of interest at the first stage, the Tribunal stated as follows:

> "264 The CIO has taken over responsibility for the operation of immigration control at Harare airport and immigration officers are being replaced by CIO officers. We accept also that one of the purposes of the CIO in monitoring arrivals at the airport is to identify those who are thought to be, for whatever reason, enemies of the regime. The aim is to detect those of interest because of an adverse military or criminal profile. The main focus of the operation to identify those who may be of adverse interest remains those who are perceived to be politically active in support of the opposition. But anyone perceived to be a threat to or a critic of the regime will attract interest also.
>
> 265 …
>
> 266 Large numbers of passengers pass through the airport. The CIO continues to recognise that it cannot question everyone; and so there is a screening process to identify those who might merit closer examination. We see no reason to suppose that the heightened role of the CIO would change this. There are now additional demands upon the CIO as it is responsible for monitoring all passengers passing through the airport, both on arrival and departure**.** We have set out the evidence that indicates in whom the CIO has an interest. This will be those in respect of whom there is any reason to suspect an adverse political, criminal or military profile of the type identified in AA(2). In addition, those perceived to be associated with what have come to be identified as civil society organisations may attract adverse interest as critics of the regime".

42. In *RN (Returnees) Zimbabwe* CG [2008] UKAIT 00083 at [205] the Tribunal noted the following *HS* as to the role of the CIO at the airport:

> "The Tribunal found in HS that the well resourced, professional and sophisticated intelligence service that is the CIO would distinguish, when dealing with those returning as deportees from the United Kingdom, between those deportees in whom there was some reason to have interest and those who were of no adverse interest simply on that account…"

43. The Tribunal in *RN* saw "no reason" to depart from the findings of the Tribunal in *HS;* [240] & [264]:

> "240. Drawing all this together we see no reason to depart from the conclusions reached in HS about risk on return while passing through the airport. The CIO would have adverse interest only in those deportees about whom something was known as to bring them within the risk categories identified in HS.

And at:

> 262. It is the CIO, and not the undisciplined militias, that remain responsible for monitoring returns to Harare airport. In respect of those returning to the airport there is no evidence that the state authorities have abandoned any attempt to distinguish between those actively involved in support of the MDC or otherwise of adverse interest and those who simply have not demonstrated positive support for or loyalty to Zanu-PF. There is no reason to depart from the assessment made in HS of those who would be identified at the airport of being of sufficient interest to merit further interrogation and so to be at real risk of harm such as to infringe either Convention."

44. In *EM and Others (Returnees) Zimbabwe* CG [2011] UKUT 98 (IAC) :

> "266. The country guidance regarding risk at the airport accordingly continues to be as set out in HS (Returning asylum seekers) Zimbabwe [2007] UKAIT 00094, read with the findings on that issue in SM and Others (MDC – internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100 and AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 (paragraphs 36 to 48 above)."

45. In CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59, the Tribunal observed that there was no basis for it to depart from the position adopted since HS (at headnote at [4d]):

> "(d) The fresh evidence regarding the position at the point of return does not indicate any increase in risk since the Country Guidance was given in HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094. On the contrary, the available evidence as to the treatment of those who have been returned to Harare Airport since 2007 and the absence of any reliable evidence of risk there means that there is no justification for extending the scope of who might be regarded by the CIO as an MDC activist"

46. Drawing those decisions together, and in the light of the appellant's sur place activities in the UK and online, the question was whether it is reasonably likely that the appellant will be identified as a critic of the regime. In answering that question it was necessary to consider

whether the activities undertaken would reasonably likely place him into such a category. Further, whether the appellant was a person in whom the CIO would find to be of "sufficient interest" (using the terminology in HS) to move on to the 2nd stage of questioning and interrogation which the country guidance decisions accept would lead to a real risk of ill-treatment.

47. The CPIN; opposition to government dated September 2021 does not seek to provide evidence to depart from the CG decisions. It refers to the ruling party being intolerant of organisations or persons who speak out against the government such as members of opposition political parties including the MDC and other groups including civil society activists, journalists, health professionals who have been arrested and assaulted. The majority of the violations are carried out by state agents (police and army) or state proxies; it records that the level of human rights violations across Zimbabwe have remained relatively constant throughout 2019, 2020 and 2021 (2.4.5). At paragraph 16, reference is made to treatment of other groups opposing the state. Whilst the constitution provides for freedom of expression several laws curtail that freedom (16.2.1). Reference is made to the blocking of social media and that the regime had not renounced the use of cyber censorship. The reference to social media as "a threat to national security" (16.2.9). Civil society activists are referred to at 16.3 and that whilst there are CSO's operating in Zimbabwe the security authorities reportedly remain suspicious of the motivation of CSO's and their activities as a threat to national stability. NGO leaders and members face detention, abduction continued scrutiny in 2020 (15.3.2) reference is made to an opposition member being arrested following accusations of inciting violence in a protest demanding the government provide more support for poor Zimbabweans (in April 2021).

48. Whilst the FtTJ referred to the risk category identified in HS, the tribunal at paragraph 264 identified that the CIO will seek to identify anyone "perceived to be a threat to or critic of the regime will attract interest also". The FtTJ did not address whether the authorities would be reasonably likely to view the appellant and his activities undertaken as being involved as a "critic of the regime". The FtTJ appeared to accept the role played by the appellant in a number of organisations, both charitable and non-charitable and which included human rights organisations (at [52]). It was pointed out by Mr Jagadesham that the factual evidence was that he was a founder of one of the organisations named.

49. The point made on behalf of the appellant was that a simple and "unsophisticated" Google search would bring up information relevant to the appellant's activities. The FtTJ referred to this at paragraph [62] noting that the search showed the appellant been described as a "human rights activist". The Google search is set out at p15AB and when read with the page for the website at A17-18 reference is made to the appellant by name, his role in the organisation.

50. Other evidence identified by Mr Jagadesham that was before the FTT related to activities undertaken in the UK. Again it did not appear to be of any real dispute that the appellant had engaged in such activities and the FtTJ summarised them at paragraphs 55, 56 and 58. However he did not consider that they would result in a profile which would be of interest to authorities. As Mr Jagadesham submits, it is the nature of the activities and what they consist of that is relevant in the assessment of risk and profile. The evidence concerning the petition is in the bundle at A37 and was a matter of public debate. The appellant's name was on the link and was linked to views critical of the regime. The activities undertaken at A29 and in the context in which they were made publicly referred to views critical of the regime (A29). Other evidence identified at A 31 and A 32 which demonstrates the appellant was named in taking part was publicised.

51. Whilst reference is made to the newspaper report at paragraph 59 and the circulation, the online report showed 1055 views at the date shown. It would remain as an online resource and link to the appellant's name. The incident at the embassy was also set out in the evidence and was published on social media and picked up by news channels. There was a video of the talk about the event with hyperlinks which had 28,000 views. The appellant was present at the incident at the Zimbabwean embassy (see letter of witness at A4) and his picture was taken there and put on the social media page (see section B printout and link). The link the photograph describes the nature of the incident, and it is consistent with the witness evidence set out at A4. When viewed cumulatively it would be reasonably likely to be viewed as a hostile act and one that could only be seen as critical of the regime.

52. There was other evidence identified which was not referred to in the decision which related to a detailed list of activities set out at E20, including direct confrontation with members of the Zimbabwean government (P 21 and 66); social media platforms and the organisation with significant active Facebook followers.

53. The evidence identified on behalf of the appellant also related to the nature of activities undertaken on social media and of seeking to raise awareness of human rights abuses (see A 10 and the hyperlink providing links to the appellant's reflections on the issues). On any reading of those activities they related to criticisms made about the regime; detailing human rights abuses and general criticism made of events in Zimbabwe.

54. In summary, the material was required to be viewed cumulatively in addressing the issue of risk. Whilst the FtTJ found at paragraph 58 that there was nothing to suggest the appellant had come to the attention of the authorities, he did accept that such evidence would be impossible to obtain. However the question of risk requires consideration of not only what the authorities may know but what was reasonably likely to become known or ascertained on return via

questioning at the airport as identified in HS. The description of the appellant as a "low level human rights activist" did not, as accepted by the respondent, adequately take account of the evidence considered cumulatively and on the information available there was sufficient evidence to demonstrate on the face of it that the activities undertaken were likely to be viewed or perceived as critical of the regime. The FtTJ concluded that any investigation by the authorities would not show the appellant to be a "prominent human rights activist." However, the country guidance decisions do not identify those who would reasonably likely be at risk as "prominent" but anyone perceived to be a threat to or a critic of the regime. The reference to a "prominent" human rights activist appears to be taken from the summary of the decision letter (at paragraph 25 and the decision letter at paragraphs 26 and 27) and not from the CG decisions.

55. It is not the case that all those who undertake sur place activities, either for a named organisation or any other, would fall within the risk category identified and that a careful consideration of the evidence taken cumulatively, based on the particular individual circumstances of the appellant concerned is required.

56. Therefore drawing matters together and applying the country guidance decisions to the evidence, on the particular individual circumstances of this appellant there is a reasonable likelihood that at the point of return the appellant would be of interest to the authorities given his length of time outside of Zimbabwe. The description of the CIO at the airport is that they are "well resourced, professional and sophisticated intelligence service" and as Mr Diwnycz identified, evidence of an unsophisticated search made the appellant would demonstrate a profile that would be reasonably likely to show the appellant of sufficient interest to merit further questioning as such information would show his criticism of the regime and of the authorities and so be at risk of harm.

57. For those reasons, the decision of the FtTJ involved the making of an error on a point of law and is set aside. The decision is remade as follows; the appeal is allowed on asylum and Article 3 grounds.

Notice of Decision

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT shall be set aside. The decision is re- made as follows:

The appeal is allowed on asylum and Article 3 of the ECHR.

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 13 October 2022