



Upper Tribunal

**(Immigration and Asylum Chamber) Appeal Number: UI-2022-003661
PA/53812/2021
IA/10754/2021**

THE IMMIGRATION ACTS

**Heard at Birmingham IAC
On the 22 November 2022**

**Decision & Reasons Promulgated
On the 07 February 2023**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

Between

MN
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Rutherford instructed by Milestone Solicitors.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Anthony ('the Judge'), promulgated on 5 July 2022, in which the

Judge dismissed the appellant's appeal on protection and human rights grounds.

2. The appellant is a citizen of Zimbabwe born on 5 September 1979 whose immigration history is set out between [4 - 14] of the decision under challenge.
3. The Judge noted that the appellant had had two previous decisions refused with rights of appeal. Both appeals had been dismissed by the First-tier Tribunal against which there was no successful onward challenge.
4. The Judge in addition to the documentary evidence had the benefit of seeing and hearing the appellant give oral evidence.
5. The Judge's findings are set out from [23] of the decision under challenge. The Judge refers to the rejection of the appellant's claim to have some involvement with the MDC in Zimbabwe, and the finding that he had not come to the adverse attention of Zanu-PF in an earlier determination, which the Judge found were findings that formed the starting point in this appeal.
6. The focus of the current appeal was on the appellant's sur place activities in the UK.
7. The Judge noted the appellant's claim that he faced a real risk on return arising from his claim to have attended a demonstration at the Zimbabwean Embassy in the UK, in which protestors entered the Embassy, but concluded having analysed the evidence that the appellant did not attend a protest inside the Embassy at which some protestors entered the building and caused damage, and that the appellant was unlikely to be at risk because of any association with that protest [30].
8. The Judge also considered the evidence of the appellant's attendance at Zimbabwe African People's Union (ZAPU) meetings from [31] and accepted the appellant attended such meetings. The Judge noted the Secretary of State had previously conceded that the appellant is a ZAPU member, which was a conclusion for which the Judge found there was ample evidence. The Judge writes in the same paragraph, however, that it could not be seen how the authorities in Zimbabwe would be aware of the appellant's attendance at ZAPU meetings, how that created any risk for him, or why that would draw him to the adverse attention of the authorities.
9. The Judge notes an article the appellant is said to have authored dated 17 October 2021 appearing in an online publication, Bulawayo24, in which the appellant's name appears together with an email address. At [33] the Judge finds the article was written by the appellant and published in an online Zimbabwe newspaper and could still be accessed at the time of writing the decision. The Judge finds the article expresses a political view which was "plainly unflattering and contrary to the views of the Zimbabwean authorities".
10. At [41], having noted in the background evidence set out in the respondent's CPIN that some who express dissent in Zimbabwe have been arrested or assaulted and that this was not just confined to those who have significant MDC profile, the Judge noted that the appellant

had stated on return he will continue to express his view in relation to which the Judge writes *“whilst the appellant claims this is his aim, I find the Appellant’s activities to date do not bear out his stated aim. I find the appellant’s evidence of his overt activities are confined to one article published in October 2021 and one protest which I have found to be against the Zimbabwean authorities. I have already found his work with Zapu i.e. attending meetings is unlikely to bring him to the adverse attention of the Zimbabwean authorities.”*

11. The Judge does not accept that writing the article referred to above generated such a significant profile that would make the appellant of interest to the Zimbabwean authorities on arrival at Harare airport; which is a risk that was evaluated in the context of the current background material as set out in the CPIN which notes the Zimbabwean authorities are intolerant of organisations or persons who speak out against the government, including civil society activists, but the number of human rights violations had significantly reduced.

12. The Judge draws together the threads of her findings between [45 – 48] in relation to the protection claim where it is written:

45. I find the appellant has not demonstrated that he has any significant opposition profile that is likely to bring him to the adverse attention of the Zimbabwean government. Having considered all the particular factors in the appellant’s case, I have found these do not generate a profile which would make him of interest to the Zimbabwean authorities on arrival at Harare Airport. The law is clear that returnees to Harare will not face significant problems there unless they have a significant MDC profile. I find the appellant has not demonstrated to the low standard of proof that he has such a profile (or other similar but significant profile) and that he would be at real risk of persecution on return to Zimbabwe because of a significant political profile.

46. I find there is no reason to believe that he will be stopped and interrogated on his journey from the airport to his home area or elsewhere. I find the appellant has presented no reliable background evidence that he is likely to return to a place with a malign presence that could properly be said to give rise to a real risk of him facing a RN-style loyalty challenge. There is no credible evidence that he will be forced through economic necessity to go to an area where he would risk facing a RN-style loyalty challenge. If returned, I find there is the prospect of financial help from the UK government’s returns programme. I take into account the number of rights violations in the most recent full year for which data is available (2020) is at its lowest.

47. The appellant also refers to the travel document process or interview he had with the Embassy officials. It is for the appellant to show why the documentation process would place him at risk. I find the process with the Embassy staff is simply routine and for the purposes of re-documenting the appellant. I find there is nothing to suggest that the Embassy official knew anything about the appellant. I find no real risk arising from this process.

48. I find the background material which I have highlighted above does not take the appellant’s case any further. This is because the appellant does not have a profile which is likely to bring him to the adverse

attention of the Zimbabwean authorities in the first place. As I do not accept the appellant is of interest to the authorities, I do not find that he would return other than as a failed asylum seeker. Of itself, that would not put him in any risk category and I conclude that he would not face a risk of persecution or serious harm in Zimbabwe. The appellant is not a refugee.

- 13.** The appellant sought permission to appeal on four grounds, Ground 1 asserting failure to make findings as to why the appellant would not continue his political activities in Zimbabwe as required by HJ (Iran), Ground 2 (in the alternative) that the Judge erred in not providing the appellant with an opportunity to respond to the proposition his activities were not important to him, Ground 3 (also expressed in the alternative) that the Judge reached perverse findings/conclusions in light of her own findings concerning the appellant's political activities, Ground 4 that the Judge wrongly discounted the evidence of Dr Aguilar based on the finding the appellant had not been present at one protest inside the Zimbabwean Embassy.
- 14.** Permission to appeal was granted by another judge of the First-tier Tribunal by specific reference to Ground 4, which claimed the Judge did not deal adequately with the expert report of Dr Aguilar in relation to risk on return to Zimbabwe in light of the appellant's sur place activities in the UK, to which it is said only brief reference was made in the determination. Although the grant of permission only refers to one grounds the grant itself is not limited.

Error of law

- 15.** In her submissions Miss Rutherford argued that the Judge failed to consider what the appellant would do on return, and why, which it was submitted is relevant to the impact of any risk on return and problems that may be faced from the government of Zimbabwe. It was submitted this issue was considered in the expert report and that the Judge had not properly dealt with or provided adequate reasons for rejecting the same. It was argued the failure of the Judge to provide adequate reasons amounted to legal error.
- 16.** The report of Professor Aguilar, dated 8 September 2021, was clearly considered by the Judge. Professor Aguilar sets out the terms of reference, a procedural history relating to Zimbabwe and political developments in that country, before addressing risk to ZAPU members/supporters in Zimbabwe from [21]. Reference is made in that paragraph to the CPIN February 2019 relating to opposition to the government in Zimbabwe. Mr Bates submitted that was not the most recent publication, although the 2021 CPIN, Opposition to Government, was published in September 2021 which may have been contemporaneous with or shortly after the date Professor Aguilar's report was being compiled.
- 17.** The report also makes reference to political repression and problems with the security forces since 2018.
- 18.** Professor Aguilar recognises the appellant's case is different from the earlier country guidance which assumed risk to those opposing the

regime within Zimbabwe and assesses that risk at [48] in the following terms:

48. My assessment of a level of risk on return would be of a very high risk. Previous country guidance suggested that the identity of a failed asylum seeker was not necessarily equated with risk of return. However, in this case the appellant is now known to the authorities because of an interview regarding documentation as well as CCTV material available in the public space. There is evidence outlined in my report that the current Zimbabwean government has detained Zimbabwean citizens who were returning to country after activities abroad, evidence that the Mugabe regime concealed from public knowledge. It is my professional opinion that it is most likely that the appellant will be at risk of arrest and detention on return because he had some involvement with the MDC previously, as well as ZAPU, and because the Zimbabwean High Commission would have requested permission to issue documents to Harare. However, the main thrust of my argument is that the current government has not changed attitude towards dissenters as intimated in the 2019 country guidance but has ordered the arrest and charge of dissidents returning from abroad under accusations of 'subverting a constitutional government'.
19. In relation to the appellant's claim to have been involved into the intrusion into the Zimbabwean Embassy, Professor Aguilar writes at [52] *"There is a high risk to the appellant's integrity and life because of his intrusion into the Zimbabwean Embassy, a fact that has been corroborated and made public through CCTV and the internet. Is it a coincidence that he was interviewed by Zimbabwean officials? I would not think so, as he was probably targeted for repatriation to Zimbabwe knowing that he has not shown allegiance to the government of ZANU-PF"*.
20. The reference at [48] to CCTV material appears to refer to that mentioned at [52] of the report.
21. The Judge's findings in relation to this aspect of the claim are set out at [30] in the following terms:
 30. Although the appellant was invited to provide more photographs from the Embassy protest to demonstrate he attended the Embassy, the appellant has failed to do so. The only photograph provided by the appellant is one which the appellant states was taken from an online newspaper from Bulawayo. The appellant believes this must have been taken from the CCTV cameras at the Zimbabwean Embassy. The appellant states that his friend told the appellant that he had seen the image on the internet and then the appellant states that he located it himself online on the news website Bulawayo24. I find the appellant has not provided any other evidence that he attended the protest which he says took place inside the Zimbabwean Embassy. I do not accept the photograph provided depicts the appellant inside the Embassy. I find the person wearing blue jeans cannot be identified from the photographs. I find there is nothing to suggest the person in the photograph is the appellant. In light of the lack of evidence regarding this protest, I conclude that the appellant did not attend the protest inside the Zimbabwean Embassy and that the appellant is unlikely to be at risk because of any association with this protest.

- 22.** There is no successful challenge to the Judge's findings on this point and there will therefore not be any CCTV camera, or data recording of the same, at the Zimbabwean Embassy, containing images of the appellant sufficient to create any alleged risk.
- 23.** The Judge specifically considers risk as a result the publication of the article at [33] but the conclusion no risk arises from the same has not been shown to be a finding outside the range of those reasonably available to the Judge on the evidence when the content of that article is considered and proper attention paid to the country guidance and other relevant country information.
- 24.** The Judge considered the country guidance case of CM (Zimbabwe) [2013] UKUT 00059 and the more up to date CPIN of September 2021 to which specific reference is made at [35 - 38].
- 25.** The Judge specifically considers the weight to be given to Professor Aguilar's report in light of the country guidance and up to date CPIN before concluding at [39] that it was not found the report added any more value to the background material, particularly in light of the rejection of the evidence concerning the appellant's claim to have attended the demonstration inside the Zimbabwean Embassy.
- 26.** Professor Aguilar refers to a risk arising from the fact the appellant was known to the authorities in Zimbabwe as a result of his attending an interview at the Embassy for the purposes of obtaining an Emergency Travel Document (ETD). The Judge was aware of this issue and finds at [47] *"The appellant also refers to the travel document process or interview he had with the Embassy officials. It is for the appellant to show why the documentation process would place them at risk. I find the process with the Embassy staff is simply routine and for the purposes of re-documenting the appellant. I find there is nothing to suggest that the Embassy official knew anything about the appellant. It would appear that routine questions were asked to redocument the appellant and I find no real risk arises from this process"*.
- 27.** We were not referred to any country guidance which suggests that merely engaging with the authorities for the purposes of re-documentation created a real risk for an individual who otherwise had not come to the adverse attention of the authorities and who did not have an adverse risk profile of the type identified in country guidance cases. The suggestion by Professor Aguilar that doing so could create a real risk was not made out on the basis of the evidence before the Judge. Whilst we accept that the process may make it known to those in Harare that an individual has applied for redocumentation to enable return to Zimbabwe, the focus of all the country guidance cases is that it is a fact specific assessment that is required of the profile of the individual concerned to ascertain whether credible risk arises or not. The Judge's conclusion that on the facts no such risk arose has not been shown to be a finding outside the range of those available to the Judge on the evidence.
- 28.** Ground 3 suggesting the Judge reached a perverse conclusion in light of the findings regarding the appellant's political activities does not

establish legal error. The Judge clearly accepted the appellant was a member of ZAPU, as did the Secretary of State. There is no contradiction or perversity when one reads the decision as a whole in which the Judge, having accepted such membership, does not find that that creates a real risk.

- 29.** Ground 2 suggests the Judge erred by not providing the appellant with an opportunity to respond to the proposition that his activities were not important to him. As noted, the Judge accepted the appellant's membership of ZAPU. Proceedings before the First-tier Tribunal are adversarial, and the Judge was entitled to assume the parties would provide all evidence, submissions, and material upon which they were seeking to rely. There was no Presenting Officer in attendance before the Judge who was entitled to consider the material that had been provided and come to what were assessed to be suitable conclusions thereafter. There was no obligation upon the Judge to advise the parties of her thinking and likely findings in advance and invite a response or further submissions before setting them out in the determination. The Judge had the option of recalling the parties if a matter arose that required further consideration or submissions but that is a discretionary power, and it is not made out that such was appropriate on the facts of this appeal. It is not made out before us that the Judge has made a specific finding that the appellant's membership of and activities with ZAPU were not genuine. As with MDC membership, many can be members, have genuine opposition views, but not face any risk from ZANU-PF or the security forces.
- 30.** In relation to Ground 1, it is accepted that the skeleton argument before the Judge on 17 June 2022 did raise the issue that the appellant would face a real risk because he would continue to express his political views on return to Zimbabwe. The HJ (Iran) principal means that an individual cannot be expected to deny something that forms a fundamental part of their personal identity, be it political view, sexuality, religion or other fundamental beliefs, if the reason that they are doing so is to avoid persecution.
- 31.** In the appeal in question the Judge concluded that the appellant's profile and activities do not create a real risk for him either at the point of return or within Zimbabwe after having left the airport. The Judge gives adequate reasons for the conclusion rejecting the appellant's claim and for finding that the appellant will face no risk and that it was safe for him to return to his home area, Bulawayo, and to be able to express his political view. At [41] the Judge writes:
41. The appellant states that on return, he will continue to express such views. He states that he wants to carry on encouraging others to participate and to be politically active. Whilst the appellant claims this is his aim, I find the appellant's activities to date do not bear out his stated aim. I find the appellant's evidence of his overt activities are confined to one article published in October 2021 and one protest which I have found to be against the Zimbabwean authorities. I have already found his work with Zapu i.e. attending meetings is unlikely to bring him to the adverse attention of the Zimbabwean authorities.

32. The Judge does not find that the appellant will not express or wish to express his views on return to Zimbabwe and would not do solely as a result of a fear of persecution. The Judge finds that on past history it is unlikely the appellant will do much on return to Zimbabwe but that he had expressed an intention to do so. The key finding of the Judge is that it had not been established that the appellant's profile is one that will create a real risk for him even if he did.
33. ZAPU is an opposition party in Zimbabwe, which like many opposition parties, appears plagued by division within its leadership and in relation to whom there was no evidence before the Judge that they present a coherent opposition to the ruling party in Zimbabwe, such that either membership of the same or support of that party at the level of the appellant will create a real risk within Zimbabwe if he expresses his views.
34. Having considered the challenge to the decision, we do not find it has been established the Judge has erred in law in a manner material to the decision to dismiss the appeal.

Decision

35. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

36. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....
Upper Tribunal Judge Hanson

Dated 25 November 2022