



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

Appeal Number: AA/02106/2014

THE IMMIGRATION ACTS

Heard at Field House

**On 23 January 2015
Prepared 23 January 2015**

**Determination
Promulgated
On 5 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**A M M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Solicitor, Fountain Solicitors
For the Respondent: Mr C Avery, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Zimbabwe, date of birth 22 October 1988, appealed against the Respondent's decision to make removal directions under Section 10 of the Immigration and Asylum Act 1999. The appeal

against that decision came before First-tier Tribunal Judge Archer (the judge) who, on 19 May, dismissed the appeal under the Refugee Convention and Articles 2 and 3 of the ECHR but allowed the appeal under Article 8 of the ECHR.

2. The Appellant appealed against the refusal with reference to Articles 2 and 3 of the ECHR and the Refugee Convention. In a decision promulgated on 19 September 2014 I found that the judge had, in considering the Refugee Convention claim and Article 3 claim, failed to address the claim of risk of the Appellant as part of a particular social group namely lone young woman who had resided outside Zimbabwe for a significant period of time.
3. In the same decision I incorrectly suggested that the appeal under Article 8 ECHR grounds had been dismissed: This was an error on my part and, as I have indicated, the effect of the Article 8 decision not being the subject of an appeal by the Secretary of State so that decision stands. I have read the Appellant's bundles with particular care on the protection (case law and background evidence AB consolidated pp363-521- 888) and health issues (AB consolidated pp 204-362).
4. The appeal was therefore relisted to remake the decision on the Refugee Convention and Article 3 of the ECHR grounds and the matter came for hearing on 23 January 2015 on those discrete issues.
5. The Secretary of State has previously concluded and published, in the country information and guidance on Zimbabwe, dated 14 October 2014, the view that women in Zimbabwe constitute a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention because they share a common characteristic that cannot be changed - their gender - and based on an assessment of the country information, they have a distinct identity in Zimbabwe which is perceived as being different by the surrounding society. (Paragraph 1.3.2) The COIS report continued at paragraph 1.3.3

“Although women in Zimbabwe form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether the particular person will face a real risk of persecution on account of their membership of such a group.”

6. In relation to the issue of effective protection, the COIS at paragraph 1.3.7 states

“Despite the existence of the legal framework for addressing violence against women, the poor understanding and implementation of legal provisions, scarcity of police resources, the unwillingness of the police to act on reports of rape and domestic violence, the seriousness lack of shelter for victims of domestic violence and the lack of legal aid, together with the government's very limited efforts to tackle trafficking and harmful traditional practices, suggest that many women fearing gender based persecution will not be able to obtain effective state protection.”

7. In respect of internal relocation as a consideration, the COIS at paragraph 1.3.9 states:

“A person may be able to escape persecution by potentially relocating elsewhere in Zimbabwe where the risk is not present – for example from a rural to an urban area. Decision makers must however note that women, especially single women with no support network, are likely to be vulnerable and may be subjected to destitution.

The relevance and reasonableness of internal relocation must be assessed on a case by case basis taking full account of the individual circumstances of the particular claimant, including their age, gender, health, ethnicity, religion, financial circumstances and support

networks, as well as the security, human rights and socio economic conditions in the proposed area of relocation, including their ability to sustain themselves.”

8. In Mr Howard’s supplementary skeleton argument he identified the risks that are faced by a lone woman and he agreed with my references to the Appellant's bundle in terms of articles relating to violence against women and domestic protection.
9. I do not need to set those out because they are at one with the Country of Origin Information Report (July 2012 which with the relevant Operational Guidance Note (2013), Home Office guidance (14 October 2014) and US DoS 2013 Country Report is the most up-to-date material.
10. The additional skeleton argument identified various persons who had made statements which are contained within the Appellant's consolidated bundle and they essentially speak well of the Appellant but do not particularly bear on the issue of risk associated with being part of a PSG.
11. The Appellant was referred to by Mr Howard as a lone young woman. I express no settled view on the description ‘young’ but I note that the Appellant is currently some 26 years of age.
12. Matters relied upon as sustaining the vulnerability of the Appellant are: first, she was only 12(possibly 13) years of age when she came to the United Kingdom; Secondly, she has lived about half her life in the United Kingdom: Thirdly, she was school educated here and has been to university here; Fourthly, she has a lack of knowledge of matters from Zimbabwe; Fifthly, she does not have anywhere to stay or with anyone on a return to Zimbabwe; Sixthly, and that her health is not good, suffering from various medical conditions (particularly ovarian cysts, polycystic ovaries and some Kidney problems). I note the Appellant does not rely

upon any intended political activities she wishes to pursue or would but for the regime in Zimbabwe.

13. It is not, I note, stated that she could not obtain medical treatment in Zimbabwe and the argument is not being advanced with reference to her health circumstances being such as to engage Article 3 (or 8) of the ECHR. I have no up to date medical report or prognosis of the impact of return on her health
14. The Appellant has experience of life in Harare. Her home area was at one time apparently Norton, a settlement some twenty miles from Harare and there are other family connections with Belvedere which is a suburb of Harare.
15. This is not a case of the Appellant having to leave Harare and to move to some rural location.
16. Similarly, as a fact the Appellant is educated, intelligent, has work abilities currently in the hotel/restaurant trade in management and has in the course of her life had a significant period of time in the United Kingdom.
17. I have carefully considered the arguments as to who poses a real risk to the Appellant on her return. It is not said that the Appellant could not communicate with people in Zimbabwe on a return. Rather it is said that the Appellant has no one to return to.
18. The Appellant says that she has her paternal grandmother and father but her paternal grandmother is terminally ill with cancer. The Appellant therefore says that she cannot rely upon them as they need financial help from her parents. As to her maternal grandparents, she says they are terminally ill being HIV positive. There are no medical reports to support the claims of ill-health.

19. To what extent they are terminal is difficult to tell on the evidence for. The Appellant said that they need financial help to be able to afford the medication and all such finance comes from the family in the United Kingdom because her maternal grandparents are elderly and no longer able to work.
20. It is unclear why with the help of her parents family and her grandparents the Appellant could not at least at the outset of the return to Zimbabwe be able to find a foothold and the evidence does not really address the likelihood of destitution for the Appellant.
21. At its highest an additional factor which might pose some risk to her is that her parents may have attended political meetings but the lack of particulars about those matters really leaves me in doubt about the likelihood of their activities giving rise to real risk of ill-treatment of the Appellant on return. However the determination of a First-tier Tribunal Judge Astle, dated 3rd February 2012 makes trenchant criticism of the credibility of the Appellant's mother, H T, and father's, M M, claims of political activism in Zimbabwe and the UK. Their claims were rejected, found to be largely fabricated and the claimed sur place activities would not be of any interest to the Zimbabwean authorities and were found to be for the purposes of bolstering a weak claim. The same judge also noted that in 2011 Immigration judge Bowen, in another appeal had rejected their credibility and claim for protection as fabricated and found they had come to the UK for economic betterment. I do not know why they were able to obtain DLR in December 2012 until December 2014 or their current status in the UK. In these circumstances I have no reliable evidence to show their activities in Zimbabwe or in the UK pose any risk to the Appellant on return.
22. Accordingly, on the evidence before me I do not find the Appellant is in a position where she knows nothing of the history of her country or the language or cultural ties. I do not accept on the evidence that the

Appellant has grown up in a western European context without knowledge of her home, her relatives, their lives and her family being wider than simply her parents and other relatives in the United Kingdom. I have considered the case of CM(EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 because the Appellant has no political profile, she is not returning to a rural area but to Harare or Norton or Belvedere, , there is no evidence that she would need to be in a high density area or that these areas are of such other than her say so, she has no well founded fear of persecution based on past events, she is not in an occupation with enhanced risk factors nor would she be returning to a social-economic milieu in which problems with ZANU-PF are likely to arise

23. In the circumstances, therefore, I find that the evidence does not show to that low standard of proof identified in Ravichandran [1996] ImmAR 97, Sivakumaran [1998] ImmAR 147 and applied in Karanakaran [2000] EWCA Civ 11 that the Appellant faces the real risk of being persecuted because of her PSG or actual or imputed political activities or opinions.
24. There is nothing identifiable about this Appellant that gives rise to the real risk of her attracting adverse attention or giving rise to the real risk of destitution, poverty and ill-treatment associated with her being exploited as a single woman in her home area or Harare She has work skills which are of general application and is evidently intelligent .
25. The case has been presented as if there are simply no realistic connections left with Zimbabwe but I do not find that that is a fair representation of the position. It seems to me highly unlikely that her parents would simply not provide or through other family members the necessary support for the Appellant on return.
26. On the evidence, I do not find the Appellant has discharged the burden of proof to that low standards that she faces the real risk of torture or treatment contrary to the Refugee Convention from state agents or non

state agents, nor do I find there is the real risk of Article 3 ill-treatment. Similarly I do not find internal relocation would be unreasonable or unduly harsh. I accept there may not be sufficient protection from domestic violence but I do not accept there is not sufficient protection from general criminality.

27. The appeal on Refugee Convention and Article 3 ECHR grounds is dismissed.

28. In the circumstances of the case the anonymity order which was made should be continued.

Direction regarding anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

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 their 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.

Deputy Upper Tribunal Judge Davey
2015

Dated 2 March