



IAC-AH-SAR-V1

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

Appeal Numbers: AA/07589/2015
AA/07592/2015
AA/07596/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 21st March 2016**

**Decision &
Promulgated
On 14th April 2016**

Reasons

Before

UPPER TRIBUNAL DEPUTY JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS CR (FIRST RESPONDENT)
MR MM (SECOND RESPONDENT)
MASTER JMM (THIRD RESPONDENT)
(ANONYMITY DIRECTION MADE)**

Respondents

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondents: Mr B Mutebuka, Solicitor

DECISION AND REASONS

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

Unless and until a Tribunal or court directs otherwise, the Appellants CR,MM and JMM are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies

both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge Bircher) which in a decision promulgated on 14th October 2015 allowed the appeals of Ms CR, Mr MM and Master JMM against the Secretary of State's decision of 8th April 2015 refusing to grant Ms CR asylum and making a decision to remove all three Appellants by way of Section 10 directions to Zimbabwe. Mr MM is the husband of Ms CR and Master JMM is their son. They are in the UK as dependants of Ms CR and therefore their cases stand or fall with hers.
2. For the sake of clarity throughout this decision I shall refer to Ms CR as "the Appellant" and the Secretary of State as "the Respondent". This reflects their respective positions before the First-tier Tribunal.

Background

3. The Appellant, a citizen of Zimbabwe born [] 1984, entered the UK in 2008 in possession of a student visa. Following completion of a BTEC diploma she applied for an extension of her visa to enable her to complete a BA social work degree at Leeds Metropolitan University. Her visa was extended to October 2014 and in 2013 her husband joined her in the UK as her dependant. Their son then joined them in 2013. The Appellant's husband and son remain here as her dependants.
4. In October 2014, on expiry of her student visa and some six years after she arrived here, the Appellant claimed asylum.
5. The basis of her claim is that she worked as a polling clerk in the March and June 2008 elections. She was employed by the National Water Authority, a quasi governmental organisation and polling clerks were drawn from that organisation as well as others. Her claim is that she was targeted by ZANU-PF activists who told her that she must use "influence" to ensure illiterate/disabled/aged voters, voted for ZANU-PF.
6. She did not follow those instructions and in April 2008 following the March election, she was visited at home by ZANU-PF youth wing supporters who abducted her, placed her in a van and drove off to the bush area outside Harare. Here she was repeatedly raped, put back in the van and then dropped off at a traffic circle intersection, where she made her way home with the help of another woman.
7. She tried to report this matter to the police but they were not interested. She contacted her father in the UK and he agreed to sponsor her as an international student.
8. Before arriving in the UK however, the June elections took place. She was informed by her manager at work that she would have to complete her

duties, by acting as a polling clerk once more. She did not wish to do so but was informed that she had no choice but to comply.

9. By her own account however she did not experience any difficulties whilst working in the June 2008 elections.
10. She travelled to the UK in August 2008. Her claim now rests on saying that there is ongoing interest in her following her departure from Zimbabwe.
11. The Respondent refused her claim on three counts:
 - The delay and the timing in claiming raised a large question mark over her credibility.
 - This in turn raised doubts over the credibility of the Appellant's claim to be of continuing interest to the authorities, considering she had been in the United Kingdom six years before she claimed asylum.
 - It was not accepted that the Appellant's account of the rape and the subsequent failure of the police to investigate this could be substantiated.
12. The Appellant appealed the Respondent's refusal decision to the FtT. That Tribunal allowed her appeal on Refugee Convention grounds.
13. The Respondent sought and was granted permission to appeal the FtT's decision. The grant of permission was framed in the following terms:

"It is arguable that the judge failed to consider internal relocation as **CM** is referred to in paragraph 77 but the judge did not indicate why the Appellant would be at risk now in Matabeleland by virtue of having been a polling officer in 2008".

Thus the matter comes before me to determine whether the FtT's decision discloses an error of law such that the decision must be set aside and re-made.

Error of Law Hearing

14. I heard submissions from both parties representatives. Mr Diwnycz on behalf of the Respondent adopted the grounds seeking permission. He submitted that the grant of submission was quite correct in that it focused on what is a narrow point. That point shows that the judge has completely misdirected herself effectively by failing to recognise the latest country guidance case of **CM (EM country guidance: disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC)**. Instead the judge had relied upon the outdated case of **SM and Others** which was good law back in 2005, over ten years ago but did not now reflect the current situation in Zimbabwe.

15. Mr Diwnycz further submitted that the judge had sought to distinguish the current country guidance case of **CM** but had failed to do so because she had simply not given any reasons why she concluded as she did in [79] that the Appellant would be at risk some six years after the events which she claimed forced her to flee. He emphasised that nowhere in the current country guidance case of **CM**, does it say that polling officers are a special risk category. The judge concluded however, without reasons, at [82] that the Appellant somehow fell into a special risk category. This was apparently because of reliance on an outdated CG case. Since these errors are fundamental ones, they taint the whole of the fact-finding process of the FtT. In the circumstances the appropriate course must be to set aside the FtT's decision and remit the matter to that tribunal for a full and fresh rehearing.
16. Mr Mutebuka in response relied upon his Rule 24 reply. In addition to that response he sought to emphasise that each appeal must turn on its own individual unique facts. This is what had happened in these appeals. The judge had looked at internal relocation but the Appellant's case was distinguishable on its own facts as per **SM**. The judge decided the Appellant fell into an enhanced risk category on the particular facts found here. The judge's fact-finding concerning credibility was unimpeachable and therefore the decision should stand.

Error of law?

17. I find there is force in Mr Diwnycz's submissions that the decision of the First-tier Tribunal must be set aside for legal error. I say this for the following reasons. It is clear from a full reading of the decision that the FtT has misdirected itself by relying on case law guidance which is now over ten years old and which has been replaced by several other country guidance cases; most notably the recent one of **CM**.
18. If one looks at [77] and [78] of the decision, the judge seemingly takes on board **CM** by setting out that a returnee to Harare (as this Appellant would be) will in general face no significant difficulties. She also sets out as per **CM** that in general a returnee to Bulawayo will not suffer the adverse attention of ZANU-PF. Then somewhat inconsistently with that, the judge says at [79]:

“For the reasons above I am satisfied that because the first Appellant worked as a polling officer and did not comply with the instructions she received from ZANU-PF she will be perceived as having engaged in political activity likely to attract the adverse attention of ZANU-PF”.
19. She then sets out at [80], her seeming justification for departing from **CM** and relies on the case of **SM [2005]** to show that because of her role as a polling officer it is accepted that the Appellant falls into an enhanced risk category. Nowhere do I see any reasoned consideration of why the judge fails to follow the more recent country guidance case of **CM**. Nor is there

any reasoned consideration of why internal relocation is not a viable option for this Appellant.

20. I have considered whether remittal to the First-tier Tribunal, as requested by Mr Diwnycz, is the appropriate course. In the circumstances I am satisfied that this is the correct approach. The criticisms of the FtT's approach means that the case has not been fully and fairly considered by that Tribunal and any credibility findings are tainted by the incorrect approach to the relevant country guidance case.
21. In these circumstances remittal to the First-tier Tribunal for a full fresh hearing is the correct course. In these circumstances none of the findings made by the FtT shall stand.

Notice of Decision

The decision of the First-tier Tribunal is set aside for error of law. The appeal is remitted to the First-tier Tribunal (not Judge Bircher) for a full rehearing. No findings of fact are preserved but at this stage anonymity is preserved.

Signed

Date

Upper Tribunal Deputy Judge Roberts