**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: PA/03808/2017**

**THE IMMIGRATION ACTS**

| **Heard at: Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On : 2 May 2018** | **On : 11 May 2018** |

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**CM**
(ANONYMITY ORDER MADE)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Sellwood, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Zimbabwe born on 24 December 1998. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her asylum and human rights claim.

2. The appellant entered the United Kingdom on 3 August 2013. She claimed asylum on 3 August 2015 after being served illegal entry papers. On 14 December 2015 a decision was made that there were reasonable grounds to believe that she was a victim of trafficking and on 10 June 2016 the Competent Authority concluded that she was a victim of human trafficking, but that no leave would be granted on that basis. On 30 March 2017 the respondent concluded that the appellant was not in need of international protection and refused her asylum claim.

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3. The appellant's asylum claim was made on the basis that she feared persecution from her great uncle in Zimbabwe. She claimed that she lived with her grandmother as her mother was living in the UK, and when her grandmother died in 2011 she moved in with her uncle together with her sister, in Kwekwe. Her uncle refused to give her food and beat her. Her sister ran away after a month. Her uncle then began to sexually assault her. She told her paternal grandfather who said that he would report the matter to the police. She also told Brother A at her church. She told her uncle's wife who spoke to her uncle and he denied the accusations and told her he was leaving and would kill her when he returned. Brother A then took her from her uncle's house and arranged for her to come to the UK with members of the church.

4. The respondent, in refusing the appellant's claim, found that she was a member of a particular social group, namely women in Zimbabwe, and accepted her account of the abuse and threats from her uncle. It was accepted that she had a subjective fear on return to Kwekwe but it was not accepted that that fear was well-founded because there was a sufficiency of protection available to her from the authorities of Zimbabwe and she could also reasonably relocate to another part of Zimbabwe. The respondent therefore considered that the appellant was not at risk on return to Zimbabwe and that her removal there would not breach her human rights.

5. The appellant appealed against that decision. Her appeal was heard on 9 November 2017 by First-tier Tribunal Judge Easterman. At the appeal hearing, the judge heard from the appellant, as well as two other witnesses, the appellant's mother HA and the appellant's mother's former boyfriend GI. The judge noted the appellant's evidence that her father and mother both lived (separately) in the UK and that she lived with her mother and her step-father and half-brothers. All her siblings and half-siblings lived in the UK apart from her sister Y who was aged 20 at the time. The uncle with whom she lived in Zimbabwe was her grandmother's brother. The appellant's mother's evidence was that she came to the UK in March 2000 as a visitor and did not return to Zimbabwe. She claimed asylum but her claim was refused, although she currently had indefinite leave to remain. She was not in contact with her other daughter Y who was living in Kwekwe. She last returned to Zimbabwe in 2008 with her boyfriend when her mother died but did not visit her family. The appellant's siblings and half-siblings were British. GI's evidence included that he was no longer together with HA and that he was not aware that HA had travelled to Zimbabwe. The judge did not accept that he had been given a truthful account of the appellant's contacts in Zimbabwe and did not accept that there was no contact with her sister Y. He found that the appellant was no longer at risk from her uncle in Kwekwe and that she could return to live there or alternatively relocate to another part of Zimbabwe such as Harare. He concluded that the respondent's decision did not breach the appellant's human rights and he dismissed the appeal on all grounds.

6. The appellant then sought permission to appeal the judge's decision on five grounds: that the judge had failed to apply the country guidance in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59; that there was procedural unfairness on the part of the judge by making findings as to the risk

to the appellant from her uncle and membership of a particular social group which were contrary to the agreed issues in the refusal decision; that the judge failed to make any findings on sufficiency of protection; that the judge failed to take into account the appellant's specific circumstances when concluding that she would not be at risk on return as a lone female and failed to consider the wider risk of re-trafficking; and that the judge applied the wrong test in considering the appellant's private life under the immigration rules, failed to consider the best interests of the appellant's half-siblings, erred in finding no special bonds of dependency between the appellant and her mother and failed to take account of various compelling circumstances in assessing proportionality.

7. Permission was granted in the First-tier Tribunal on all grounds, but in particular on the second ground.

## Hearing and submissions

8. Mr Sellwood relied and expanded upon the grounds of appeal. With regard to the first ground he submitted that the appellant fell within the risk factors in CM, in particular with regard to internal relocation to a high density area, which the judge failed to consider. As to the second ground, the judge ignored the fact that the respondent, in the refusal letter, had accepted that the appellant was at risk in her home area and was a member of a particular social group. With regard to the third ground, the judge made no findings on sufficiency of protection and did not undertake any analysis of the evidence produced by the respondent and appellant in that regard. As for the fourth ground, the judge considered the risk to the appellant as a lone female but did not factor in applicable nuances such as the risk of re-trafficking from others aside from her uncle. With regard to the fifth ground, the judge made four misdirections in law in regard to Article 8, applying the wrong test in considering "very significant obstacles", making only a limited assessment of the best interests of the appellant's two half-siblings with whom she lived, failing to give proper consideration to the family ties between the appellant and her mother and failing to consider relevant compelling circumstances in the proportionality assessment.

9. Mr Wilding submitted that the judge had made no errors on any of these matters. From his series of findings the logical conclusion was that the appellant could live in another part of Zimbabwe. The judge had not gone behind any concessions made by the respondent, but in any event was entitled to find that the appellant was at no risk in her home area. Whilst the judge did not make findings on sufficiency of protection that was immaterial as he found that the appellant was not at risk on her home area and in any event could relocate. The judge's conclusion on the risk of re-trafficking was lawful as the appellant would be facing a completely different scenario on return as an 18 year old. The judge made no errors in his assessment of Article 8.

10. Mr Sellwood, in response, reiterated the points previously made.

## Consideration and discussion

11. Whereas the grounds seek to break down the judge's decision into distinct areas and challenge the findings in a piecemeal fashion, I am entirely in agreement with Mr Wilding's submission that the decision needs to be read as a whole as a combination of findings leading to the logical conclusion that the appellant could safely and reasonably return to live in another part of Zimbabwe.

12. I do not consider that the judge was excluded by any concession in the refusal decision to find that the appellant would be at risk in her home area. The refusal decision makes no such concession, accepting only that she had a subjective fear of persecution in Kwekwe. The judge gave very cogent reasons, at [91], [92], [100] to [102] and [108], for concluding that the appellant's uncle no longer posed a risk to her in her home area, given the different scenario existing on a return to Zimbabwe as opposed to that when she left. I find nothing unreasonable or unlawful about such a finding and it was one which was entirely open to the judge on the evidence before him. However, and in any event, it was the judge's finding that the appellant could relocate to another area of Zimbabwe and that her uncle would have no knowledge of her return, nor the means or inclination to seek her out. That was a conclusion properly open to the judge and on that basis any suggestion that the judge erred in law by going behind a concession in regard to risk in Kwekwe is simply immaterial.

13. Likewise, given the judge's view that the appellant could relocate to another part of Zimbabwe, the challenge at [5] and [6] of the grounds to the judge's decision on risk on return on the basis of a failure to consider the country guidance in CM, and at [12] to the failure to consider sufficiency of protection, is plainly immaterial. The judge clearly had CM in mind when making his decision, referring to the submissions made by Mr Sellwood in that regard and having regard to the risk factors therein at [104], but had no need to consider the position in [3(2)] of the headnote to CM when it was considered that the appellant would not be returning to a rural area, such as Kwekwe, but could safely relocate to an area such as Harare. It was Mr Sellwood's submission that the judge ought in any event to have considered the risk on relocation, as set out in CM, to a person such as the appellant who would not be able to demonstrate loyalty to Zanu-PF. However the relevant finding in CM appears to be that at [3(5)] and I fail to see how the risk factors in that paragraph could possibly indicate any risk to the appellant, given her profile, even if she would be living in a high density area as was Mr Sellwood's suggestion. That was plainly the judge's finding at [113]. Accordingly, given the judge's conclusion that the appellant could relocate to another part of Zimbabwe such as Harare, there was no need for him to make specific findings on sufficiency of protection in her home area.

14. It was Mr Sellwood's submission that the judge had not considered the appellant's full profile when concluding that she could return to Zimbabwe without risk and that a finding that lone females were not per se at risk on return and that she did not risk being re-trafficked by her uncle failed to take account of the wider picture that she was vulnerable as a past victim of trafficking and sexual abuse, that she had no support network on return and that she risked being re-trafficked by unknown persons. However, I do not

accept that the judge failed to take account of the appellant's own profile. It is plain that, having found that lone females were not at risk of persecution per se, the judge went on from [96] to consider the appellant's particular circumstances. He considered her claim to have no support network in Zimbabwe and no access to work, but did not believe that he had been provided with a truthful account of her circumstances including her relationships and family contacts in Zimbabwe, given in particular the highly inconsistent evidence of her mother and her mother's former partner, and concluded that she could at least obtain support from her sister. There was no proper basis for the judge to conclude that the appellant was at risk of being re-trafficked by unknown persons, and the suggestion in the grounds that she would be at such risk is pure speculation. In any event the judge gave full and proper reasons for concluding that the appellant would have access to a safe support system in Zimbabwe. It seems to me that, contrary to the assertion in the grounds, the judge gave full and cogent reasons for concluding that the appellant would be at no risk on return to Zimbabwe and that such a conclusion took account of all the risk factors raised by and on behalf of the appellant.

15. As for the assertion that the judge materially erred in law by going behind the respondent's concession that she was a member of a particular social group, I agree with Mr Wilding that whether or not she was a member of a particular social group was not material, given that the real issue was risk of harm. In any event it is plain from [101] that the judge made findings on the alternative basis that the appellant was a member of a particular social group and thus made no error of law by going behind any concessions.

16. Turning to the judge's findings on Article 8, again I find no merit in the grounds. Having found, for reasons fully and cogently given, that it would not be unduly harsh for the appellant to relocate to another part of Zimbabwe, the judge was fully entitled to conclude that there were no very significant obstacles to integration on the same basis. The judge was fully aware of the test in paragraph 276ADE(1)(vi), as mentioned at [114], and I am entirely in agreement with Mr Wilding that it is difficult to see how the judge could have found there to be very significant obstacles to integration when finding it not to be unduly harsh to return to Zimbabwe. The judge took account of the only further and relevant consideration, namely the respondent's delay in making her decision, and provided cogent reasons at [114] why this could in fact aid, rather than hinder, integration. The judge had full regard to the best interests of the appellant's half-siblings and gave consideration to the separation of the children from the appellant at [115]. His findings on the appellant's relationship with her mother, at [116], were entirely open to him on the evidence before him and took account of all relevant matters. I do not agree with the assertion in the grounds that the judge failed to take account of the appellant's past experiences in assessing proportionality. Although he did not specifically refer to the earlier trafficking and mistreatment in Zimbabwe at [118], those are matters to which he had previously given full consideration and would have been in his mind when assessing proportionality and there is no proper basis for concluding anything other than that the proportionality assessment took account of all relevant matters. On the evidence before him the judge was

perfectly entitled to conclude that the proportionality balance fell in the respondent's favour.

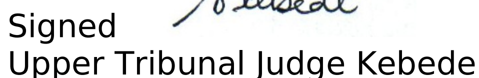
17.For all of these reasons I find that the judge was fully entitled to reach the conclusions that he did and to dismiss the appeal on the basis that he did. The judge's decision was based upon a full and careful assessment of all the evidence and the relevant background materials and country guidance and contained properly reasoned findings and conclusions. I find no errors of law in the judge's decision. I uphold the decision.

## DECISION

18.The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

**Anonymity**

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed 
Upper Tribunal Judge Kebede Dated: 4 May 2018