Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP 00073 2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 December 2017	**on 03 October 2018**

Before

THE HON LADY RAE
(sitting as a Judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

L--- T--- M---
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Ms A Radford, Counsel instructed by Turpin & Miller Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. We make this order because, although we are unimpressed by the arguments, the respondent claims that he cannot be returned safely to Zimbabwe and there is always a risk in cases of this kind that publicity will itself create a threat to a person's safety. Further, although

we recognise that there may be a legitimate public interest in the reasons for the respondent wanting to remain in the United Kingdom and our findings on how the law applies to them we see no strong legitimate public interest in knowing his name.

2. This is an appeal brought by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against a decision of the Secretary of State on 10 May 2016 to revoke his status as a refugee and a decision dated 23 May 2016 (served on 9 June 2016), to refuse him leave to remain on human rights grounds after deciding that he is subject to deportation by reason of section 32(5) of the UK Borders Act 2007.

3. The First-tier Tribunal said:

> "The appellant's appeal against revocation of his refugee status and against deportation is allowed
>
> The appeal is allowed on human rights grounds."

4. The claimant appealed the decisions on the grounds that the decisions were contrary to the United Kingdom's obligations under the European Convention on Human Rights and under the Refugee Convention and therefore that by reason of section 33(2) of the UK Borders Act 2007 he was not subject to "automatic deportation" under section 32 of that Act.

5. Lest there be any room for confusion we make it plain that this is *not* a case where it is said that the claimant is, by reason of his bad behaviour or otherwise, disentitled to protection under the Refugee Convention. The decision to cease his status was based on the Secretary of State's view that he no longer needed protection.

6. We have found the First-tier Tribunal Judge's reasoning hard to follow. The First-tier Tribunal allowed the appeal because it was satisfied that claimant still needed international protection. The main reasons are given in paragraphs 23, 24 and 25 of the First-tier Tribunal's decision and reasons. We set them out below:

> "23. The respondent has concluded that the appellant has refugee status as he was given leave to enter the UK as the dependant of his father who had been granted refugee status himself. The respondent has sought to establish that the cessation provisions of the Refugee Convention applied to the appellant's circumstances. The respondent wrote to UNHCR inviting their response to their intention. The respondents indicated that the country situation in Zimbabwe had improved significantly and that political violence had decreased as had the general violence. There were MDC strongholds and the appellant could safely return and live in one of the same.
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> 24. I find it noteworthy that the respondent did not address the UNHCR concerns in their response letter despite having requested them. These concerns are not addressed in the Reasons for Refusal Letter. I find it noteworthy that despite the appellant's father of his own volition returning to Zimbabwe while a refugee, that when he returned to the UK and this factor became known that he was handed his travel document back and no action was taken against him to seek to use the cessation provisions against him. It would appear perverse that the respondent would conclude that the appellant's father still faced a well-

> founded fear of persecution upon return to Zimbabwe but that the appellant would not.
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> 25. The appellant was not granted refugee status under the Rules and so reliance on the provisions in the Rules in respect of cessation would appear to be flawed. Reverting to the UNHCR issues, their views were that there has not been a fundamental and durable change in Zimbabwe. The appellant's father was accepted as having a significant political profile in Zimbabwe and so despite his actions in returning, he states that he suffered problems upon return and was advised to leave immediately by a family member, but the appellant was still to be at risk based on imputed political opinion. In those circumstances I find the respondent's attempt to enforce the cessation provisions against the appellant's refugee status to be wrong in the circumstances. I find that the appellant remains entitled to refugee status and allow the appellant's appeal in this respect. As the appellant remains a refugee he cannot be deported from the UK. I therefore allow the appellant's appeal on deportation grounds."

7. We note that "deportation grounds" are not one of the permitted, statutory, grounds of appeal and so are not a proper reason to allow an appeal.

8. Ms Radford drew our attention to the decision of the Court of Appeal in **SSHD v Mosira [2017] EWCA Civ 407**. This appears to have been in the judge's mind when he prepared paragraph 25 of the Decision and Reasons. The case turns on the cessation provisions of article 1C(5) of the Refugee Convention and is embodiment in rule 339A of HC 395. The cessation provisions operate (inter alia) when "the circumstances in connection with which they have been recognised as a refugee have ceased to exist". In this case the claimant was granted refugee status because he was his father's son and because he was a minor. He is still his father's son and his becoming an adult has not been relied upon as a reason to revoke his status.

9. Nevertheless we do not find the decision in Mosira helpful. It was an appeal dealing with the cessation of refugee status and was brought at a time when such a decision could be appealed because it was "not in accordance with the law". In Mosira it was found that the reasons for revoking refugee status were unlawful. We are not concerned with the lawfulness of the reasons for revoking refugee status. We have an appeal against a revocation decision and against a refusal to give leave on human rights grounds and these appeals can only raise statutory grounds.

10. The grounds of appeal to the First-tier Tribunal are set out in a section headed "Human Rights Decision". It is asserted there that :

> "To remove the appellant from the UK would be a breach of Article 8 ECHR".

11. Under the section "Revocation of Protection Status Decision" it says:

> "The appellant's father was an active high profile member of the opposition. The objective evidence relied on by the respondent does not engage with the particular circumstances that feed the appellant's father to flee at which point he cannot return today."

12. Neither of these are permissible grounds of appeal. The only relevant permissible ground of appeal dealing with revocation of refugee status since 20 October 2014 is under Section 84(1)(3)(a) of the Nationality, Immigration and Asylum Act 2002 and is: "that the decision to revoke the appellant's status

breaches the United Kingdom's obligations under the Refugee Convention". There is a similar ground of appeal dealing with people who might need humanitarian protection but that is not relevant here. There is no obligation under the Refugee Convention to reunite families. That is something that the United Kingdom choses to do.

13. Clearly a person who risked persecution in his country of nationality would, prima facie, be able to argue that his refugee status should not have been revoked because he still needed protection but he could not argue in an appeal that the decision to revoke his status was unlawful. If he wanted to take that point he could seek judicial review.

14. The plain fact is the claimant is not recognised as a refugee because the Secretary of State has decided to withdraw his status but even if he were a refugee that would not necessarily mean he could not be removed. The obligation under the Refugee Convention is to offer international protection to people who need international protection. His case before the First-tier Tribunal is that he is such a person and that is what the First-tier Tribunal decided but did not explain. The fact that he was recognised as a refugee solely because he was his father's son is not relevant to the appeal before us.

15. At all material times it has been the Secretary of State's case that the claimant would not risk persecution in Zimbabwe.

16. We are satisfied that when considering the appeal against revocation it is for the Secretary of State to prove that the claimant does not need protection. This follows a decision of the Asylum and Immigration Tribunal in in RD (Cessation – burden of proof – procedure) Algeria [2007] UKAIT 00066. The First-tier Tribunal Judge appears to have misdirected himself by saying that the burden of proof is on the claimant (see paragraph 22 of the decision.

17. Nevertheless the First-tier Tribunal clearly recognised that the Secretary of State took the view that the claimant no longer needed protection and clearly decided that the claimant did need protection. However we are satisfied that the reasons given for that conclusion are so inadequate that they are unlawful.

18. It follows that we set aside the decision of the First-tier Tribunal that the claimant remains a refugee and that the Secretary of State's appeal should be allowed on that basis.

19. Paragraph 23 of the judge's Decision and Reasons records the Secretary of State's reasons for deciding that the claimant does not need protection. The claimant was told in a letter dated 10 May 2016 that his refugee status had ceased because his fear of persecution was no longer well founded because of a fundamental and non-transitory change in Zimbabwe.

20. There are two reasons advanced at paragraph 24 for deciding that the Secretary of State had not shown that the claimant no longer needed protection.

21. One alleged reason, namely that the claimant's father has been allowed to keep his refugee status, is no reason at all. The fact that the claimant's father's status has not changed might prompt inquiry but it does no more than raise a question the answer to which might be illuminating. It is not evidence

that the claimant still needs protection. There are many reasons why the Secretary of State might not have interfered with the father's refugee status including inertia but even if he still needs protection it does not follow that his son, the claimant, is at risk throughout Zimbabwe. We do not know the reasons of the father's status continuing and neither did the First-tier Tribunal.

22. The high point of the judge's reasoning appears to be the acceptance of the claimant's father's evidence that the claimant would be at risk. That is not enough. The claimant's father returned to Zimbabwe for a brief period and returned to the United Kingdom. Although it is conceivable that he experienced something then that would illuminate the fate of his son this is not explained.

23. In fact, in his statement dated 2 January 2015 at P3 in the Respondent's bundle, the claimant's father, MM, stated that he had been elected as a councillor when he was an MDC activist, that he had been arrested and had been shown a "thick file with my name on it" and the interviewing officer referred to it to identify the name of his children. This is evidence that MM believed that the claimant would be at risk because of MM's profile. That might be his subjective view but it does not explain why the claimant would be at risk throughout Zimbabwe.

24. We do not agree that the opinion of UNHCR in this case is strong evidence that the appellant remains a refugee. Much of the letter is concerned with whether the claimant is disqualified from refugee protection but that is not an issue in this case. The letter refers to continuing examples of persecution of opponents of the government and/or ZANU-PF and cautioned the Secretary of State to be satisfied that the claimant could be excepted to turn to the authorities in Zimbabwe for protection.

25. The UNHCR letter did not say that the claimant should not be returned.

26. It is clear from that letter that the claimant told UNHCR that he had not been active politically when he was a child in Zimbabwe or in the United Kingdom. His professed fear was based on his being his father's son.

27. Ms Radford had produced a Rule 24 notice. With respect we find it difficult to distil from Ms Radford's Rule 24 notice the First-tier Tribunal's reasons for finding that the claimant was still a refugee. In her oral submissions she said it was for the Secretary of State to show there had been changes and the judge was entitled to be less than persuaded by that evidence. We agree that the burden is on the Secretary of State to show that the claimant does not face a real risk of persecution but the judge has not given proper reasons for reaching that conclusion in the Decision and Reasons.

28. Taken at its very highest the First-tier Tribunal Judge might have decided, permissibly, that the claimant's father's evidence show that the claimant cannot return to the home area. The decision does not begin to deal with the possibility of relocation to an MDC stronghold area which is what the Secretary of State contemplated.

29. Although Ms Radford did all that could be expected we do not accept that the decision that the claimant cannot relocate is right in law. The explanation is inadequate.

30. We therefore set aside the decision allowing the appeal against the revocation of refugee status.

31. There is very little consideration of the appeal on human rights grounds.

32. The applicant cannot satisfy the requirements of the Rules because he is the subject of a deportation order and therefore excluded by S-LTR.1.2.

33. As this is an appeal on human rights grounds against a person subject to deportation we are obliged to consider Part 5A of the Nationality, Immigration and Asylum Act 2002. This claimant is someone who has been sentenced to a period of imprisonment of one year or more but not four years or more. It follows that the public interest is in his deportation unless certain exceptions apply. Exception 2 applies where there are relationships with a qualifying partner or parent and neither is alleged here. It cannot apply. Exception 1 applies where the claimant has been lawfully resident in the United Kingdom for most of his life and is socially *and* culturally integrated into the United Kingdom *and* "there would be very significant obstacles" to that person's integration into the country to which he would be deported.

34. The claimant was born in October 1993. He will be 25 years old this year. He entered the United Kingdom in May 2007. He was then 13 years old He does not qualify for consideration under exception 1 because he has not lived over half his life in the United Kingdom.

35. The First-tier Tribunal Judge said "I consider that whilst the appellant cannot satisfy the requirements of section 117C Part 5A, that nonetheless his case exhibits very compelling circumstances such a(sic) deportation would be disproportionate under Article 8(2)." In other words that Judge found that the claimant's appeal on human rights grounds could not succeed under Part 5A of the Nationality Immigration and Asylum Act 2002 but he went on to allow the appeal. In the absence of a full explanation identifying lawful reasons this is clearly wrong and we set aside the First-tier Tribunal's decision to allow the appeal on "human rights grounds".

36. We see no need for a further hearing to remedy these errors.

37. In so far as the appeal concerns the decision to revoke the claimant's refugee status we accept that the claimant's father is a refugee, that he was an MDC councillor and that he was told by state interrogators that they knew the names of his family members. We accept to that following a brief (and possibly ill considered) brief visit to Zimbabwe he remained concerned for his family.

38. We direct ourselves that he burden is on the Secretary of State to show that the decision to revoke does not breach the United Kingdom's obligations under the Refugee Convention. This means that the Secretary of State must show that there is no real risk of persecution in a part of Zimbabwe where the claimant could reasonably be expected to live.

39. The claimant might be at risk for his perceived political opinions and he might be at risk as a member of a particular social group, namely member of his father's family. Given the claimant's father's concerns, which might be justified objectively, we do not accept that the Secretary of State has shown that there is no relevant risk in the part of Zimbabwe where he lived as a child.

40. It has never been the Secretary of State's expectation that the claimant would return there to live.

41. The Secretary of State relied on the Country Information and Guidance Note- Zimbabwe: Political Opposition to Zanu-PF dated October 2014. This recognised an improving situation and concluded that there is no risk of a failed asylum seeker with no significant profile being required to show loyalty to the government, even in the more "Zanu-PF" leaning poorer areas of Harare.

42. Few people will know about his father's profile. There is no evidence that the state authorities throughout Zimbabwe might assume that this claimant is an MDC supporter or would otherwise ill-treat him on return.

43. We have reminded ourselves of the points raised by UNHCR.

44. We agree that we must approach the case on the basis that the claimant's father was severely ill treated and still needs protection. We note that UNHCR does not draw our attention to any evidence that the claimant would be at risk now on return to Zimbabwe or that he could not establish himself in a safe part of the country.

45. We have considered the country information and policy note on Zimbabwe dated January 2017. Regrettably there are still credible reports of people being harassed and marginalised because of their membership of the MDC. This is not to say that a person would be at risk of persecution simply by reason of being a member of the MDC but there would be a real risk of that person's allegiance being noted and that possibly leading to difficulties that would ordinarily be rather less than persecutory. However we have not been able to find any evidence to suggest that the family members of people who previously have been persecuted for MDC activities are at risk throughout the country. The necessary evidence is just not before us. There is not, for example, any reason to fear that if the claimant was stopped on his return and if his relationship with his rather was noted, that this would lead to a real risk of persecution by the authorities on arrival. We suspect that is because there is no such evidence because people like the claimant are not at risk of persecution now.

46. Neither is there any reason to fear ill treatment amounting to persecution by government supporters throughout Zimbabwe. Whilst that might be a risk in parts of the country there is no persuasive evidence that it might be a risk in MDC dominated areas.

47. We are quite satisfied that the Secretary of State has proved that the claimant is not a refugee.

48. Given the clear requirements of section 117C we must dismiss the appeal on human rights grounds.

49. There are facts that might assist him if he was able to rely on the statutory exceptions.

50. Here we remind ourselves of the requirements of paragraph 117B of the 2002 Act. This reminds us that the maintenance of effective immigration control is in the public interest but also identifies factors that might help this appellant. The claimant speaks English and that is significant. We accept that he would

be able to work if that were permissible. He has shown himself willing to commit criminal offences but he is not idle and we understand has studied to degree level. He does not rely on close personal relationships and his private life cannot be given much weight because of its precarious nature.

51. We agree with the Secretary of State that he would have advantages in Zimbabwe. His education and knowledge of English must help him get work although we do not for a moment suggest that it will be an easy task. Zimbabwe remains a difficult country emerging from the financial disaster associated with the Mugabe years. Life there will not be easy but we do not accept he could not cope at all unless he remains a refugee.

52. We acknowledge the evidence that he has learned from his experiences in prison. The learning is imperfect because he has been in trouble for drinking too much although we accept that is a significantly less serious offence than the matters that have got him into trouble but it does not show that the claimant is someone who is now completely at ease with himself in the United Kingdom. However the detrimental effect of the further conviction is extremely modest. His difficulty is not that he has committed a further offence. His difficulty is that he is a foreign criminal who has committed an offence of robbery which has led to his being sent to prison.

53. This offence is now rather old.

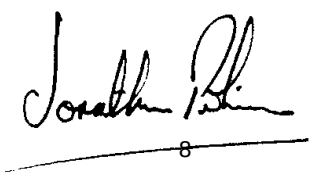
54. We find it undesirable that the Secretary of State allowed the claimant (or any other prisoner likely to be deported) to be released without a clear warning that deportation was being considered but that is not a reason to allow the appeal.

55. However the main cause of the delay has been the claimant exercising rights of appeal. He is perfectly entitled to do that but it is not a case of the Secretary of State going to sleep and somehow acquiescing in delay with the result that there is a basis for saying the public interest has diminished and the need to take appeals seriously and give then proper consideration should not lightly be elevated into a reason for remaining in the United Kingdom.

56. It will be recognised that the appellant's deportation will be a significant blow to him as he struggles to establish himself in a difficult country of which he has only childhood memories and a blow to his family who would like him to remain with them. We remind ourselves that deportation is a savage sanction. It does break relationships and does make it very difficult for a foreign criminal but Parliament has decided that, subject to certain exceptions, the public interest requires the deportation of foreign criminals who have served more than a year in prison. The alternative is that the person is treated as he is in fact a British citizen and he is not and probably could not be because of his criminality.

57. We find that the First-tier Tribunal was not entitled to say removal pursuant to a deportation order was a disproportionate interference with his private and family life. Rather it is plainly a normal and consequent interference.

58. It follows that we set aside the decision of the First-tier Tribunal and substitute a decision dismissing the appeal against the decision of the Secretary of State.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 September 2018