Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00168/2018**
HU/08799/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 19 August 2019	**On 15 January 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[D M]
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms E Groves, Senior Home Office Presenting Officer
For the Respondent: The Respondent appeared in person

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent (also "the claimant). Breach of this order can be punished as a contempt of court. I make this order because the respondent claims to be entitled to the protection of the Refugee Convention.
2. Appeal number RP/00168/2018 is an appeal by the Secretary of State against a decision of the First-tier Tribunal to allow the appeal of the respondent,

hereinafter "the claimant", against the decision of the Secretary of State to revoke his refugee status. At the same time as that appeal was heard the First-tier Tribunal was seized with an appeal by the claimant against a decision of the Secretary of State refusing him leave to remain on human rights grounds following a decision to deport him. That is the appeal represented by the reference HU/08799/2018 and the First-tier Tribunal declined to determine that appeal at all. The decision not to determine that appeal made sense only if the decision to allow the appeal against the decision to revoke the refugee status was sound. In my judgment for reasons I have explained below that decision was not sound and it follows that the First-tier Tribunal erred in not determining the appeal HU 08799 2018.

3. The decision leading to the appeal RP 00168 2018 is dated 26 January 2018 and it set out in a "Notice of Revocation of Refugee Status – In-Country Right of Appeal". The decision in Appeal No. HU/08799/2018 is dated 4 April 2018 and is explained in a "Decision to Refuse a Human Rights Claim".

4. The First-tier Tribunal Judge set out the claimant's immigration history.

5. The claimant arrived in the United Kingdom on 26 September 2002 when he was 16 years old. He arrived with his sister and they both claimed asylum. They said they had fled Zimbabwe because their father was an active MDC supporter who had "disappeared". Their claims were refused but they appealed. Their appeals were allowed and the claimant was given refugee status on 16 June 2003.

6. The appellant is a criminal. He was warned about his behaviour formally on 15 August 2008 and again on 12 June 2009. On 12 February 2010 he was served with a "Liability to Deportation" letter following further convictions. Following referral to UNHCR it was decided, on 5 August 2010, that his refugee status could not be revoked lawfully at that time. Nevertheless the Secretary of State revoked his indefinite leave to remain and an appeal against that was dismissed.

7. On 16 October 2009 he was sent to prison for two years and six months.

8. On 20 January 2015 he was sent to prison for three years.

9. On 14 February 2015 Notification of Liability to Deportation was served on him. His solicitors responded indicating he would be at risk in Zimbabwe and he had family life with a partner and four children in the United Kingdom. On 12 April 2016 a referral was made to UNHCR informing them of the Secretary of State's intention to cease the claimant's refugee status because of his criminality and the UNHCR responded on 5 May 2016 setting out some matters that concerned them.

10. On 26 January 2018 the decision was made to revoke the claimant's refugee status.

11. I do not find it necessary to go into details about the claimant's criminal behaviour. The short point is that he has been sent to prison on (I think) three occasions, once for four months, once for two years six months and once for three years. It is quite plain from his record that he is a man who has a history of drinking too much and being violent perhaps particularly towards his partner

or former partners. When sentencing him to three years' imprisonment the Recorder in the Crown Court was particularly withering about the claimant's conduct saying that the claimant did "not work, you spend your time drinking and taking drugs while sponging off your partner" and went on to describe him as "lazy, indolent, and violent parasite". It is not the role of a Recorder in the Crown Court to be gratuitously rude. These remarks were made because they described the claimant.

12. The First-tier Tribunal Judge then summarised the claimant's case.

13. The claimant said that he comes from Bulawayo, that his father had a prominent role as an MDC supporter and that as a result the whole family were attacked. He maintained he would be at risk in the event of return to Bulawayo or any part of Zimbabwe. It was the claimant's case that he had avoided political activity in the United Kingdom because he wanted to remain removed from the reasons that led to his coming to the United Kingdom in the first place.

14. The First-tier Tribunal Judge then examined carefully the Secretary of State's reasons for revoking the claimant's asylum status. The Secretary of State, correctly, reminded herself of the appropriate Immigration Rules and particularly paragraph 339A(v) which permits revocation where the claimant "can no longer, because of the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality".

15. The UNHCR had indicated that it was not satisfied that Zimbabwe had fundamentally and durably changed so as to obviate the circumstances in which the claimant came to be recognised as a refugee and therefore should not be subject to revocation of status.

16. The Secretary of State however relied on the country guidance given in **CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC)** which decided clearly that failed asylum seekers returning to Bulawayo would not usually suffer the adverse attention from ZANU-PF even if they had a significant MDC profile and, generally, someone with no significant MDC profile would not face a real risk of having to demonstrate loyalty to ZANU-PF. The Secretary of State noted, correctly, that it was not the claimant's case that he had been politically active in the United Kingdom and the Secretary of State found that the circumstances leading to the claimant being recognised as a refugee had ceased to exit.

17. Additionally the Secretary of State decided that asylum status should be revoked because there were reasonable grounds for finding that the claimant constituted a danger to the community of the United Kingdom. I mention this next point simply to discount it. There was a clear finding by the First-tier Tribunal Judge that this claimant does not represent a danger to the community and that finding was not challenged. As far as this case is concerned that point has been established and cannot be a reason to justify his revocation of status or deportation.

18. The judge then outlined the reasons for bringing a claim on human rights grounds but did not expand upon it greatly.

19. The judge was understandably critical of the Secretary of State failure to provide documents relating to the original asylum claim. The judge wanted to see the screening interview, the asylum interview, the Reasons for Refusal Letter and the written Determination following the appeal in which the claim was upheld by the First-tier Tribunal Judge. It is disappointing that the Secretary of State was not more cooperative. It is not a question of reviewing the Secretary of State's decision. The judge had to satisfy himself that the claimant was no longer at risk. It would have been much easier to do that if the First-tier Tribunal's decision had been available and so at least the judge would have known what was established when the claimant was awarded asylum. The Secretary of State should not be making decisions of this kind without considering these things and should make her decisions and/or supporting documents available to assist the Tribunal.

20. Be that as it may, the judge had to make a decision on the information that he had got and there were things that could be deduced properly.

21. He was assisted by the Determination and Reasons of Immigration Judge Frankish sitting with Mr H G Jones MBE JP deciding in October 2010 to dismiss the claimant's appeal against the decision to curtail his indefinite leave to remain. Paragraph 10 of that Determination confirms that it was the claimant's case that he was the son of an MDC leaflet distributor. His father was beaten almost to death and his shop burned and his father was abducted. He was able to finance the claimant and his sister travelling to the United Kingdom. The judge noted that the "core finding and analysis" in the determination of the asylum appeal stated:

> "The evidence of the appellant and his sister has been consistent with each other. Their accounts of events in September 2002 are in accord with each other. They detail an attack on a date in September 2002 where the sister was sexually abused. They also detail the key event of the attack on their father's shop by ZANU-PF on 20 September 2002".

22. In short, the claimant was a refugee because he was the 16 year old son of someone who had been persecuted for MDC sympathies in 2002.

23. Although First-tier Tribunal Judge Chapman has been conspicuously careful in his decision I am quite satisfied that he is wrong to say that the refugee status should not be revoked, at least for the reasons he gives. Whilst the burden of proof justifying a revocation clearly lies on the Secretary of State I find the Secretary of State appears to have discharged that burden by pointing out there has been a regime change and that the guidance given in **CM** points to people being returnable to Bulawayo. I agree respectfully with the UNHCR that the situation in Zimbabwe remains difficult and I agree that some people who have been recognised as refugees might still be in need of international protection. That is something to decide on a case-by-case basis when the need arises. I do not accept that the evidence supports the conclusion that people who were at risk in 2002 because of the activities of their parent, particularly relatively low level activities and who are not themselves MDC activists, are at risk in Zimbabwe now. The judge's error was not individualising the risk. If he had he would not have made the decision he did for the reason that he did.

24. If this is all that was wrong with the decision I would have remade the decision on the background material before me.

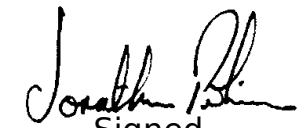
25. However a further difficulty here is that the human rights claim has not been considered. It is plainly an error of law not to determine a ground of appeal and an issue before the Tribunal. With respect the judge was wrong not to determine the point. Clearly if the first decision had stood there were to be no need for the further work but a person who is a refugee is likely to qualify for protection on Article 3 grounds and there are issues here relating to private and family life which might be capable of supporting a decision to allow an appeal. I am satisfied that it will be wrong to make a decision on this point without giving the claimant an opportunity to give oral evidence if that is what he wishes to do and without losing the possibility of further appeals because it is not his fault the case was not determined in the First-tier Tribunal.

26. As the case has to be heard again I have decided not to redetermine the appeal against revocation. The claimant is representing himself and may, if he wishes, apply to serve further evidence that might make a difference to the "refugee appeal".

27. I set aside the decision of the First-tier Tribunal because it erred in law. Both appeals will have to be determined again in the First-tier Tribunal.

Notice of Decision

28. The First-tier Tribunal erred in law. I allow the Secretary of State's appeal. I direct that both appeals are determined again in the First-tier Tribunal.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 13 January 2020