



25 July 2012

PRESS SUMMARY

RT (Zimbabwe) and others (Respondents) v Secretary for State for the Home Department (Appellant); KM (Zimbabwe) (FC) (Appellant) v Secretary of State for the Home Department [2012] UKSC 38

On appeal from: [2010] EWCA Civ 1285; [2011] EWCA Civ 275

JUSTICES: Lord Hope, Deputy President, Lady Hale, Lord Kerr, Lord Clarke, Lord Dyson, Lord Wilson and Lord Reed.

BACKGROUND TO THE APPEALS

Is it an answer to a refugee claim by an individual who has no political views and who therefore does not support the persecutory regime in his home country to say that the individual would lie and feign loyalty to that regime in order to avoid the persecution to which he would otherwise be subjected? This is the question which arises in these appeals, which form a sequel to this court's decision in *HJ (Iran) v Secretary of State for the Home Department* in which it was held that a gay man was entitled to live freely and openly in accordance with his sexual identity and it was no answer to the claim for asylum that he would conceal his sexual identity in order to avoid the persecution that would follow if he did not do so ("the *HJ (Iran)* principle"). [1]

The country guidance for Zimbabwe, applicable in these cases, found that there is a campaign of persecution perpetrated by undisciplined militias who have delivered a quite astonishingly brutal wave of violence to whole communities thought to bear responsibility for the 'wrong' outcome of the March 2008 election. Any attempt to target those who are themselves involved with the Movement for Democratic Change ("MDC") has been abandoned and those at risk includes anyone who cannot demonstrate positive support for Zanu-PF or alignment with the regime. The means used to establish loyalty include requiring the production of a Zanu-PF card or the singing of the latest Zanu-PF campaign songs. Inability to do these is taken as evidence of disloyalty and therefore support for the opposition. In deploying these militia gangs, the regime unleashed against its own citizens a vicious campaign of violence, murder, destruction, rape and displacement. [2], [15]-[16]

The first appeal concerns RT, SM and AM. They arrived in the UK from Zimbabwe at various times between 2001 and 2008 and have each claimed asylum here. Each of their claims was refused. RT, while credible, had never been politically active. SM was not a credible witness and had given inconsistent accounts of her involvement with the MDC and had lied in a number of respects. On reconsideration it was found that she had no connections with MDC. AM was found not to be a credible witness and although he was in favour of the MDC, he had no political profile and was not politically engaged prior to his departure from Zimbabwe. The Court of Appeal allowed the appeals of RT, SM and AM on the basis that if individuals are forced to lie about their absence of political beliefs, solely in order to avoid persecution, that is covered by the *HJ (Iran)* principle and does not defeat their claims for asylum. [4]-[10]

The second appeal concerns KM. He claimed to have arrived in the UK in January 2003 on a false South African passport and claimed asylum on 20 August 2008. His claim was refused. While his son

had been granted asylum in the UK because he had a well-founded fear of persecution in Zimbabwe on the grounds that he was a sympathiser of the MDC, KM was found by the Tribunal not to have established any adequate factual basis to support his claim that he would be at real risk of finding himself in a position where he would be unable to demonstrate loyalty to the regime. In the Court of Appeal, although the Secretary of State accepted that the appeal should be allowed because it was arguable that adequate consideration had not been given to the assessment of risk, there was an issue between the parties as to whether the case should be allowed outright or sent back to the Tribunal. The Court of Appeal allowed the appeal and sent the case back for further decision. [12]-[14]

JUDGMENT

The Supreme Court unanimously dismisses the Home Secretary's appeals in the cases of RT, SM and AM and allows KM's appeal. The *HJ (Iran)* principle applies to applicants who claim asylum on the grounds of a well-founded fear of persecution for reasons of lack of political belief.

Lord Dyson gives the leading judgment with which Lord Hope, Lady Hale, Lord Kerr, Lord Clarke, Lord Wilson and Lord Reed agree. Lord Kerr also gives a short concurring judgment.

REASONS FOR THE JUDGMENT

There are no hierarchies of protection amongst the Refugee Convention reasons for persecution. Thus the Convention affords no less protection to the right to express political opinion openly than it does to the right to live openly as a homosexual. The Convention reasons reflect characteristics or statuses which either the individual cannot change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights.[25] The *HJ (Iran)* principle applies to any person who *has* political beliefs and is obliged to conceal them in order to avoid the persecution that he would suffer if he were to reveal them.[26] The right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom *not* to hold and *not* to have to express opinions. There is no basis in principle for treating the right to hold and not to hold political beliefs differently from religious ones. There can also be no distinction between a person who is a committed political neutral and one who has given no thought to political matters. [32]-[45]

It is not in doubt that an individual may be at risk of persecution on the grounds of imputed political opinion and that it is nothing to the point that he does not in fact hold that opinion. [53] Persecution on the grounds of imputed opinion will occur if a declared political neutral is treated by the regime as a supporter of its opponents and persecuted on that account. But a claim may also succeed if it is shown that there is a real and substantial risk that, despite the fact that the asylum seeker would assert support for the regime, he would be disbelieved and his neutrality would be discovered. [55] This gives rise to questions of fact, but it is difficult to see how an asylum claim advanced on the basis of imputed political opinion could be rejected, unless the judge was able to find that the claimant would return to an area where political loyalty would be assumed and where, if he was interrogated, he would not face the difficulties faced by those who were not loyal to the regime in other parts of the country. If the claimant would return to any other parts of the country, the judge would be likely to conclude that there was a real and substantial risk that a politically neutral person who pretended that he was loyal to the regime would be disbelieved and therefore persecuted. [56]-[59]

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html