Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00490/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Sent**
On 1 July 2014	**On 30 July 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VYM
(ANONYMITY DIRECTION MAINTAINED)

Respondent

Representation:

For the Appellant: Mr M Diwnycz, a Senior Home Office Presenting Officer
For the Respondent: Dr Mavazu, Walters, Solicitors

DETERMINATION AND REASONS

1. The respondent, VYM, is a citizen of Zimbabwe. I shall hereafter refer to the respondent as the appellant and to the appellant as the respondent (as they were respectively before the First-tier Tribunal). The appellant entered the United Kingdom in December 2003 and applied for asylum in April 2013. Her application for asylum was refused by the respondent on 10 January 2014 and a decision was also made to remove her from the

United Kingdom by way of directions under paragraphs 8-10 of Schedule 2 of the Immigration Act 1971. The appellant appealed against that decision to the First-tier Tribunal (Judge Shimmin) which, in a determination dated 20 February 2014, allowed the appeal on asylum and human rights grounds and under the Immigration Rules (paragraph 276ADE). The respondent now appeals, with permission, to the Upper Tribunal.

2. Permission was granted by Upper Tribunal Judge Freeman in the following terms:

> The permission judge [First-tier Tribunal Judge Bird] did not deal with the Home Office's point about the hearing judge not having considered *CM (EM country guidance; disclosure) Zimbabwe* [2013] UKUT (IAC) 59.

In a detailed refusal of permission, Judge Bird had rejected each of the grounds advanced to her by the Secretary of State. It is not clear from Judge Freeman's grant of permission whether he intended to revisit those other grounds for which permission had been refused in the First-tier Tribunal. In any event, the sole focus of the submissions in the Upper Tribunal was on the ground as summarised by Judge Freeman.

3. The respondent submits that the judge erred in law by failing to take account of country guidance. It is true that the judge did not refer to any item of country guidance and jurisprudence in his determination. This does not, however, mean that he did not apply the country guidance. The submission made in the grounds of appeal is that the judge's finding at [39] did not follow the country guidance of *CM*. At [39], the judge wrote:

> I find that the appellant has established there is a reasonable likelihood that she would be subjected to detailed interrogation by the CIO on arrival at Harare Airport and so be at real risk of harm such as to infringe either Convention.

4. Citing head note 4(d) of *CM*, the respondent submitted that the judge's finding was not sustainable:

> d) *The fresh evidence regarding the position at the point of return does not indicate any increase in risk since the Country Guidance was given in HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094. On the contrary, the available evidence as to the treatment of those who have been returned to Harare Airport since 2007 and the absence of any reliable evidence of risk there means that there is no justification for extending the scope of who might be regarded by the CIO as an MDC activist.*

5. The judge had found that the appellant had told the truth about her role as an anti-ZANU-PF activist. Indeed, he records at [30] that the Presenting Officer accepted that the appellant's account of her activities was true and accurate. There appears to be some dispute whether the Presenting Officer also accepted that the appellant had been sexually abused as claimed (Mr Diwnycz indicated that the Presenting Officer's note of the hearing did not record such a concession) but this appeal does not turn on that issue. Although it is asserted in the grounds that the judge should not have found the appellant's account to have been credible, I find that he

has given sufficient reasons in the determination for accepting her evidence. As regards his finding at [39], it is difficult to see how this is contrary to the passage from the head note of *CM* upon which the respondent now seeks to rely. *CM* did not reverse the previous country guidance of *HS (returning asylum seekers) Zimbabwe CG* [2007] UKAIT 00094 in that it did not extend the scope of those who might be regarded by the CIO as MDC activists or actively opposed to the ZANU-PF regime. The fact that the scope of those possibly at risk was not extended does not, of course, mean that those who were previously at risk no longer faced any danger at Harare Airport. The Tribunal in *HS* had identified a risk to "those seen to be active in association with human rights and civil society organisations when evidence suggests that a particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwean regime." *HS* found that returning passengers would be subject to screening by the CIO "who will generally have identified from the passenger manifest in advance, based upon such intelligence, those passengers in whom there is any possible interest." In the present case, the judge found that "although the appellant's profile in respect of her activities in attending demonstrations in support of the MDC in the UK is not high … her profile is substantially elevated by the anti-Mugabe articles she has written on the internet." [37]. Whilst it would have been helpful if Judge Shimmin had made an express finding to the effect that the appellant would be identified by the Zimbabwean authorities in advance of her arrival as a potential threat to the regime, such a conclusion is clearly implicit in his findings. In the light of the evidence (and also the Secretary of State's concession regarding the appellant's account), I find that it was open to the judge to conclude that the appellant fell within the category of returnee identified in *HS*. His conclusion that the appellant would be consequently at risk was not at odds with *CM*.

6. More problematic is the judge's finding at [40] that one of the factors which might expose the appellant to risk would be her "inability to demonstrate loyalty to ZANU-PF". *EM* (affirmed by *CM*) makes it clear that challenges to individuals to show that they are supporters of ZANU-PF no longer pose a general threat to those returning from the United Kingdom. Having said that, it was clearly in the judge's mind that the appellant's activism in the UK and her anti-Zimbabwean postings on the internet were most likely to lead her to face a threat on return and I find that his comments regarding her inability to demonstrate loyalty should be read in the context of the likely interrogation which she would undergo at Harare Airport. Whilst general and random challenges to individuals to show support may no longer occur to the extent detailed in previous country guidance, the fact that the appellant might be identified in advance of her arrival as an opponent of the Zimbabwean regime and would then, under interrogation, be unable to demonstrate support for that regime are factors which would clearly expose her to a real risk of harm.

7. In conclusion, whilst it would have been helpful for the judge to have referred to current country guidance in his determination, his failure to do so does not constitute an error of law whilst his findings, based upon the

evidence and supported by good and clear reasoning, were clearly open to him and support his conclusion that the appellant faces the reasonable likelihood of harm upon return to Zimbabwe.

8. As regards the remaining grounds, I refer to Judge Bird's refusal which was not revisited by Judge Freeman in the Upper Tribunal. I agree with the reasons she has given for rejecting those grounds of appeal.

DECISION

9. This appeal is dismissed.

Signed Date 10 July 2014

Upper Tribunal Judge Clive Lane