



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: DA/01743/2013

THE IMMIGRATION ACTS

**Heard at Stoke
on 12th May 2014**

**Determination
Promulgated
On 3rd July 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**BM
(Anonymity order in force)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O’Ryan instructed by Paragon Law.

For the Respondent: Mr McVeety Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a panel of the First-tier Tribunal composed of First-tier Tribunal Judge PLM Hollingworth and Mr FT Jamieson JP (hereinafter referred to as ‘the Panel’) who in a determination promulgated on 4 March 2014 dismissed the Appellant’s appeal against a decision of the Secretary of State to deport him from the UK.

2. The Appellant was born in April 1977 and is a citizen of Zimbabwe. The Panel set out the evidence they received during the course of the hearing in some detail and in paragraph 9 of the determination set out the following self-direction:

9. In the consideration of this appeal we take this approach. Is the Appellant a refugee? If not is the Appellant entitled to humanitarian protection? If not is the Appellant entitled to resist removal on human rights grounds?

3. It is a relevant factor in this case that the Appellant was previously recognised as a refugee. The Secretary of State revoked his refugee status as part of the process leading to the making of the deportation order. In relation to this issue the Panel record at paragraphs 58 and 59 of the determination:

58. Learned Counsel has argued as we have set out above that the burden of proof in this case rests upon the Respondent in the light of what has taken place in the context of the cessation of refugee status of the Appellant as set out in the correspondence of May 2013. Learned Counsel was unable to assist us with the standard of proof in relation to his contention that the burden of proof rests upon the Respondent.

59. We reject learned Counsel's contention in this context. We find that it is clear that it is for the Appellant to establish that he falls within an exception to automatic deportation. We find that the burden of proof is upon him in this respect. We have proceeded in this case to apply the lower standard of proof.

4. The Panel found that the Appellant had not discharged the burden upon him and accordingly found that no exception to the automatic deportation provisions had been established.
5. The grounds seeking permission to appeal are detailed but can be summarised as follows: (a) that the Panel materially misdirected themselves in law in relation to the burden of proof in light of the fact that the Appellant had previously been recognised as a refugee, (b) made a misdirection in law and failed to have regards to a material consideration in failing to determine a relevant legal point that the Respondent's proposal to restrict the residence of the Appellant, a recognised refugee, to one location in his country of origin was unlawful and contrary to the refugee convention law regarding cessation and UNHCR guideline, para 17, in particular, (c) the Panel failed to have regard to the relevant evidence and (d) the Panel failed to make relevant findings or to give adequate reasons in relation to the risk be faced by the Appellant on return to Zimbabwe.

6. Permission to appeal was granted by a different judge of the First-tier Tribunal on 24th March 2014. The grant summarises the procedural history and grounds of appeal before stating in paragraph 5 that "the grounds of appeal disclose arguable error of law". No further reasoning or explanation was provided.

Error of law

7. As a result of the brevity of the grant of permission to appeal the first issue that arose at the hearing was whether permission had been granted on all grounds. Mr O’Ryan accepted that the grant referred to all the grounds on which permission to appeal had been sought but submitted it was not clear from the grant whether permission had been granted on all heads of claim or only on a limited basis.
8. In Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304(IAC) the Tribunal held that (i) In deciding an application for permission to appeal to the UT a judge should consider carefully the utility of granting permission only on limited grounds. In practice, such a limited grant is unlikely to be as helpful as a general grant, which identifies the ground or grounds that are considered by the judge to have the strongest prospect of success. (ii) Where the judge nevertheless intends to grant permission only in respect of certain of the applicant’s grounds, the judge should make this abundantly plain, both in his or her decision and by ensuring that the Tribunal’s administrative staff send out the proper notice, informing the applicant of the right to apply to the Upper Tribunal for permission to appeal on grounds on which the applicant has been unsuccessful in the application to the First-tier Tribunal; (iii) If an applicant who has been granted permission to appeal to the UT on limited grounds only applies to the Upper Tribunal on grounds in respect of which permission has been refused, the Upper Tribunal judge considering that application should not regard his or her task as merely some form of review of the First-tier Tribunal’s decision on the application; (iv) In the IAC the overriding objective of the Tribunal Procedure (Upper Tribunal) Rules 2008 is unlikely to be advanced by adopting a procedure whereby new grounds of appeal can be advanced without the permission of the Upper Tribunal under rule 5 of those Rules.
9. In light of there being no such restriction apparent on the face of the grant of permission and in light of the fifth paragraph of the grant stating that the grounds of appeal disclose arguable error of law it appears the only possible interpretation of the grant is that permission was granted on all grounds.
10. In relation to the four grounds Mr McVeety accepted there is merit in the assertion the Panel misdirected themselves in law in relation to where the burden and standard of proof lies in this appeal. I find the Panel erred as alleged in the grounds. In the case of RD (Cessation -

burden of proof – procedure) Algeria [2007] UKAIT 00066 the tribunal held that if the appellant challenges the decision to revoke indefinite leave to remain because he has ceased to be a refugee for one of the reasons given in section 76 (3) of the 2002 Act the Secretary of State must prove that such a reason existed and in doing so must rely only on an action that took place after that section came into force in February 2003. The suggestion that the burden of proof lay upon the Appellant is a material misdirection of law. It was for the Secretary of State to prove that justifiable grounds existed for revoking the Appellant's status. Dang (Refugee - query revocation - Article 3) [2013] UKUT 00043 also considered.

11. I also find from a reading of the determination that it is clear that the evidence concerning the risk to the Appellant in travelling to a safe area and the poor conditions there for returnees which, it was contended, would breach his Article 3 rights, was not adequately considered by the Panel. It was found in Dang that whilst the past may be relevant in shedding light on the current situation and a prospective Article 3 risk, it remains the case that the question whether there is a real risk of Article 3 ill-treatment must be answered at the date of the hearing and is forward looking.
12. There was no opposition to the third ground on which permission to appeal was sought before me and in relation to the fourth ground Mr McVeety accepted he was not able to dispute the alleged misdirection which he accepted may have had an effect upon the Panel's approach to the remainder of the evidence.
13. I find there are clear material errors that go to the core of the Panel's determination and that accordingly that determination must be set aside. As all relevant issues have not been adequately considered by the Panel Mr O’Ryan was asked to consider whether he wished the Upper Tribunal to deal with this matter or for it to be remitted with there being no preserved findings. Having been given time to take instructions he requested that the matter be remitted which the Tribunal agreed too, especially in light of the fact that this preserved the Appellant's right to have his case properly considered in the First-tier Tribunal and maintains the two-stage appeal process in his favour.
14. The following direction shall apply to the future management of this appeal:
 - i. The determination shall be set aside. There shall be no preserved findings.
 - ii. The parties shall prior to the substantive hearing produce a schedule of agreed facts and issues remaining in dispute in an attempt to narrow the issues to be considered on the

next occasion. Such an [redacted] agreed scheduled to be included in the consolidated bundle.

iii. The appeal shall be remitted to the First-tier hearing centre at Stoke [redacted] to be listed before a salaried judge of that centre nominated by the [redacted] Resident Judge, or her nominee, on the first available date with a [redacted] time estimate of three hours and taking into account the availability [redacted] of Mr O’Ryan who shall file details of his availability for the months [redacted] of June July and August by Friday 16th May 2014.

iv. Consolidated indexed and paginated bundles containing copies of all [redacted] documentary evidence being relied upon shall be filed and served [redacted] with the First-tier tribunal at Stoke and opposing party no later than [redacted] 7 days before the date of the next hearing. Those responsible for [redacted] preparation of the bundle must not assume that documents [redacted] previously filed remain available to the Tribunal. Witness statements shall stand as the evidence in chief of the maker and must be signed, [redacted] dated, and contain a declaration of truth. Evidence not contained within the bundle shall not be admissible without permission of the [redacted] trial judge which must be sought on a written application filed prior [redacted] to the expiration of the final date on which the bundle is to be filed [redacted] and which identifies the reason for the failure to comply with this [redacted] direction, the date when the evidence will be available and filed, [redacted] whether the opposing party consents to such evidence being [redacted] adduced late, and the name of the individual responsible for the failure to comply with this direction.

v. No interpreter is required.

Decision

15. The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. The appeal shall be remitted to the First-tier Tribunal sitting at Stoke and case managed in accordance with the directions set out above.

Anonymity.

16. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 3rd July 2014