



IAC-AH-SC-V2

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

Appeal Number: AA/01226/2015

THE IMMIGRATION ACTS

**Heard at Birmingham
On 16th September 2015**

**Decision & Reasons Promulgated
On 5th October 2015**

Before

**UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE HALL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**N R C
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mrs R Petterson, Senior Home Office Presenting Officer

For the Respondent: Mr V Madanhi of Genesis Law Associates Limited

DECISION AND REASONS

Introduction and Background

1. The Secretary of State has appealed against the decision of Judge of the First-tier Tribunal Nixon (the judge) promulgated on 26th March 2015. For the purposes of this decision we shall hereafter refer to the Secretary of State as the Respondent and N R C as the Appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

2. The Appellant is a female citizen of Zimbabwe born 24 September 1997. She initially entered the United Kingdom in 2002 and was granted indefinite leave to remain as a dependant in the asylum claim of her aunt S who was granted refugee status. The Appellant returned to Zimbabwe in 2003 where she lived until April 2014 when she travelled to South Africa. The Appellant travelled from South Africa on 30th April 2014, arriving in the United Kingdom on 1st May 2014 where she was refused leave to enter, as her indefinite leave to remain was deemed to have lapsed.
3. The Appellant claimed asylum on 7th May 2014. She underwent a screening interview on 16th June 2014 and a substantive asylum interview on 30th June 2014. Her asylum and associated human rights claim was refused on 9th January 2015.
4. The basis of the Appellant's claim is that she is at risk in Zimbabwe as a result of her uncle's support for the MDC, and as a lone minor with no family support network. She claims to have lived with her paternal grandmother in Zimbabwe from 2003 until her grandmother's death in 2007. Thereafter she attended boarding school, and in school holidays lived with her aunt G in Harare or with her uncle G in Murehwa.
5. The Appellant had no direct contact with her father and according to her witness statements spoke to her mother occasionally.
6. In April 2014 she was spending the holidays at her uncle's house when ZANU-PF supporters attacked the house, beat her uncle, and took him away. She was told that her family was a target because of her uncle's support for the MDC.
7. Her uncle was taken away on 18th April 2014 and his whereabouts are still unknown. The next day the Appellant's aunt G travelled from Harare to pick her up and they returned together to her aunt's home in Harare. On 22nd April 2014 the Appellant's aunt received a threatening letter from the men who had kidnapped her uncle, stating that her family were going to be targeted. That night stones were thrown at the house and it was believed that this was linked to the kidnap of the Appellant's uncle and the threatening letter. The Appellant and her aunt G left Harare and travelled to South Africa where the Appellant was collected by her aunt S who had travelled from the United Kingdom, and was taken back to the United Kingdom.
8. The Respondent's reasons for refusing the application are set out in a letter dated 9th January 2015. In summary the Respondent did not accept that the Appellant had had no contact with her mother, because enquiries had revealed that her mother's Facebook profile showed that the Appellant was listed there and there were photographs of the Appellant. The Respondent did not accept that the Appellant's uncle was involved with the MDC, nor was it accepted that he was kidnapped by ZANU-PF, nor was it accepted that a threatening letter was received. The Respondent

considered that the Appellant could return to Zimbabwe and reside with her mother, and it was not accepted that she would be at risk on return or that her removal would breach her human rights.

9. The Appellant's appeal was heard by the judge on 20th March 2015. The judge found there to be no evidence that either the Appellant or her uncle had any significant profile within the MDC and found that she was not at risk from ZANU-PF. The judge however accepted the Appellant's evidence about the lack of contact between herself and her mother, and found that her position was analogous to that of an orphan, and that in accordance with the principles in LQ (Age: Immutable Characteristic) Afghanistan [2008] UKAIT 00005 she would be at risk on return to Zimbabwe as an orphaned minor and the appeal was allowed on that basis.
10. The Respondent was granted permission to appeal to the Upper Tribunal on the grounds that the judge had failed to consider the family support available to the Appellant in Zimbabwe and had misunderstood the Facebook evidence.

Error of Law

11. On 20th July 2015 Upper Tribunal Judge Kebede heard submissions from both parties in relation to error of law, and concluded that the judge's decision must be set aside. We set out below paragraphs 9 – 12 of Judge Kebede's decision giving reasons for setting aside the decision of the First-tier Tribunal;

“9. In concluding that the Appellant had no family support network remaining in Zimbabwe, Judge Nixon found there to be no evidence to counter the Appellant's claim as to a lack of contact with family members. However, in so doing, it is plain that she disregarded many aspects of the evidence. She referred, in paragraph 12, to a photograph of the Appellant with her siblings taken in 2013, yet failed to consider how that was consistent with a claim to having no contact with her siblings. Her findings on the Facebook extracts show a misunderstanding of the way in which Facebook operates and failed to engage with the fact that the Appellant and her mother had evidently accepted each other as friends on Facebook. Indeed her finding, at paragraph 22, that there was no attempt at contact by the Appellant's mother is inconsistent with the Appellant's own evidence in her appeal statement that there was communication between herself and her mother. The judge also failed to give any consideration to the fact that the Appellant had resided in Zimbabwe for eleven years until the age of 17 prior to coming to the United Kingdom and to consider the family and other connections she had established during that time.

10. The judge's findings on the Appellant's account as to her uncle's kidnapping are unclear and it is not possible to ascertain, from her findings at paragraphs 18 and 19, whether she accepted that account. It is apparent from her findings at paragraph 19 that she did not, in any event, accept that the family had received threats or that they were targeted. In the circumstances, and given that the Appellant's account of her aunt and uncle's absence was a direct result of that claimed

threat, it is unclear how the judge was able to conclude that the Appellant's aunt and uncle no longer remained in Zimbabwe and were thus unable to offer her any support.

11. In the light of such concerns, and in the absence of any reasoned analysis, based upon subjective and objective evidence, of the conditions to which the Appellant would be returning, it seems to me that the judge's conclusion, that the Appellant's circumstances were analogous to those of the Appellant in LQ, is plainly unsustainable.
12. Accordingly, and for the reasons given above, I find that errors of law have been established in the Tribunal's decision and that it must be set aside and re-made. The appeal will accordingly be listed for a resumed hearing. There has been no challenge to the judge's conclusion that the Appellant would not be at risk as a result of any perceived political profile in line with the country guidance in CM (Zimbabwe) v the Secretary of State for the Home Department [2013] EWCA Civ 1303 and therefore her findings in that regard are preserved. However the decision will be re-made in regard to the risk to the Appellant as a lone female minor (although bearing in mind that the Appellant may no longer be a minor) and in regard to Article 8 of the ECHR."

Re-Making the Decision

The Law

12. The Appellant is entitled to asylum if she is outside her country of nationality and is recognised as a refugee, as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 as a person who falls within Article 1A of the 1951 Geneva Convention. The onus is on her to prove that she has a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group or political opinion), and is unable or, owing to such fear, unwilling to avail herself of the protection of the country of her nationality.
13. The Appellant is eligible for humanitarian protection under paragraph 339C of the Immigration Rules if she does not qualify as a refugee, but establishes substantial grounds for believing that if she was removed from the United Kingdom, she would face a real risk of suffering serious harm, and is unable or, owing to such risk unwilling to avail herself of the protection of the country of return.
14. In relation to Articles 2 and 3 of the 1950 European Convention on Human Rights (the ECHR) it is for the Appellant to establish that if removed from the United Kingdom there is a real risk of her being killed, or subjected to torture or inhuman or degrading treatment or punishment.
15. In relation to Article 8 of the ECHR the Appellant must satisfy the Immigration Rules in relation to family life under Appendix FM, or private life with reference to paragraph 276ADE(1). If the Appellant cannot succeed under the rules, the Appellant must show a good reason why Article 8 should be considered outside the rules.

16. The burden of proof is on the Appellant and can be described as a reasonable degree of likelihood, which is a lower standard than the normal civil standard of the balance of probabilities. We must look at the circumstances as at the date of hearing.

Evidence

17. At the resumed hearing we heard oral evidence from the Appellant who adopted her witness statement dated 11th June 2014, and her undated appeal statement contained at pages 13 - 16 of the Appellant's bundle. The Appellant also adopted the contents of her most recent statement which is undated, and which is attached to a fax from her solicitors dated 11th September 2015.
18. In the most recent statement, the Appellant stated, in summary, that her mother left her because she could not look after her, and it was the Appellant who sent the friend request on Facebook, and although her mother accepted it, there was no further contact. In relation to the photograph showing the Appellant and her siblings, it was the Appellant who had uploaded this. The photograph was taken when the Appellant's siblings had visited her aunt G and the Appellant was also at her aunt's house during the school holidays.
19. The Appellant confirmed that her parents have played no role whatsoever in her upbringing and not shown any interest in her. The whereabouts of her uncle G are unknown, and her aunt G is now resident in South Africa and therefore there would be nobody in Zimbabwe to look after her if she returned. The only person willing to look after the Appellant is her aunt S, with whom the Appellant lives in the United Kingdom.
20. We also heard evidence from the Appellant's aunt S who adopted her undated witness statement contained at pages 17 - 19 of the Appellant's bundle. In summary, she confirmed that the Appellant's father is her brother, who did not accept that the Appellant is his child and did not want anything to do with her. The Appellant's mother decided to give the Appellant up for adoption. Other family members decided to look after her.
21. This witness confirmed that the Appellant had been given leave as her dependant in the United Kingdom, but that it was decided to send the Appellant back to Zimbabwe in 2003 where she lived with her paternal grandmother until she passed away in 2007. It was not appreciated that the indefinite leave to remain that had been granted to the Appellant would lapse by reason of passage of time.
22. When the Appellant's grandmother passed away, the Appellant was looked after by her aunt G and financially supported by aunt S from the United

Kingdom. It was aunt S who paid boarding school fees of approximately US\$9,000 per year.

23. Aunt S confirmed that there were no family members in Zimbabwe who could look after the Appellant.
24. Both the Appellant and her witness were questioned by both representatives and we asked some questions by way of clarification. We have recorded all questions and answers in our Record of Proceedings and it is not necessary to reiterate them in full here. If relevant, we will refer to aspects of the oral evidence when we set out our conclusions and reasons.

The Respondent's Submissions

25. In submitting that the appeal should be dismissed Mrs Petterson relied upon the reasons for refusal letter dated 9th January 2015. In addition she submitted in summary, that both the Appellant and her witness had been evasive in answering questions. It was suggested that the initial intention was for the Appellant to travel to the United Kingdom and apply for leave to enter on the basis that she previously had indefinite leave to remain. When it was realised that this leave had lapsed, an asylum claim was made in order to secure the Appellant's entry and stay in the United Kingdom.
26. We were asked to find that the Facebook evidence confirmed that the Appellant did have contact with her mother, and the Appellant had given conflicting evidence, by contending in her oral evidence that she had no contact whatsoever with her mother, whereas in her witness statements she had accepted that she had had some conversations with her.
27. We were asked to note that there was a dearth of evidence as to what had happened to the land owned by the Appellant's uncle G following his disappearance. We were also asked to note that the Appellant had brought with her to the United Kingdom, copies of her school reports, the inference being that this would not have been the case had she fled from Harare to South Africa in fear of her life.
28. Mrs Petterson submitted that the Appellant has in Zimbabwe wider family support than she has admitted.
29. We were asked to find that the Appellant would not be at risk on return to Zimbabwe and therefore the claim for asylum and the alternative humanitarian protection claim must fail, so must her claim that to remove her from the United Kingdom would breach Articles 2 and 3 of the ECHR.
30. In relation to Article 8 it was submitted that we had been given very little information about the Appellant's private and family life in the United Kingdom. In oral evidence she did not know the ages of her cousins with whom she lived. The provisions of Appendix FM of the Immigration Rules were not met in relation to family life, nor were the provisions of

paragraph 276ADE(1) in relation to private life. We were asked to conclude that this appeal could not succeed with reference to Article 8 of the ECHR.

The Appellant's Submissions

31. Mr Madanhi relied upon the skeleton argument contained at pages 2 - 12 of the Appellant's bundle. We were asked to accept the Appellant and her aunt as credible witnesses, and to note that detailed statements had been produced, and that the Appellant's latest witness statement explained the Facebook entries.
32. It was disputed that the Appellant and her aunt had been evasive, and we were asked to accept that they had endeavoured to recollect dates and provide accurate evidence.
33. We were asked to accept the Appellant's account that her uncle had been kidnapped and was still missing, and that her aunt fled from Zimbabwe to South Africa, and therefore there would be no family support for the Appellant if she returned to Zimbabwe.
34. Mr Madanhi submitted that the Appellant had established both a private and family life since arriving in this country, which engaged Article 8 of the ECHR, and that to remove her to South Africa would be a breach of Article 8.
35. At the conclusion of oral submissions we reserved our decision.

Our Conclusions and Reasons

36. In re-making the decision we have taken into account the documentary evidence that was before the First-tier Tribunal. This amounts to the Respondent's bundle with Annexes A - E, and the Appellant's bundle comprising 67 pages. In addition we have taken into account the Appellant's most recent undated witness statement, received by the Tribunal on 11th September 2015.
37. We have considered all of the evidence in the round, and taken into account the submissions made by both representatives. We have considered the circumstances as at the date of hearing and considered this appeal in the light of the provisions of paragraph 339L of the Immigration Rules. We are conscious of the need to take great care before making adverse findings of credibility in asylum cases, and we are aware of the importance of considering this appeal in the light of the conditions in Zimbabwe, and this we have done by taking into account the background evidence.
38. The Appellant's age and nationality are not in dispute. We have taken into account that the Appellant is a minor at the date of the hearing before us, although she may have achieved her majority by the time this decision is promulgated. The Appellant will be 18 years of age on 24th September

2015. We have taken into account that the Appellant is still a minor, when considering her answers in interview, and the evidence given to the Tribunal. We accept that the Appellant first came to the United Kingdom when she was approximately 5 years of age, in 2002, and she is recorded as a dependant of her aunt S in the grant of asylum to aunt S dated 27th October 2003.

39. We accept that the Appellant was sent back to Zimbabwe by aunt S in 2003.
40. The findings made by the First-tier Tribunal that are preserved are set out in paragraphs 19 and 20 of the decision and may be summarised as follows. The Appellant is not an MDC member or supporter, and there is no evidence that either the Appellant or her uncle G have any significant profile within the MDC. There is no real evidence to support the Appellant's claim that she is at risk from ZANU-PF.
41. Having considered the country guidance in CM Zimbabwe, the Appellant has not shown that she would be at risk of attracting the adverse attention of ZANU-PF if returned to Zimbabwe. A failed asylum seeker with no significant MDC profile is not at real risk of having to demonstrate loyalty to ZANU-PF. The Appellant would not be at risk because of her political opinion if returned to Harare where she was previously living.
42. We had to consider whether the Appellant would be at risk as a lone minor female if returned to Zimbabwe. Having carefully examined the Appellant's account we do not accept that her uncle was kidnapped. We note the preserved finding of the First-tier Tribunal that the Appellant's uncle did not have any significant profile within MDC. There was therefore no reason for him to be attacked and kidnapped by ZANU-PF.
43. If the uncle had been kidnapped, we do not find it credible that the family have apparently made no attempt to locate him or make any enquiries as to his whereabouts. Both the Appellant and her aunt were asked about this in oral evidence, and both indicated that they had no information, and gave no indication that the authorities in Zimbabwe had been informed that the uncle was still missing or that any enquiries had been made.
44. We also do not find it credible, if the uncle had been kidnapped, that neither the Appellant nor her aunt had any idea as to what had happened to his property. The Appellant described her uncle's property as a farm, although her aunt described it more as rural land rather than a farm. It is however apparent from the Appellant's evidence that the uncle had some assets, as she described him having two employees. For these reasons, we do not accept that the Appellant's uncle was kidnapped.
45. We do not accept the Appellant's aunt G took the Appellant from her uncle's property to her home in Harare and shortly thereafter received a threatening letter from the people who had been involved in the kidnap. Again we note the preserved findings of the First-tier Tribunal that neither

the Appellant nor her uncle had any significant MDC profile. We find that no adequate reason has been given as to why a threatening letter would be sent. We note that the letter has not been produced in evidence, and the Appellant accepted that she had not read the letter. We also note the lack of evidence from the Appellant's aunt G who is said to have received and read the letter, and that it was this letter that caused her to flee to South Africa. We fully accept that it would not be possible for aunt G to give oral evidence before the Tribunal, but if the events had occurred as claimed, we find that it would have been possible for aunt G to have submitted either a written statement or letter.

46. We do not accept that at the same time that the threatening letter was received, stones were thrown at aunt G's property in Harare. If some individuals did throw stones, which we do not accept, we do not find that this was linked to kidnapping of the Appellant's uncle or threatening letter, as we do not accept that those events occurred.
47. We accept that the Appellant travelled from Zimbabwe to South Africa, and that she then travelled from South Africa to the United Kingdom, in company with her aunt S who had travelled from the United Kingdom to meet her in South Africa. We find that aunt S believed that the Appellant still had the right to enter the United Kingdom, because of the leave that she had previously been given in 2003. Aunt S confirmed that she did not realise the Appellant's indefinite leave to remain had expired, in answering a question put to her by the Tribunal.
48. We do not accept that the Appellant's aunt G remains in South Africa nor do we accept that she has made an asylum claim in that country. We note the absence of any evidence from aunt G to confirm her whereabouts and the absence of any documentary evidence to confirm that an asylum claim has been made in South Africa. We appreciate that on occasions it may be difficult to produce documentary evidence, but if an asylum claim had been made in South Africa, we see no satisfactory reason why documentary evidence of that should not have been sent in support of the Appellant's claim to the Tribunal.
49. We do not accept that the Appellant has no family members in Zimbabwe. We note that the Appellant has resided in Zimbabwe between 2003 and April 2014. We do not accept that the Appellant does not have contact with her mother. We find that the Appellant has given inconsistent evidence on this issue. In response to question 21 of her asylum interview on 30th June 2014, the Appellant when asked when she last had contact with her mother, stated that she had "never talked to her directly as well." In her oral evidence, when cross-examined as to paragraph 7 of her witness statement at page 15 of the Appellant's bundle, the Appellant stated that she had never had a conversation with her mother. She stated that her witness statement was incorrect. In her witness statement at paragraph 7 she had recorded; "I confirmed in my witness statement that I speak to my mother here and there. We do not discuss anything special." In paragraph 3 of the same witness statement the Appellant stated,

“I refer you to my WS paragraph 6 where I confirm that I communicate with my mother here and there. My mother has episodes of what I assume to be guilt, she tries to communicate but she has always maintained that she is not in a position to take care or live with me because she has since remarried and lives with her husband’s family. I have no idea where she lives and neither do I have other contact details for her apart from Facebook which she rarely uses.”

It is therefore evident that the Appellant has on three separate occasions in two of her witness statements confirmed that she does communicate with her mother, but denied this when interviewed, and denied it in her oral evidence. We find no satisfactory explanation has been given for this contradiction in evidence. We find this adversely affects the credibility of the Appellant.

50. We find that the Facebook evidence also adversely affects the Appellant’s credibility. It is now accepted that the Appellant’s mother accepted her request to be a friend. There are photographs of the Appellant in her mother’s Facebook profile. The Appellant has produced a photograph of herself and her younger brother and sister. We did not find her oral evidence when asked about this to be either credible or plausible. The Appellant accepted that she had uploaded this photograph onto Facebook and explained that she had met her siblings by coincidence. She believed that they lived with their father, but in oral evidence stated that she had not asked them where they lived. We did not find this to be credible. In our view it is reasonably likely, that if the Appellant met her siblings by chance she would ask them where they were living and with whom.
51. Having considered the evidence given both by the Appellant and her aunt, we are not satisfied that the condition in paragraph 339L(iii) and (v) are met and we set out below those conditions;
 - “339L(iii) the person’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person’s case;
 - (v) the general credibility of the person has been established.”
52. The burden of proof in this appeal is on the Appellant to a reasonable degree of likelihood. We find that the burden has not been discharged, and we do not accept that the Appellant is not in contact with her mother, nor do we accept that the Appellant has no family support available in Zimbabwe. We conclude that we have not received from the Appellant and her witness, a comprehensive or accurate account of the Appellant’s circumstances in Zimbabwe, and we conclude that the Appellant would not be at risk if returned. We do not find that she would be returned as an orphan female minor, because she is not an orphan, and we do not accept that she would have no family support.
53. We accept the evidence of aunt S that she has been providing financial support for the Appellant in Zimbabwe, and we find that there is no reason why such financial support could not continue if it was needed.

54. We therefore conclude that because the Appellant would not be at risk if returned to Zimbabwe, she is not entitled to a grant of asylum, or humanitarian protection, and there would be no breach of Articles 2 and 3 of the ECHR.
55. In considering Article 8 we firstly consider the Immigration Rules. The Appellant does not rely upon Appendix FM in relation to family life, and we conclude that the Appellant cannot satisfy the requirements of Appendix FM.
56. We also conclude that the Appellant cannot satisfy the requirements of paragraph 276ADE(1). She cannot satisfy sub-section (iii) because she has not lived continuously in the United Kingdom for at least 20 years. She cannot satisfy sub-section (iv) because although she is under the age of 18 years, she has not lived continuously in the United Kingdom for at least 7 years.
57. The Appellant cannot satisfy sub-section (v) because she is not age 18 years or above and under 25 years. She cannot satisfy sub-section (vi) because she is not age 18 years or above.
58. We have decided that it is appropriate to consider Article 8 outside the Immigration Rules. We have done so taking into account the step by step approach advocated in Razgar [2004] UKHL 27 which involves answering the following questions;
- “(1) Will the proposed removal be an interference by a public authority with the exercise of the applicant’s right to respect for his private or (as the case may be) family life?
 - (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
 - (3) If so, is such interference in accordance with the law?
 - (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
 - (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?”
59. The burden of proving a family or private life that engages Article 8 rests upon the Appellant. If that is proved, the Tribunal must then consider whether the proposed interference with that family and/or private life is in accordance with the law, necessary and proportionate.
60. The Appellant has resided in the United Kingdom since 1st May 2014. We accept she briefly resided in this country as an infant in 2002 and 2003. She has however lived by far the greater part of her life in Zimbabwe. We do not find that the Appellant has established a family life with aunt S, and the children of aunt S with whom she lives. There has been very little

detail given in relation to the children of aunt S, and the Appellant when asked in oral evidence could not give their ages. The Appellant's biological mother lives in Zimbabwe as does her father. We are not satisfied that the Appellant provided an accurate account of her circumstances in Zimbabwe, and are not satisfied that she does not have contact with her mother. We accept that some financial support has been provided by aunt S to the Appellant while the Appellant was in Zimbabwe, and that the Appellant has lived with her aunt in the United Kingdom for approximately sixteen months. We do not however accept this amounts to family life that engages Article 8. However, we do accept that the Appellant has established a private life in this country since she arrived in May 2014, and we will go on to consider the third, fourth and fifth questions posed in Razgar, in relation to the Appellant's private life, and also, in relation to her family life, if we are wrong in holding that family life does not exist.

61. We find that the proposed interference which would be caused by the Appellant's removal from the United Kingdom is in accordance with the law. We find this because the Appellant is not at risk in Zimbabwe, and therefore she is not entitled to asylum or humanitarian protection, and Articles 2 and 3 of the ECHR would not be breached. We also find that the Appellant cannot satisfy the Immigration Rules necessary in order to be granted leave to remain.
62. We find that the removal decision is necessary in the interests of maintaining effective immigration control, which in turn is necessary in order to maintain the economic well-being of the country.
63. We then turn to consider the issue of proportionality. The Appellant is still a minor, and therefore her best interests are a primary consideration. We take into account the wishes of the Appellant to remain in the United Kingdom. We also take into account that she has only resided here for approximately sixteen months, and that her biological parents reside in Zimbabwe, and we are not satisfied that the Appellant has given an accurate account of her circumstances in that country.
64. We also take into account that the Appellant has lived the greater part of her life in Zimbabwe, and she is a citizen of that country, and she would not be at risk if returned. The Appellant has been educated in Zimbabwe, and we find no reason why she could not continue her education there. There are no relevant medical issues to be considered.
65. We conclude that the Appellant's best interests would be served by returning to the country of which she is a citizen, and where we are satisfied that she has developed relationships and friendships between 2003 and 2014.
66. We take into account and attach weight to the considerations listed in section 117B of the Nationality, Immigration and Asylum Act 2002. We note that sub-section (1) confirms that the maintenance of effective

immigration controls is in the public interest. We note that the Appellant can speak English and therefore satisfies sub-section (2) although as confirmed in AM (Malawi) [2015] UKUT 0260 (IAC) an Appellant can obtain no positive right to a grant of leave to remain whatever the degree of her fluency in English.

67. Sub-section (3) confirms that it is the public interest that an individual seeking to remain in this country is financially independent. We do not find that the Appellant is financially independent, although we accept that she has been financially supported by her aunt.
68. We have to attach weight to sub-section (4) which states that little weight should be given to a private life established by a person at a time when the person is in the United Kingdom unlawfully. The Appellant has had no leave to remain in this country since her arrival on 1st May 2014. Even if she had had limited leave to remain, sub-section (5) states that little weight should be given to a private life established by a person when their immigration status is precarious, and limited leave is a precarious immigration status.
69. Therefore we find it appropriate to attach little weight to the private life developed by the Appellant. We in fact have not heard comprehensive evidence about her private life, other than she lives with her aunt and her aunt's children, and is currently studying.
70. Having conducted a balancing exercise in relation to proportionality, taking the above factors into account, we conclude that the weight to be attached to the failure of the Appellant to satisfy the Immigration Rules is substantial, and the weight to be attached to the public interest in maintaining effective immigration control is also substantial. We find that this outweighs the weight to be attached to the wishes of the Appellant and her aunt that she be allowed to remain in the United Kingdom notwithstanding that she cannot satisfy the Immigration Rules. Our conclusion is that the Appellant's removal from the United Kingdom is proportionate, and would not breach Article 8 of the ECHR.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. We substitute a fresh decision as follows, referring to NRC as the Appellant;

We dismiss the Appellant's appeal on asylum grounds.

The Appellant is not entitled to humanitarian protection.

We dismiss the Appellant's appeal under the Immigration Rules.

We dismiss the Appellant's appeal on human rights grounds.

Anonymity

The First-tier Tribunal made an anonymity direction. This is continued pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall directly or indirectly identify the Appellant or any member of her family. Failure to comply with this direction could lead to a contempt of court.

Signed
Deputy Upper Tribunal Judge Hall

Date
17th September 2015

**TO THE RESPONDENT
FEE AWARD**

No fee has been paid or is payable. There is no fee award.

Signed
Deputy Upper Tribunal Judge Hall

Date
17th September 2015