



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

Appeal Number: HU/15078/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 8<sup>th</sup> October 2018**

**Decision & Reasons  
Promulgated**

**On 23<sup>rd</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**E P  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

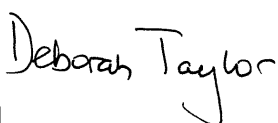
For the Appellant: Mr Billie of A Billie Law

For the Respondent: Mr A Tan, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Howard made following a hearing at Bradford on 20<sup>th</sup> July 2017. The judge dismissed the appellant's appeal on human rights grounds.
2. The appellant was born on 8<sup>th</sup> November 1969 and is a citizen of Zimbabwe. He came to the UK on 7<sup>th</sup> November 2002 and sought asylum. His claim was rejected and he made further submissions in 2007 and 2010 both of which were unsuccessful.

3. On 31<sup>st</sup> May 2016 the appellant was refused leave to remain as the partner of a person present and settled in the UK.
4. Mr Billie of A Billie Law, who was present at the First-tier hearing, informed me that he sought permission to advance asylum grounds at the hearing. The protection claim is a new matter for the purposes of Section 85(6) of the 2002 Nationality, Immigration and Asylum Act and accordingly express consent from the Secretary of State was needed in order to allow the Tribunal to consider the ground in accordance with Section 85(5) of the 2002 Act. Mr Billie said that such consent was sought from the Presenting Officer at the hearing and was granted.
5. He challenged the judge's decision on the basis that the judge had failed to assess the risk of persecution on arrival in Zimbabwe in accordance with existing country guidance authority. The judge had accepted that the appellant had been present at a number of events before the Zimbabwean Embassy in London and ought to have engaged with the fact that, regardless of the level of his political profile, he will be stopped and subjected to a two stage questioning process at Harare Airport.
6. Furthermore the judge had failed to consider whether the appellant's removal would constitute a breach of his right to remain in the UK on private life grounds - he has been here for over fifteen years - and had erred in failing to assess the claim by reference to paragraph 276ADE(vi).
7. Mr Tan accepted that the judge had erred for the reasons set out in the grounds and the appellant's submissions. He did not oppose a remittal of this appeal to a judge other than Judge Howard at a date to be notified.
8. The original judge erred in law in failing to apply a number of country guidance cases in relation to Zimbabwe including TM (Zimbabwe) v SSHD [2010] EWCA Civ 916, EM and Others (returnees) Zimbabwe CG [2011] UKUT 98 and CM (EM country guidance disclosure) Zimbabwe CG [2013] UKUT 00059.
9. He also erred in law in failing to consider one of the grounds of appeal, namely Article 8 both in relation to the Rules, paragraph 276ADE and outwith the Rules. His decision is set aside.
10. Both parties are directed to serve on each other the bundles upon which they intend to rely within fourteen days of receipt of this determination. The appellant is also directed to expressly request consent, prior to the hearing, from the Secretary of State to argue his protection claim before the next First-tier Judge.



Signed

Date 17 October 2018

Deputy Upper Tribunal Judge Taylor

