Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11853/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 March 2018	**On 12 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

J M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Cole, Counsel, instructed by SMK Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant to the decision of First-tier Tribunal Judge Chapman (the judge), promulgated on 15 December 2017, dismissing the Appellant's appeal against the Respondent's decision of 1 November 2017, which in turn refused his protection and human rights claims. The Appellant, a citizen of Zimbabwe, essentially claimed that he had been actively involved with the MDC and was at risk from ZANU-PF as a result. He asserted that he had been abducted and ill-treated in the past and that this would occur if returned to Zimbabwe.

The judge's decision in summary

2. Between [48] and [56], the judge makes numerous adverse credibility findings against the Appellant. In summary, he find that the Appellant had not been involved with the MDC, had not been abducted or ill-treated, and was not at risk on return to Zimbabwe.

The grounds of appeal and grant of permission

3. The fairly succinct grounds of appeal are in effect limited to three points. First, that the judge erred in his assessment of medical evidence. Second, that the judge erred in relation to the dates on which the Appellant was allegedly detained by ZANU-PF. Third, that he erred in respect of the conclusion that the Appellant had failed to mention at an earlier stage his work as a model.

4. Permission to appeal was granted by First-tier Tribunal Judge Keane on 30 January 2018.

The hearing before me

5. The Appellant attended the hearing. Having given an introduction, I then ascertained that I had all relevant papers before me including a new bundle of documents submitted under Rule 15(2A) of the Upper Tribunal's Procedure Rules.

6. Mr Cole relied on the grounds, quite properly acknowledging that they were somewhat restricted in their scope. In respect of the Appellant's claim to have been a model in Zimbabwe I was referred to [53] of the judge's decision. The Appellant had in fact stated that he had been a model in his screening interview. This evidence had been referred to by the interviewing officer in the substantive asylum interview. In this regard, there an error on the judge's part. Mr Cole submitted that this was a material error. Indeed, he suggested that this of itself was sufficient to render the whole of the decision unsound.

7. It was submitted that the Appellant's position as a model would have stood him out, creating a greater adverse risk profile, both in the past and on return. It was suggested that being a model might increase the risk on return in the same way as being a teacher would (in light of the country guidance decision in CM (EM country guidance; disclosure) Zimabawe CG [2013] UKUT 59 (IAC). Mr Cole noted that the Appellant had also mentioned his work as a model at paragraph 6.2 of his witness statement (page 26 of the Appellant's bundle). The connection between the work as a model and risk on return had been stated in Mr Cole's skeleton argument as well.

8. Turning to the issue of the medical evidence, Mr Cole submitted that the judge's inference that the Appellant had been in detention when the report was allegedly written was not a strong one. It might be that the judge or the Appellant had been calculating time periods inclusively, having regard

to the start and end dates of the claimed detention. It was unclear why the judge had stated that the medical evidence could have been consistent with the Appellant being robbed rather than assaulted in the manner put forward in his claim.

9. Mr Clarke submitted that the grounds of appeal were indeed limited and there were a number of unchallenged findings by the judge. In respect of the model issue it was submitted that the judge had looked at this point in light of how the Appellant had put his own case. I was referred to [54] of the decision. It was said that there was insufficient evidence to suggest that risk categories in the country guidance case of CM could be expanded to include models. The judge was entitled to find that even if the Appellant had been a model it would make no difference to the issue of risk on return.

10. In respect of the medical evidence, Mr Clarke submitted that the judge's findings were open to him and were certainly not perverse.

11. In respect of the alleged inconsistency on the dates on which the Appellant claims to have been abducted by ZANU-PF, there was clear inconsistency in the Appellant's own evidence, having regard to the asylum interview and the witness statement. Indeed, the grounds themselves appeared to be wrong in stating that the Appellant had claimed to have been abducted in April 2012.

Decision on error of law

12. As I announced to the parties at the hearing, I conclude that there are no material errors of law in the judge's decision when it is read sensibly and as a whole. My reasons for this conclusion are as follows.

13. I note firstly that a large number of adverse credibility findings have not been challenged by the Appellant. Without setting these out in detail, they are contained in [48](1), (3), (4), (5), (6), (7) and (8), [51]-[52], and [55]. All of these findings were clearly open to the judge. When assessing the merit of the alleged errors I bear in mind the overall number and nature of the unchallenged findings.

14. Dealing with the inconsistency on the claimed date of detention/abduction by ZANU-PF, I note that at question 88 of the substantive asylum interview the Appellant claimed this occurred in June 2012. By contrast, in the witness statement at page 27 of the Appellant's bundle he makes reference to having himself first erroneously stated that he was detained in April 2012, then seeking to clarify and correct this by saying that it was in fact May 2012. On any view, the judge was entitled to find that there was a material inconsistency in the Appellant's evidence on this core issue of his claim. Therefore this ground of challenge is misconceived.

15. Turning to the medical evidence, in my view, the judge was entitled to find, based on the evidence as a whole and perfectly reasonable

inferences drawn therefrom, that the Appellant's claim involved him being in detention in October 2012, that being the time when the medical report appears to have been produced (see [50]). The judge was faced with inconsistent evidence from the Appellant even as to when the detention began (April, May, or June 2012). The Appellant had claimed to have been in detention for a period of some five months. I see no evidence from the Appellant as to how he was calculating the length of detention; whether it was inclusive or exclusive of any particular month. Mr Cole has offered a suggestion which would favour the Appellant's challenge, but that is, with respect, somewhat beside the point. The judge was entitled to draw inferences as best he could, based on the evidence before him: that is precisely what he did.

16. It follows from what I have just said that the judge was also entitled to find that the date of the medical report was inconsistent with the Appellant's claim.

17. Further, the judge was entitled to have regard to the fact that the medical report did not mention the Appellant having been in detention and/or any injuries consistent with the alleged sexual violence. He was entitled to find that the contents of the medical report were consistent with, for example, a violent robbery. When this last point is seen in light of the evidence as a whole, there is no error in respect of the treatment of the evidence.

18. I turn finally to the issue of the Appellant's work as a model in Zimbabwe. It is a fact that the Appellant did mention having been a model at question 1.14 of the screening interview and in his witness statement at paragraph 6.2. It is also the case that the interviewing officer referred to the modelling work at question 21 of the asylum interview. In this regard, what the judge says in the second sentence of [53] is factually erroneous. However, in my view, this is not a material error, having regard to the decision as a whole.

19. I say this for two reasons. First, having regard to what the judge says in the rest of [53] and then in [54], I find that the judge was also placing emphasis on his view that the Appellant had not himself put forward the fact of his modelling work as being a significant element of his claim both in respect of past events and future risk. The judge was entitled to find that nothing about the modelling work was said at all in the Appellant's first written statement. Having looked at the asylum interview for myself, I note that at questions 13–14, 125, 129, and 130, there was ample opportunity for the Appellant to have raised this particular factor as being of importance, but failed to do so. The judge was entitled to find in [54] that the Appellant had not suggested that he was recognised when abducted and detained nor was he identified as being someone of a higher profile when allegedly treated in hospital or in the letter from the MDC.

20. With reference to the skeleton argument, at page 8 of the Appellant's bundle I note that the Appellant's work as a model is referred to in the

context of internal relocation in Zimbabwe. That point was by way of a submission made to the judge in writing. However, it does not materially undermine the judge's overall findings on the evidence that the Appellant himself did not regard the modelling as being particularly significant as to what he alleged to have occurred to him in the past.

21. Second, I agree with Mr Clarke that the judge was fully entitled to conclude at the end of [53] that the modelling issue would not have enhanced any risk on return. As I read that particular sentence, it is likely that the judge was effectively regarding this as an "in any event" point; in other words, even if the Appellant had been a model, in light of the evidence as a whole this would have made no difference to the issue of risk. I reject any suggestion that the enhanced risk categories in the country guidance decision of CM does, or could possibly, include models. The submission to the contrary was, I have to say, somewhat ambitious.

22. In light of the above there are no material errors of law here and the decision of the First-tier Tribunal shall stand.

Notice of Decision

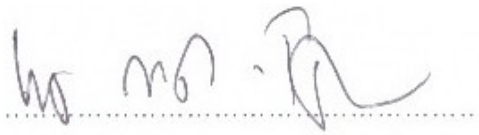
The decision of the First-tier Tribunal does not contain material errors of law.

The decision of the First-tier Tribunal stands.

The Appellant's appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

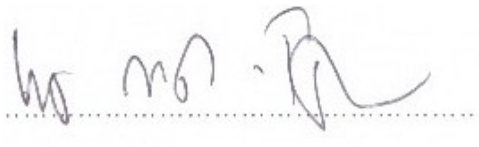
Signed  Date: 9 April 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed  Date: 9 April 2018

Deputy Upper Tribunal Judge Norton-Taylor