



IAC-AH-SAR-V1

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

Appeal Number: PA/04710/2019

THE IMMIGRATION ACTS

**Decided under Rule 34 Without a Hearing
On 18 September 2020**

**Decision & Reasons
Promulgated
On 23 September 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M L A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Hutchinson promulgated on 19 December 2019.
2. The appellant is a citizen of Zimbabwe whose case is that he is at risk of persecution on return for association with his maternal uncle who has been arrested and murdered in Zimbabwe. The appellant's case is he is at risk because of his uncle's activities.
3. The respondent did not accept that the appellant's uncle is politically active in Zimbabwe, nor did she accept that the appellant had received any threat or mistreatment in Zimbabwe. The respondent also drew inferences adverse to the appellant of his failure to claim asylum in the

Netherlands en route to the United Kingdom or on arrival in London or Belfast.

4. The appellant appeared in person at the hearing before Judge Hutchinson in Belfast. He was not legally represented. The respondent's Presenting Officer was present by a video link.
5. The appellant gave evidence and was cross-examined. The judge noted [11] that the appellant had said in his interview that although his uncle had received threats, nothing physical had happened and he had never been arrested. He noted also that the appellant had [10] now produced an article from "Byo 24 News" dated 5 November 2018 before he had left Zimbabwe on 7 December 2018 referring to the uncle and that he had been arrested. The judge noted [12] that this discrepancy, that is the appellant not knowing in March 2019 that his uncle had been arrested prior to 5 November 2018 required explanation, noted that he said "by then I didn't have the article. I didn't know the news was about him. I only know now".
6. The judge set out at [12] to [15] why she did not accept the appellant's explanations for not knowing what had happened to his uncle and the contradictions in that explanation.
7. The judge considered [16] that the appellant's credibility was diminished by his failure to mention that his uncle was one of the members of the "Mthwakazi Liberation Front" at interview.
8. The judge also drew inferences adverse to the appellant from his account of how he learned of his uncle's death [18] to [21] given inconsistencies in the affidavit which mentioned it.
9. The judge found that:-
 - (i) the appellant had not shown he was related to the man said to be his uncle;
 - (ii) the claimed uncle had been murdered as claimed;
 - (iii) even if that was so that there was a risk to him on return to Zimbabwe [23];
 - (iv) even if the appellant's uncle were a target he identifies as Shona (not Ndebele as the uncle is);
 - (v) there was no evidence that might support a finding that the authorities would be in a position to identify him as an associated threat [26] given that he lived in a different township, has no political involvement himself and was not targeted and had not been in contact with the uncle for a long time;

- (vi) the appellant's evidence of how he was no longer in possession of his passport was not credible [28] and he did not therefore provide an explanation as to why he could not obtain his passport if indeed it was being held against the payment of a balance so he could avoid a risk at the airport on return [29];
- (vii) the appellant's credibility was damaged pursuant to Section 8 of the 2004 Act [30];
- (viii) having had regard to CM (EM country guidance; disclosure) Zimbabwe [2013] UKUT 59, the appellant was not at risk.

10. The appellant sought permission to appeal on the grounds that his refusal was based on him not being able to say that his uncle belonged to "Mthwakazi" which he had in fact mentioned in his interview as shown in the voice recording; that Mthwakazi is not really a political party but "human rights" and that if he had been asked about political parties he would not be able to say Mthwakazi because it is not really a political party. He said that he had not said that Mthwakazi and his uncle spoke against the government.

11. On 4 June 2020 Upper Tribunal Judge Bruce granted permission stating:-

"The appellant asserts that the central account of dismissing his appeal - his failure to mention the term Mthwakazi at his interview is an unfounded error of fact. Permission is granted because it is arguable that such an error, if made out, would establish unfairness material to the outcome of the appeal.

The appellant, who was unrepresented, should be aware that the Tribunal will not consider new documents he has submitted when considering whether the decision of the First-tier Tribunal contains an error of law. Should the decision of the First-tier Tribunal be set aside, it remains open to the appellant to make an application to submit the documents to the Tribunal at that stage. The appellant may provide the Secretary of State with copies of those documents at any time".

12. Judge Bruce also made directions in this case stating:

1. I have reviewed the file in this case. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:

(a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so

(b) whether that decision should be set aside.

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

2. I therefore make the following DIRECTIONS:
 - (i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);
 - (ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;
 - (iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file and serve a reply no later than **28 days after this notice is sent out**.
 - (iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.
3. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit reasons for that view no later than **21 days after this notice is sent out** and they will be taken into account by the Tribunal. The directions in paragraph 2 above must be complied with in every case.
4. If this Tribunal decides to set aside the decision of the First-tier Tribunal for error of law, further directions will accompany the notice of that decision.
5. Documents and submissions filed in response to these directions may be sent by, or attached to, an email to FieldHouseCorrespondence@Justice.gov.uk using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents. Service on the Secretary of State may be to UTdirections@homeoffice.gov.uk and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.
13. The appellant did not provide any submissions, nor has he provided a response to the respondent's submissions dated 24 July 2020.
14. The appellant has made no objection to this matter being dealt with without a hearing. I note that he is acting in person but there is nothing to indicate that he is not capable of communicating in English. His asylum interview was conducted in English and there was no need for an interpreter at the hearing. Further, he was able to draft his own grounds of appeal and to attach documents thereto.
15. The respondent does not object to this matter being dealt with on the papers.

16. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. Given that no objection to this course of action has been raised, and bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly, I am satisfied that in the particular circumstances of this case where no objection to a decision being made in the absence of a hearing that it would be right to do so. I find no merit in the grounds of appeal.

17. The challenge to the findings is limited to a specific charge that the appellant had in fact mentioned Mthwakazi in his interview.

18. What is said in the asylum record is as follows:-

“Q174 Has your uncle been involved with any political party in Zimbabwe?

I don't know if he is involved like voting or when you say involved (IO – Is your uncle a member of any political party in Zimbabwe?) No, just the one he is wanting to establish not any other.

Q175 So he is not involved with any established party in Zimbabwe?

It is only what he wants to start it is not yet it is just a skeleton”.

19. What the appellant says referring to his voice interview is that “Mthwakazi and my uncle SN spoke against the government”. He goes on to say that Mthwakazi is not really a political party but “human rights”. If he asked me about political parties I want to be able to say Mthwakazi because it is not really a political party.

20. I note also that in his preliminary information questionnaire the appellant said Mthwakazi stands for the Ndebele people in Zimbabwe and fights for the rights of people [page 3] and also that his uncle was part of the Mthwakazi group [page 4].

21. I accept there appears to be an error on the part of the judge in regard to the finding that the appellant had not said at interview that his uncle was a member of the Mthwakazi Liberation Front. That said, his evidence appears to be equivocal. It is odd to say “my uncle and Mthwakazi” if in fact he was a member. In reviewing the interview record I note that at Q91 the appellant said that he was assisted by the Mthwakazi crew which is not a political group but they stand for the rights of the people of the village; that the people who worked for it [Q95] were connected to his uncle [Q96] that he did say that he feared for his life because of the work his uncle does [Q161] as he testifies against the authorities [Q162].

22. I have also considered what the appellant said with regard to his uncle from Q194 to Q202. In short, the appellant accepted his uncle's political involvement was only in the township where he lives but did not mention that anything had happened to him [Q198].
23. The appellant was also asked about his uncle's political involvement.
24. While it may be that the judge misunderstood the evidence, the findings with respect to this point are limited in that the judge states only that his credibility is reduced and that he could not rely on the article as claimed. The judge had already given at [10] other reasons for not accepting the article. These are not challenged. Among these explanations are that there was no adequate explanation as to why the appellant had not produced the article earlier. Finally, it was not credible that he would have produced it only in response to the refusal letter given that it was published as early as 2018.
25. More importantly, there is no challenge to the inferences fairly drawn regarding the inconsistencies in the explanation as to why he had not mentioned that his uncle had been arrested if in fact that had taken place before he had left Zimbabwe and well before he had been interviewed. The judge was clearly entitled to draw inferences adverse to the appellant that he had changed his explanations [12] in that he had said first that he did not have the article and had not known the news about him, changing his explanation it was put to him that the appellant had always been in contact with his family since coming to the UK was that he had not been in contact with him for a long time, then confirming that it was four months before March 2019 and [13] that it was unclear why the appellant would have known about the uncle testifying against the government but not of a claimed arrest around the same time.
26. The judge was manifestly entitled to conclude that the explanation for the contradictions that this was "just an update" to reduce his credibility and indeed was entitled to conclude that the explanation of his interview lasting for six hours when it did not and that he had not made any complaint at the time is not explaining his inability to give truthful evidence. The judge was also entitled to draw inferences adverse to the appellant from his account about his uncle being murdered. She was entitled to conclude that it was not credible that the appellant would not have asked about how his uncle was killed and would not have asked his family [20] and from his inability to explain how he and his uncle's home were so certain the uncle had been murdered when he did not know the cause of death and the affidavit referred to an "decomposing body".
27. The judge was also entitled to draw inferences adverse to the appellant from inconsistencies and changes in his account as to how he had lost his passport [28]. In interview he had said that he had lost it with his baggage after he entered the United Kingdom. In cross-examination he said that it had been taken by the agent whilst there was a balance remaining for his being smuggled to the United Kingdom and he was unable to explain how

the passport, which he had confirmed in oral evidence he had in his hand and showed Immigration in the UK came to be taken by the agents stating that “they might have taken it from me”.

28. In the context of these unchallenged findings and clear inconsistencies and discrepancies, the judge was entitled to conclude that the appellant was not telling the truth. The sole point challenged is minor and when the determination is read as a whole the error is not in any way material.
29. It is telling that the appellant has not sought to challenge the cogent reasons given by the judge for concluding that she was unable to accept any of his claims as to what he stated had happened and why he could not return [31] and at [14] that “I am satisfied he is willing to say whatever he feels to be most advantageous to his asylum claim, with no regard for the truth”.
30. Accordingly, for these reasons, I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law as claimed. Bearing in mind that the appellant is not represented, I have considered the decision carefully, but conclude that it does not disclose any evident errors. I therefore uphold it.

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 their 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 18 September 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul