



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01744/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 8 December 2021**

**Decision & Reasons
Promulgated
On the 23 December 2021**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**AMM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Harvey, Counsel, instructed by the Cardinal Hume Centre

For the Respondent: Ms A Everett, Home Office Presenting Officer

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.

DECISION AND REASONS

1. The Appellant is a citizen of Zimbabwe. His date of birth is 4 February 1964.
2. Upper Tribunal Judge Gill anonymised the Appellant when granting permission. This direction continues.
3. Upper Tribunal Judge Gill granted the Appellant permission to appeal against the decision (promulgated on 4 December 2020 following a hearing on 21 October 2020) of the First-tier Tribunal (Judge R Hussain) to dismiss his appeal against the decision of the Secretary of State (dated 7 February 2020) to refuse his claim on protection grounds. The matter came before me to determine whether the First-tier Tribunal erred in law when dismissing the Appellant's appeal.
4. Judge Hussain allowed the appeal on Article 8 grounds, having found that the Appellant has lived in the UK continuously for twenty years. There is no cross-appeal by the Secretary of State.
5. The Appellant's claim in a nutshell is that he has a well-founded fear of persecution on return to Zimbabwe as a teacher who will be living in a high-density suburb of Harare (Mabvuku) and is who is reasonably likely to express his political opinions and/or be perceived to be in opposition to the government.

The Decision of the First-tier Tribunal

6. First-tier Tribunal Judge Hussain dealt with the claim for asylum in paragraphs 17-28 of his determination. The judge accepted that the Appellant was a teacher in Zimbabwe [paragraph 25] before he left; however, he found that this alone did not bring him within a risk category. The judge assessed risk on return to Mabvuku. He found that even if this is a "high-density" area of Harare, the Appellant would not be at risk because he has failed to demonstrate that he has any significant MDC profile or any other political profile. The judge did not accept that the Appellant engaged in sur place activities [paragraph 24]. Having found that the Appellant is not at risk on return to his home area, there was no consideration by the judge of relocation.

The Grounds of Appeal

7. There is one ground of appeal. It is asserted that the judge misconstrues and consequently misapplies the country guidance case of NN (Teachers: Matabeleland/Bulawayo: risk) Zimbabwe CG [2013] UKUT 198. The First-tier Tribunal Judge errs in law in that he incorrectly reads NN and CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 0059 as requiring the Appellant to show that he has a "significant MDC profile or any other political profile" to demonstrate risk on return.

The Country Guidance

CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 0059

8. In CM the Upper Tribunal restated the country guidance as set out in EM (with a change to paragraph 5 of the headnote). The country guidance is as follows:-

- “(1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.**
- (2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).**
- (3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.**
- (4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is**

one that, unusually, is under the sway of a ZANU-PF chief, or the like.

- (5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.**
- (6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.**
- (7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.**
- (8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.**
- (9) The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the**

humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.

(10) As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.

(11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN ... and remains valid”.

NN (Teachers: Matabeleland/Bulawayo: risk) Zimbabwe CG [2013] UKUT 198

9. The Upper Tribunal in NN decided as follows:-

“The “geographical filter” identified in EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC) and confirmed more recently in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC) is equally applicable to teachers. Thus, a teacher will generally not face a heightened risk on return to Zimbabwe, on account of his or her occupation or former occupation alone, if his or her destination of return is (a) rural Matabeleland North or Matabeleland South, where a returnee will in general not face a real risk of harm from Zanu-PF elements, including the security forces, even if he or she is a MDC member or supporter; or (b) Bulawayo, where the returnee will in general not face such a risk, even if he or she has a significant MDC profile”.

The Error of Law

10. Judge Hussain did not assess risk on return on the basis of the Appellant’s profession properly applying CM and NN. He dismissed the Appellant’s appeal on the basis that he has no “significant MDC profile or any other political profile”, however he did not assess risk on return to Harare (the Appellant’s home area) on the basis of the finding that the Appellant was a teacher before leaving Zimbabwe properly applying NN and CM. For the above reason the decision of the judge to dismiss the Appellant’s appeal on protection grounds is set aside. I communicated this decision to the parties at the hearing. I then heard oral submissions with a view to remaking the decision.

11. Ms Harvey submitted that I could allow the appeal. The Appellant, who was a teacher before leaving Zimbabwe, is of Shona ethnicity and would be returning to a high density suburb of Harare. Ms Everett relied on the RFRL.
12. The Respondent's position at the hearing before Judge Hussain was that the country guidance case, NN, no longer applied. In the Reasons for Refusal Letter the Secretary of State does not accept that the Appellant was a teacher before leaving Zimbabwe. The First-tier Tribunal made a positive finding in respect of this in favour of the Appellant. However, the position of the Secretary of State before Judge Hussain was that there has been a significant reduction in the level of official discrimination and ill-treatment against teachers since 2008 and that ill-treatment has changed from "overt violence to harassment and intimidation". The Secretary of State relied on the Zimbabwe Country Information and Policy Note (CPIN): Opposition to the government - February 2019. It was the Secretary of State's position that teachers are in general unlikely to be able to demonstrate that they would face persecution or serious harm solely on grounds of their profession. However, each case must be considered on its individual facts. The position was reiterated in the "Respondent's Review". The judge did not engage with this issue and therefore failed to resolve a matter of conflict between the parties.
13. The most recent country guidance relied on by the Secretary of State is CPIN Zimbabwe: Opposition to the government, version 5.0 of September 2021 and in respect of teachers the guidance states as follows:-
 - 2.4.21 In the case of teachers, in CM (Zimbabwe) the UT held that 'Those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.' (paragraph 3(10))
 - 2.4.22 As well as teachers, other groups which have been critical of the government include: health professionals, journalists, students, lawyers and civil society activists. Many of the recorded incidents are linked to involvement in (or, in the case of journalists, coverage of) demonstrations protesting against pay, working conditions and living costs. Recorded violations include arrest, assault, detention and abduction (see Treatment of other groups opposing the state).
 - 2.4.23 Being a teacher, lawyer, journalist, health professional, student or civil society activist does not, in itself, establish a risk of persecution or serious harm. Each case must be considered on its individual merits. Factors to take into account include the person's profile, activities, area of origin and proposed area of return. The onus is on the person to demonstrate that they face a risk of persecution".

It is also stated at paragraph 2.4.20 that the findings in CM (Zimbabwe) continue to apply.

14. The CPIN also relies on CM in respect of internal relocation stating that in general it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare or Bulawayo will reasonably be able to relocate to a rural area in eastern provinces and that in the case of the Shona ethnic group relocation to Matabeleland (including Bulawayo) may not be reasonable as they may face discrimination. Socio-economic circumstances of relocation need to be considered to decide whether relocation would be unreasonable or unduly harsh.
15. The country guidance background material relied on by the Secretary of State in the reasons for refusal and review is no longer relevant.
16. The Appellant's case is that internal relocation would not be reasonable on the basis of the Appellant's Shona origin which is a matter which is not contested by the Secretary of State. Furthermore he has been in the UK for twenty years, he does not speak Ndebele and he would have no means of sustaining himself in Matabeleland.
17. In terms of the applicability of the country guidance case NN the Appellant relies on background evidence in AB/2, specifically documents at section 3 relating to risk to teachers. It is also noted that in MS (Zimbabwe) v Secretary of State for the Home Department [2021] EWCA Civ 941 and in PS (cessation principles) Zimbabwe [2021] UKUT 00283 the Secretary of State accepted that CM remains applicable country guidance.
18. It is also noted by the Appellant that there has been a change in country guidance as noted above. It is asserted that the Appellant would face a real risk on return to his home area on account of his occupation. The area of Harare is high-density where he cannot be expected to conceal his political views, profession and past associations.

Conclusions

19. CM sand NN apply. There is no good reason to depart from current CG cases. In any event, the SSHD's own CPIN does not support such a departure.
20. Having taken into account the Appellant's submissions and those of the Respondent, I find that the Appellant would be at risk on return to his home area as a result of his former profession. He is in a heightened risk category as a teacher. Whether or not he has engaged in sur place activities, there would be a perception of MDC support on disclosure of his profession. Moreover, he is returning to a high-density area in Harare. Therefore, I must consider whether relocation is a safe and reasonable option. Applying the CG cases and current CPIN and taking into account the Appellant's ethnicity, the period of time that he has been in the UK and that he would not have family and unlikely to find employment

outside of his home area, I conclude that it would not be reasonable to expect the Appellant to relocate. For the above reasons the appeal is allowed on protection grounds.

21. The appeal is allowed on protection grounds.

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 Joanna McWilliam

Date 14 December 2021

Upper Tribunal Judge McWilliam