



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

Appeal Number: AA/06666/2013

THE IMMIGRATION ACTS

Heard at Birmingham

**Determination
Promulgated**

On 12 November 2013

On 5 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY

Between

CONCOLATA TINGIRIZINYANI ZVIRIKUZHE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Fountains Solicitors, Walsall

For the Respondent: Ms M Morgan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. On 20 September 2013, the appellant was granted permission to appeal against the determination of First-tier Tribunal Judge Pooler. Judge Pooler had dismissed the appellant's appeal against the Secretary of State's immigration decision of 9 July 2013 to remove the appellant as a person subject to administrative removal whose asylum/human rights claim has been refused.
2. The grounds of application which stand as the grounds of appeal fall under six headings. I deal with them in turn, taking into account Mr Howard's amplification of the grounds during his submissions.

3. Firstly, the judge failed to give adequate reasons for finding that, despite accepting that the appellant was heavily involved in the United Kingdom with organisations working for peace and justice which, according to the appellant's evidence, required her to criticise the Zimbabwean regime, she did not have a well-founded fear of persecution in Zimbabwe.
4. Secondly, the judge failed to identify all the risks factors that applied to the appellant and thereby did not follow binding case law. The judge accepted that the appellant's brother and son may have experienced difficulties in Zimbabwe. Similarly, the judge failed to take adequately assess whether the appellant would be disbelieved in Zimbabwe by the authorities as to whether she supported the regime. By not giving appropriate weight to these two factors the judge failed to follow the Supreme Court's approach in RT (Zimbabwe) and KM (Zimbabwe) v SSHD [2012] UKSC 38 which found that these issues would enhance a person's the risks on return.
5. Thirdly, the judge made contradictory findings in that at paragraph 31 he recorded that the appellant had said, "She has never engaged in political activity", whilst in her witness statement she had clearly indicated her political activity.
6. Fourthly, the judge applied the wrong test when assessing whether the immigration decision was proportionate in relation to article 8 ECHR. The judge had found that the appellant enjoyed private and family life in the United Kingdom and that her private and family life would be disrupted should she be required to leave. The judge had failed to give proper weight to the fact that the appellant had provided support to her daughter who had mental health difficulties and support for her grandchildren who were otherwise at risk of being taken into care.
7. Fifthly, the judge had failed to have due regard to the best interests of the children. The children are British citizens and they rely on the appellant for support. The judge failed to identify countervailing features to show that removal would be proportionate. Mr Howard took me to paragraph 60 of the determination where Judge Pooler had assessed proportionality in relation to the potential for the children suffering significant harm. Mr Howard argued this was the wrong legal test.
8. Sixthly, and on the same point, the judge failed to have due regard to section 55 of the Borders, Citizenship and Immigration Act 2009. Although the judge found that the best interests of the children were that the appellant should remain in the United Kingdom, the judge did not rank this factor higher than other factors when determining proportionality.
9. Ms Morgan relied on the rule 24 response of 5 October 2013, which was a detailed reply to each of the grounds. She submitted that the determination was well reasoned and omitted nothing. The appeal failed because of the lack of relevant reliable evidence to support the appellant's claims.
10. The appellant had been a high ranking nurse in Zimbabwe and would not be at risk on return, and in any event would be able to relocate. The judge

found that the appellant's activities in the United Kingdom did not amount to political activity that would attract the interest of the Zimbabwean authorities. He was entitled to come to that finding as it amounted to a finding that the appellant did not have a significant political profile.

11. Although the appellant had travelled to the United Kingdom in 2003 to support her daughter and grandchildren, she had overstayed. There was no clear evidence that the current situation required the appellant to remain in the United Kingdom. It was for the appellant to show that her absence would have negative consequences for her grandchildren's well-being. The evidence of such consequences was very limited and from friends, who although qualified to comment on such matters, gave personal rather than professional opinions. It was open to the judge to take account of the limited evidence and find against the appellant.
12. In reply, Mr Howard took me through the evidence that was available to Judge Pooler regarding the children's best interests.
13. Having examined the determination, the evidence and after having regard to all the arguments presented, I am satisfied that the grounds of application are merely an attempt to re-litigate the appeal. I find there is no error whatsoever in the judge's findings. My reasons are as follow.
14. There is no irrationality in the judge's finding that the appellant has been active in justice and peace organisations in the United Kingdom but would not be of interest to the Zimbabwean authorities. This is because the judge did not accept that the activities in which the appellant has been involved would be regarded by the Zimbabwean authorities as anti-regime. The judge set out in detail his findings and reasons on this issue in paragraph 26, relying on the fact that her concern for peace and justice was far removed from a focused interest in Zimbabwean political issues. The appellant provided no evidence from an independent source or any background country information to suggest that the judge could not reasonably come to this conclusion.
15. Similarly, Judge Pooler's findings regarding what risks the appellant might face because of the difficulties her brother and son encountered in Zimbabwe are properly set out in paragraph 27. The Supreme Court case law describes such factors as ones that might enhance an existing risk of persecution and does not go so far a to say that such relationships might be a further risk factor. Judge Pooler is correct in identifying that there is no authority suggesting that the appellant would be targeted because of her relationship to her brother and son and, having found she is not at risk herself for political reasons, would not encounter an enhanced risk.
16. With regard to the criticisms relating to paragraph 31 of the determination, it is clear they stem from a misreading of what Judge Pooler wrote. The grounds take the phrase out of context since Judge Pooler was, at this point of his determination, looking at the appellant's activities in Zimbabwe. The appellant has never claimed to have been politically active in Zimbabwe.

17. In light of these conclusions, I find there is no legal error in the judge's findings relating to asylum.
18. The remaining three grounds all challenge the judicial findings relating to the assessment of proportionality. The grounds seek to misrepresent what Judge Pooler found. He carefully looked at the reasons that brought the appellant to the United Kingdom and the current situations of the appellant and her daughter and grandchildren. Judge Pooler identified a serious lack of up to date evidence about the best interests of the children and how their wellbeing might be affected should the appellant be removed.
19. The Court of Appeal identified in SS (Nigeria) v SSHD [2013] EWCA Civ 550, [2013] WLR(D) 192 that the adversarial nature of the Tribunal meant that it would not generally be able or required to embark on investigations of its own even in situations where the best interests of children had to be considered. I am aware that in this appeal the appellant was legally represented and no doubt was advised that the burden of proof lay on her to show what the best interests of the children were. In such circumstances it was for the judge to consider the evidence presented. It is clear that this is what Judge Pooler did. In paragraphs 45 to 47 he set out the historical support provided by the appellant and the reasons for that. In paragraphs 48 to 52 he examines the very limited evidence relating to the current situation and in paragraph 53 sets out the difficulties this posed.
20. In paragraphs 54 to 59, Judge Pooler weighed the evidence and concluded that the immigration decision was proportionate. It is evident that he took into account all the factors that arose in this appeal and weighed them together.
21. The legal arguments raised are that he did not prioritise the best interests of the children and that he applied a "significant harm" test. I do not agree. The judge identified in paragraph 54 that it was in the children's best interest for the appellant to remain in the United Kingdom. He then went on to consider whether that consideration was displaced and he found that it was. He found that contact would change but would not end if the appellant returned to Zimbabwe and he considered that there was no evidence that the appellant's removal would result in the children suffering significant harm, which is akin to saying that they would not encounter a level of hardship that would be contrary to article 8 should the appellant be removed from the United Kingdom. This is fully consistent with Strasbourg and domestic principles and law.
22. The grounds seek to find difficulties in the determination where there are none. They are merely disagreement with the legitimate findings made by the judge and do not disclose any legal error.

Decision

The determination of Judge Pooler does not contain any error on a point of law and is upheld.

Signed
2013

Date: **12 November**

Deputy Judge of the Upper Tribunal