

**Upper Tribunal
(Immigration and
Asylum Chamber)**
Number: AA/09522/2013



Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 31 March 2015**

**Decision and Reasons
Promulgated
On 16 April 2015**

Before

DEPUTY JUDGE DRABU CBE

Between

PM

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms A Radford of Counsel instructed by Turpin & Miller, Solicitors.

For the Respondent: Ms A Fijiwala, Senior Presenting Officer.

DECISION AND REASONS

1. The appellant is a national of Zimbabwe. Following the refusal of the respondent to grant her asylum or any other kind of leave to remain, the appellant appealed to the First tier Tribunal. Her appeal was heard by Judge Colvin, a Judge of the First tier Tribunal at Taylor House on 14 November 2013. The appeal was dismissed for reasons given in Judge Colvin's determination dated 9 December 2013.

2. The appellant obtained permission to appeal to the Upper Tribunal from Judge Rintoul against the decision of Judge Colvin. The appeal came before me on 24 October 2014 and for reasons detailed in my determination dated 30 October 2014, I found that the decision was in material error of law for reasons I gave. I directed that the appeal be heard afresh but by agreement of parties the findings made by Judge Colvin regarding the appellant's claim of having been sexually abused were retained. I reserved the fresh hearing of this appeal to myself and I accordingly heard it on 31 March 2015.
3. The appellant, born on 29 August 1963, arrived in the United Kingdom on 24 April 2013, with a business visa, which was valid from September 2012 to September 2014. She claimed asylum on 16 August 2013. Her claim is that she fears persecution in Zimbabwe because she has been the victim of continuous sexual abuse by a man in high position named Happyton Bonyongwe. This person is the head of CIO in Zimbabwe and was related to her late husband who died in December 2000. He had been HIV positive. The appellant was expected to marry him after his death but she refused. The appellant is also HIV positive and following Mr Bonyongwe having been diagnosed HIV positive, he has become very angry and blames her for infecting him. He had her detained for several days and she escaped to come to the UK on her business visa, which she had already obtained. She states that if she were to return to Zimbabwe he would kill her and subject her to treatment contrary to Article 2 and 3 of the ECHR.
4. I have noted the reasons of the respondent to refuse the appellant's claim. It is essentially on grounds of credibility, the respondent relying heavily on lack of corroborative evidence about the appellant's relationship with Mr Bonyongwe and her claim that she escaped from his custody and left Zimbabwe on her own passport.
5. I have reminded myself that in directing that the appeal be heard afresh, it was agreed by the parties and with my consent, to preserve the findings made by Judge Colvin in paragraph 29 of her determination. The Judge in this paragraph accepted that the appellant is "likely to have been the victim of sexual abuse following the death of her husband by a family member who considered it his right to "inherit" her in the traditional way...". What the Judge did not accept is that the abuser was Happyton Bonyongwe who she found to be "the head of the CIO and part of Robert Mugabe's government and has been for a number of years". The Judge's refusal to find the abuser to be the man the appellant claimed to be her abuser was due to lack of objective evidence of relationship between the appellant and Happyton Bonyongwe.
6. In paragraph 28 of her decision Judge Colvin said, "This is not a case where the appellant has been incoherent or inconsistent in the core of the account she has given." I agree with Judge Colvin, having made a careful and detailed appraisal of the appellant's evidence throughout the asylum proceedings and the oral evidence she gave at the hearing before me when she was cross-examined at length.

7. As Ms Fijiwala, representing the respondent said, if I found the appellant credible, then her claim of being at real risk of persecution on removal to Zimbabwe must succeed. I do find the appellant's claim credible. I find that the appellant has given reasonable and credible explanations raised by the respondent regarding the credibility of her claim including her ability to leave Zimbabwe on her own passport and her failure to seek asylum in the UK during her previous visits.
8. In my judgment the reasons doubting her credibility fall away when the standard to which she is required to discharge the burden of proof is real likelihood rather than on balance of probabilities. The fact that the appellant has not produced "objective evidence" of her relationship to the abuser is perfectly understandable in the circumstances. His relationship to the appellant is through her husband and who has been dead for many years and who did not get along with the abuser. The relationship with the husband has never been claimed to be close or direct. They shared grandfathers but came from different grandmothers. In my view the expectation that the appellant could and should have produced relevant birth certificates to prove the relationship objectively is placing too heavy a burden on the appellant. In this context, I have borne in mind the state of her mental health and also that such evidence could at best be corroborative of what she has consistently claimed throughout the proceedings. Corroborative evidence is not generally required in asylum cases. The discrepancies alleged by the respondent in the appellant's description of the relationship with her abuser are no more than illusory and non-existent and at best minor, given the relationship itself and the circumstances surrounding that relationship.
9. I also note that the appellant's social, economic and professional background in Zimbabwe were not such as to cause her to emigrate to the UK for economic reasons. She was gainfully employed in the field of orthodontics. I also note that the appellant has made no attempt to bolster her claim through suggesting that she was an active supporter of the MDC. She has candidly admitted that she was not politically active in Zimbabwe and was no more than "a passive MDC supporter". I note the compelling nature of the appellant's statements in her witness statement dated 4 November 2013 in particular in paragraph 6 where she has said, "If the Home Office want to know why I didn't speak to Happyton much when he was with me, this was because I was too busy being raped and abused. That is the tough reality of it...".
10. I have taken due account of the objective evidence on Zimbabwe on conditions relevant to the appellant's claim. In this context I have found the information relating to women in Zimbabwe as set out in the COI Report for Zimbabwe 2012 very helpful and supportive of the claim that the appellant has made. I have also considered and given due weight to the report of Dr Ian McCubbin, Senior Clinical Psychologist. Letter date 5 November 2013 from Dr Anthony Chinhara, Specialist Orthodontist has also been important in my consideration of the claim. I note in particular that it was in 2009 that the appellant had told him that she was being

abused by Happyton Bonyongwe who she described at the time as husband's cousin. This description of the relationship was a loose description. But what is important is that upon getting to know the name of the abuser as Happyton Bonyongwe, it was decided not to engage help from police. This is strong evidence of the consistency and bona fides of the appellant's claim. I have also taken du account of the fact that it was after her abuser discovered that he too had become HIV positive that he threatened to kill her. This happened just before the appellant fled Zimbabwe and indeed caused her to flee.

11. In my judgment the appellant has discharged the burden of proof. I find that she is a refugee under the Refugee Convention and needs to be granted asylum in accordance with paragraph 334 of the Immigration Rules.

K Drabu CBE
Deputy Judge of the Upper Tribunal
Date: 13 April 2015

Anonymity Direction:

The direction made by Judge Colvin shall remain in force.

TO THE RESPONDENT
FEE AWARD

Having allowed this appeal I make an award of full fee paid or payable

K Drabu CBE
Deputy Judge of the Upper Tribunal