



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03102/2015

THE IMMIGRATION ACTS

Heard at Field House
On 29 February 2016

Decision & Reasons Promulgated
On 30 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

KG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Not represented
For the Respondent: Mrs S Sreeraman, Senior Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Zimbabwe born on 27 June 1986. He is appealing against the decision of First-tier Tribunal ("FtT") Judge Harrington, promulgated on 11 August

2015, whereby his appeal against the respondent's decision to refuse his application for asylum was dismissed.

2. The background to this appeal is that the appellant entered the UK on 10 March 2013 with leave as a visitor and with the intention, as notified to the respondent, of joining the British army. Whilst in the UK he was notified of rule changes that rendered him ineligible to join the army. He then applied for asylum.
3. Most of the appellant's family live in Zimbabwe. However, his sister lives in the UK and he has resided with her. He has never been politically active or experienced difficulties with the authorities in Zimbabwe but believes that he would be at risk on return because the authorities in Zimbabwe are aware he sought to join the British army (having tampered with a letter he received from the British army). In addition, he believes that his brother in law, who is divorcing his sister, has informed the authorities in Zimbabwe about him.
4. The respondent refused the appellant's application. It was not accepted that the Zimbabwean authorities have, or have ever had, an interest in him or that he would be at risk on return.
5. The appellant appealed and his appeal was heard on 27 July 2015 by Judge Harrington. The FtT dismissed the appeal. It found, inter alia, that:
 - a. The appellant has no political affiliation although his father is an MDC supporter.
 - b. The letter from the British army that the appellant believed was tampered with was more likely damaged in transit or opened in error.
 - c. The authorities in Zimbabwe did not have any particular interest in the appellant or desire to prevent him travelling to the UK. They would be aware that he travelled for employment purposes.
6. In assessing the risk the appellant would face on return to Zimbabwe the FtT first considered the risk at the airport, applying HS (Returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094 as affirmed more recently in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC). The FtT found that even if the appellant revealed his attempt to join the British army he would not be seen as requiring a second stage interview and would be able to safely pass through the airport.
7. The FtT then considered the risk the appellant would face in his home area. Applying CM, the FtT found that because the appellant did not have an MDC profile and would be returning to an urban area he would not face risk on return in his home area.
8. The FtT also considered the appellant's Article 8 claim and determined that it was unable to succeed either within or outside of the Immigration Rules.
9. The grounds of appeal argue that the FtT failed to properly assess the risk to the appellant of being subjected to persecution at Harare International Airport and that the

FtT's conclusions as to the absence of risk were not consistent with the Country Guidance case law given, in particular, the appellant's effort to join the British army and his father's involvement with the opposition. The grounds also argue that Country Guidance case law was not followed in respect to the risk the appellant would face upon return to his home area.

10. At the error of law hearing, Mr KG was not represented. He relied on his grounds of appeal and a detailed skeleton argument (which I confirm I have read carefully). At the hearing he highlighted the risk he would face at the airport arising from the suspicion caused by his attempt to join the British army and his father's involvement with the opposition.
11. Mrs Sreeraman's response was to argue that the FtT had undertaken a comprehensive assessment and directed itself to, and properly applied, the relevant authorities. She maintained that this is a clear and well reasoned decision where the judge has explained which evidence was accepted and which was not.

Consideration

12. The appellant's strongest argument is that the FtT failed to properly assess the risk he will face upon arrival at Harare International airport given that he travelled to the UK to join the British army.
13. It was common ground that the Country Guidance case of HS, despite its age, was applicable in this appeal and should be applied in respect of the risk the appellant will face at the airport in Harare on being returned to Zimbabwe. HS identifies a two stage interview process for people being returned to Zimbabwe through Harare International Airport. The first stage is an initial interview at the airport to establish whether the person is of interest to the authorities. This stage does not carry with it a risk of mistreatment. If someone is of interest to the authorities a second stage interrogation may follow, which does entail a serious risk of mistreatment. HS states that a Zimbabwean being returned will be of interest, such that there is a real risk of them being subjected to the second stage interrogation, in the following circumstances.

"249...The deportee will be of interest if questioning reveals that the deportee has a political profile considered adverse to the Zimbabwean regime. Further interrogation away from the airport may also follow if enquires reveal aspects of a military history to be followed up such as being absent without leave or being involved in military activities outside Zimbabwe..."

14. The FtT correctly identified, at paragraph [39], that the key issue for it to resolve was how the authorities will view the appellant's aborted attempt to join the British army. In analysing this issue, the FtT found that the appellant will be believed if he tells the authorities he was unsuccessful in his effort to join the British army because the change in rules preventing him from doing so were well publicised and the time he has spent in the UK is insufficient for him to have served in the army. The FtT then found that a second interview would not be required because the appellant will not be of interest as someone who tried but failed to join the British army and as someone who has never been of interest to the authorities and has no MDC profile.

15. The appellant challenges this analysis as being inadequate and speculative, arguing that the suspicion of his involvement with the British army will be enough to trigger the second stage interview. However, the FtT has engaged with, and applied, the relevant Country Guidance; and it has given clear reasons for its findings. Reviewing both HS and the factual matrix in this appeal as a whole, it is clear that it was open to the FtT, for the reasons it gave, to conclude that the appellant's history will not be seen by the Zimbabwean authorities as requiring a second stage interview following his arrival at the airport in Harare upon being removed from the UK.
16. The appellant also contends that the FtT erred in not recognising the risk he would face returning to his home area. I do not accept that there is merit to this argument. The FtT found that the appellant would be returning to an urban, not rural, area and therefore, following CM, would not be at risk, as a failed asylum seeker, of having to demonstrate loyalty to ZANU-PF. The FtT also noted that the appellant had lived and worked in Zimbabwe throughout the worst of the political troubles without difficulties. I am satisfied that the FtT's finding is consistent with CM where a distinction is drawn between the risk faced in rural and urban areas.
17. In the appellant's skeleton argument he argued that the distinction between urban and rural areas has no relevance in the province from which he originates and cited part of paragraph [189] of EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) in support of this contention. The wording quoted in the skeleton argument is as follows:

"...serious concerns as to the position of a Zimbabwe citizen without ZANU-PF connections, returning from the United Kingdom after a significant absence to live in Mashonaland West, Mashonaland Central, Mashonaland East, Manicaland, Masvingo or Midlands province"

18. However, when the extract of paragraph [189] cited by the appellant is placed in its context it becomes apparent that the Tribunal in EM did distinguish rural and urban areas and that the extract cited by the appellant does not support the argument he is purporting to make. The full paragraph [189] from EM states (emphasis added):

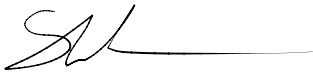
*Although, as a general matter, the risk of persecution and other serious ill-treatment in Zimbabwe, including the rural areas, has significantly declined, as at 28 January 2011, compared with the position under review in RN, the evidence before us raises serious concerns as to the position of a Zimbabwe citizen without ZANU-PF connections, returning from the United Kingdom after a significant absence to live in Mashonaland West, Mashonaland Central, Mashonaland East, Manicaland, Masvingo or Midlands province. Such a person, **returning to a rural part of such a province**, where the chief or headman is likely to be an acolyte of ZANU-PF, may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control, unless, of course, the Immigration Judge is entitled to conclude that the returnee is likely to be associated with such elements.*

19. I am satisfied that the grounds of appeal, both individually and cumulatively, fail to establish that the FtT made a material error of law and that the FtT reached a decision that was open to it on the evidence and consistent with the Country Guidance case law.

Decision

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.

Signed

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

Deputy Upper Tribunal Judge Sheridan

Dated: 14 March 2016