



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

Appeal number: AA/04517/2015

THE IMMIGRATION ACTS

**Heard at Manchester
On December 14, 2015**

**Decision & Reasons Promulgated
On January 4, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

T G

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

Appellant

Ms Johnstone (Home Office Presenting Officer)

Respondent

In person

DECISION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, citizen of Zimbabwe, claimed asylum on November 2, 2013 but this was refused by the respondent on February 23, 2015 and at the same time a decision was taken to remove him. The appellant appealed this decision on March 17,

2015 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before Judge of the First-tier Tribunal Chambers on June 17, 2015 and he allowed the appeal in a decision promulgated on June 22, 2015.
4. The respondent sought permission to appeal that decision on June 25, 2015 on the ground the Tribunal had failed to make or give adequate findings on why the appellant would be at risk from his former employer, [SP].
5. Permission to appeal was granted by Judge of the First-tier Tribunal Holmes on July 7, 2015 on the basis the grounds were arguable.
6. The matter came before me on the above date and on that date I heard submissions from both the appellant and Ms Johnstone. Ms Johnstone had also represented the respondent at the original hearing.
7. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order now.

ERROR IN LAW

8. Ms Johnstone submitted the Tribunal had erred by allowing the appeal. No evidence, other than the oral evidence of the appellant, had been submitted that demonstrated he would be at risk, if returned. The evidence before the Tribunal was the appellant's employer had money problems and this was why they fell out. There was no evidence that either the appellant or his former employer were public figures. The appellant was part of a group and the Tribunal's finding was open to it.
9. The appellant maintained that as a well known figure he would be at risk and the Tribunal was entitled to reach the decision he did. He submitted that he would not be safe, if returned, and the Tribunal was entitled to reach the decision it did.

DISCUSSION AND FINDING

10. The appellant applied for asylum and it is clear from paragraphs [12], [17] and [24] the respondent accepted the core of his claim namely that he worked for whom he claimed and that there had been a falling out between himself and [SP].
11. The issue for the respondent and the Tribunal was whether there was sufficiency of protection and the respondent concluded at paragraph [26] the authorities did provide protection if the same

was sought and at paragraph [29] it concluded the appellant had failed to establish there had been a sustained and systematic failure of state protection. The Tribunal further concluded at paragraph [30] that he had failed to demonstrate his employer had any influence over the state. The respondent went on to state at paragraph [35] that even if the appellant could not return to where he lived he had failed to demonstrate it was unreasonable for him to go and live elsewhere.

12. At the hearing the Tribunal noted there was police corruption and that the judicial system was subject to political influence. The Tribunal concluded that a determined individual with influence could act with impunity.
13. Ms Johnstone's submission is that there was no objective evidence to support the appellant's claim his employer was such a person.
14. An article about the group was submitted to the respondent but this did not support the appellant's claim. A newspaper article referred to the appellant absconding from the group due to poor remuneration-the appellant himself claimed that he had been told he would not be paid.
15. The appellant's case was built only on his evidence. Although others had absconded from the dance group there was no evidence before the Tribunal that they had sought asylum or come to any harm.
16. The real issue for me to consider was whether, in the absence of any adverse objective material, about his former employer the Tribunal could reach the conclusion it did.
17. Bearing in mind the appellant's claim I am satisfied the Tribunal should have considered why there was an absence of any such evidence. The objective evidence in the refusal letter only applies to persons of influence but the appellant had provided no evidence to show his former employer was a person of influence.
18. I am satisfied that the Tribunal's decision was inadequately reasoned and there is therefore an error in law. I therefore set aside the decision to allow the claim on asylum and human rights grounds.
19. Both parties had indicated at the hearing that a further hearing was unnecessary and that the decision could be made on the evidence currently before me.
20. The fact I found there to be a material error and the reason I found a material error means the decision allowing the appeal must be reversed. Whilst his employment and dispute may be

credible I have no evidence to support the appellant's claim that he would be at risk in Zimbabwe. The total lack of any adverse material about [SP] undermines the appellant's claim that he would be at risk of persecution or serious harm, if returned.

21. It is insufficient to merely be a credible witness. The appellant has to show he is either at risk of persecution or serious harm and to do that he needed to present some evidence to support his claim that [SP] was a man of influence and that he would be both at risk from him and the state would not provide protection.
22. The appellant failed to do this and I therefore dismiss his claim for asylum and under human rights.

DECISION

23. There was a material error.
24. I set aside the original decision and dismiss his appeal for asylum, humanitarian protection or protection under human rights.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I uphold the fee award.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis