



IAC-PE-AW-V1

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

Appeal Number: AA/05310/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11th February 2016**

**Decision &
Promulgated
On 4th April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**[P C]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Morgan - Counsel

For the Respondent: Mr Wilding - Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Zimbabwe born [] 1990. She appeals against the decision of the Respondent made on 11th March 2015 to remove her from the United Kingdom as an illegal entrant by way of directions under

paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971. The Appellant appealed against that decision and her appeal was dismissed by First-tier Tribunal Judge C J E Nicholls on 27th August 2015. On 19th November 2015 having heard submissions I found that there was a material error of law in the determination of Judge Nicholls and I set his decision aside with no preserved findings of fact. I found that Judge Nicholls failed to make proper findings on the factual basis of the Appellant's claim and gave no reasons and no authority for his expressed view of the situation in Zimbabwe and the likelihood of the Appellant getting a fair trial.

2. The Appellant arrived in the UK on 14th October 2013 using someone else's passport. She contacted the Asylum Screening Unit two weeks after she arrived here. There was some confusion about when she got here and the route she took, there being some suggestion that she came via Dubai.

Basis of the Appellant's Claim for Asylum

3. The Appellant is of Shona ethnicity. She has a child who is looked after by her mother in Chivhu and she also has three siblings. Her mother has indefinite leave (ILR) to remain in the UK and she also has a brother here.
4. The Appellant's mother had been involved in politics but the Appellant did not become involved, having seen how dangerous it was. In 2008 the authorities had gone to their house looking for her mother and accused her of "selling out". The Appellant's aunt had applied for a visa for the UK for the Appellant at that time which was refused.
5. The Appellant worked as a bus conductor. Her manager, Mr S, was an active supporter of the Movement for Democratic Change (MDC) and in the days leading up to the 2013 elections he put MDC posters on the buses. No-one seemed to have any problem with the posters. The buses were being used to ferry people to MDC rallies and conferences and those on the bus would sing, shout and wear t-shirts with MDC slogans. After the elections the posters stayed on the bus. Occasionally people taunted them but the Appellant was not concerned because she does not support any party.
6. On 10th August 2013 four Zanu-PF supporters approached the bus driver who was called Mr M. One was wearing a police uniform and the others Zanu-PF t-shirts. The Appellant said she recognised them because she had seen them previously a few blocks from her house. The men taunted and mocked her but she was not bothered as she was used to people hurling insults because of the posters on the bus. Mr M retaliated and this started an altercation. The men started punching and kicking him. The Appellant ran away. She decided to leave the country. On her way to Chivhu her manager sent her a text to say that the bus driver had been found dead and a policeman had been to the office looking for her. She stayed at her grandmother's house for about a month during which time she was informed by a tenant living at her own house that a warrant had

been issued for her arrest after she had failed to respond to a subpoena. She sold her father's cattle to raise the money to pay the agent to bring her to the UK.

The Decision of the Secretary of State

7. On the day she made the decision the Secretary of State had before her a subpoena dated 12th August 2013 and an arrest warrant dated 9th September 2013. The subpoena is addressed to the Appellant in Harare and was issued by the Magistrates' Court. The law that is alleged to have been broken is "Undermining authority of or insulting the President" and "Assaulting or resisting a Police Officer". The warrant was issued also on 9th September 2013 because she had failed to turn up at the hearing intimated in the subpoena set down for 9th September 2013.
8. The view of the Secretary of State is that it is inconsistent given the Appellant's previous experiences and her claim that what had happened to her mother had made her cautious that she would continue to work on a bus exhibiting MDC posters. The fact that she had said that the time before the elections was peaceful so she did not try to leave her job shows the level of awareness she had of the potential dangers of the situation. Despite this she continued to work in a job where she was taunted as an MDC supporter and indeed said it did not bother her. The Secretary of State does not therefore accept that she worked on a bus displaying MDC posters and carrying MDC supporters. The Secretary of State notes that in her interview the Appellant had at one point said "One of the police officers that attacked my colleague", having previously stated that there was only one police officer and gave an explanation for this which the Secretary of State did not accept. The Secretary of State does not accept that the Appellant witnessed the assault on Mr M.
9. With regard to the subpoena and the warrant, the Secretary of State said that they are originals insofar as they are copied documents which have been written on and have had what appears to be a wet stamp applied but the method by which the Appellant came to have received them is considered inconsistent. She said that they had been delivered to her home address and the people she lived with brought them to her place of work from where she collected them. When she was asked the names of the people who brought them she could not remember. Her explanation for this was that she had lived there for a year but she would move back and forth to her mum's and the lodgers were not the same lodgers all the time. The Secretary of State said that it is inconsistent, that if the lodgers knew her well enough to be able to bring the documents to her place of work, she did not know their names.
10. The Secretary of State mentioned a further inconsistency in that she said in her statement that she had received a telephone call from a tenant to tell her that a warrant had been received in her name but this is at odds with her claim at interview that she found out about the warrant when her employer telephoned her to tell her about it. She had said too that she

picked up the document when she was on her way to the UK which means that she must have carried it over the border to South Africa. The Secretary of State does not accept that she would have done such a dangerous thing.

11. I have a statement from the Appellant which is dated 25th August 2015 in which she confirmed that her son is still in Chivhu with his grandmother. The father of her son has never wanted anything to do with either her or him. Her mother was not happy that she had become pregnant so young. She managed to secure a job as a bus conductor. She earned about \$10 a week, a sum which left her unable to care for her son and her father who was critically ill so she took the child to her grandmother.
12. In response to the points made in the refusal letter she said that the elections in 2013 were generally very peaceful. There was not much violence. She had no choice but to work. She had to take whatever job she could get. No-one seemed to have a problem with the posters. The driver had become angry and was calling the men names. The Appellant was afraid. She knew she could not go to the authorities because no Judge would believe her account, especially given that a policeman was involved. By this time Mr M was lying on the floor unconscious. She ran away. She took a couple of essentials from her house and fled to her grandmother's house in Chivhu. If she had remained in Zimbabwe it would have put her son and her grandmother at risk. On her way to Chivhu her manager sent her a text message saying that Mr M had been found dead on the pavement. He also told her that a policeman had come to the office looking for her. From the description she knew it the man looking for her was one of the four men who had killed her friend. She stayed at her grandmother's house for about a month.
13. She has established a strong family life in the UK with her mother and brother. She is often depressed and feels isolated and alone.
14. The Appellant gave oral evidence adopting her statement.
15. The Appellant was asked why she said in her screening interview that she had arrived in the UK in 2010 when she later said it was 2013. She said she had made a mistake. She was asked about the bus company she worked for and said it was a small private one. Mr Sadduma was her manager. She always worked on the same bus with Mr M. She confirmed that her case is solely based on what happened to Mr M. She had no political involvement herself at all. She did not see Mr M actually being killed because when she left they were still kicking him. The text that she received would still be on her phone but her phone is at her grandmother's house in Zimbabwe.
16. With regard to the subpoena and the warrant, she said she carried them across the border into South Africa in an envelope in her suitcase. She denied that the agent had had anything to do with the documents. He did not see them and she did not tell him about them. She said she was safe

at her grandmother's house but she left because she knew the police were going to be looking for her. Chivhu is a two hour drive from Harare

17. In cross-examination she confirmed that all three buses belonging to the owner had MDC posters put on them. I asked her if it was common for posters to be put on business vehicles and she said it was. It was a sixteen seater minibus and they stopped at bus stops to pick people up. The men had pulled Mr M out of the bus. Other people came and were watching. She said there was a big crowd about twenty to 40 people at the bus station. She was sitting at the back of the bus where there is a sliding door which she used to exit the bus when she decided to run away. At that point the men were still shouting. They were not hitting Mr M. He asked her about the text and she said she got it when she was at her grandmother's house. Mr Wilding pointed out to her that that is not what she said at paragraph 10 of her statement. She repeated that she had been at her grandmother's. The text told her that Mr M was dead. It was the same day that her manager phoned her and told her the police were looking for her. She had said at paragraph 10 of her statement that when she was on her way to Chivhu she got a text that said the police were looking for her. Her response was that she could not really remember. She just knows it was all the same day.
18. Mr Wilding asked her about the warrant and she said it was about two weeks after she arrived at her grandmother's that she received this. She said that she had phoned her housemates to tell them that she would not be around. There are approximately four housemates. She did not go to get the warrant because she was frightened. Mr Wilding pointed out to her that she had said that she lived with her grandmother for a month but there was a two month gap between her going there and her leaving the country. She conceded that it must have been two months she was at her grandmother's. He put it to her that she had given two different answers to the question of when she had found out that the police were after her. She could not say when she found out about the warrant or how long it was before she left her grandmother's that she had found out about it. She said her mother had not come to court because she had not been asked to come.
19. In re-examination Mr Morgan, having noted that the Appellant had said that she had no money to go to her home to collect the documents, asked her where she got the money for the agent. She said she sold her father's cars for US \$5,000 and gave the agent \$4,500.
20. In his submissions Mr Wilding said that he would rely on the reasons for refusal letter. He submitted that the account given by the Appellant is entirely lacking in credibility and plausibility. It is inconsistent. She gave two different accounts of how she found out about the letter. There is indeed a catalogue of discrepancies. When the incident happened no-one spoke to her or approached her. There is no credible explanation for anyone having any interest in her. She was subpoenaed two days later on 12th August. She could not say how long she had been at her

grandmother's. There is no evidence that the authorities have been looking for her since she left. He questioned why her mother was not called to give evidence.

21. Mr Morgan said that the account given by the Appellant is simple and was clearly told. She could have claimed asylum on account of political opinion but it is clear that she has not made up a story. He said it is reasonable to infer that the police are looking for her to keep her quiet. He submitted that the Respondent had erred in failing to check the two documents that the Appellant provided. It is not open to her to simply say they are false without providing evidence of that.
22. Mr Morgan also provided a skeleton argument which I have taken into account.

Burden and Standard of Proof

23. The burden is on the Appellant to show with regard to the asylum appeal that returning him would expose him to a real risk of an act of persecution for reasons set out in Regulation 6 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006. With regard to Humanitarian Protection he would have to show substantial grounds for believing that he would face a real risk of serious harm as defined by paragraph 339C of the Immigration Rules or face a real risk of a breach of his protected human rights.

My Findings

24. I have given very careful consideration to all the evidence put before me in this case. I did not find the Appellant to be a credible witness. There were discrepancies, some of them small but it is the core of her account that I have difficulty comprehending. I do of course bear in mind that she has provided a subpoena and a warrant, both documents on the face of it having been issued by the court in Zimbabwe.
25. What the Appellant says is that she worked with a bus company and there was an incident when four men came and started to harangue the driver because there were MDC posters on the bus. The driver got annoyed and the men started to beat up him so badly that he died. She told us in oral evidence that she was at the back of the bus. She did not go forward at all. She was not particularly clear about when she ran away but it is clear that no-one spoke to her. She was inconsistent about whether or not Mr M was unconscious or dead when she ran away. I think it unlikely that she recognised the men or that they knew who she was. The men did not show the slightest bit of interest in her. If the bus had been in an isolated place and there was no-one else there, I may have taken the view that the men would have seen her and wanted to silence her but that is not what happened. Her evidence was that there were 30 or 40 people standing watching. I have some doubts as to whether the Zanu-PF or the police in Zimbabwe would care about anyone witnessing them murdering someone

but the fact is that there were 30 or 40 people who saw what happened. The submission of Mr Morgan was that the police are after her to 'keep her quiet', but what of the other witnesses?

26. With regard to the court documents, the charges set out on the subpoena and the warrant have no basis in the account of events as described by the Appellant. On her account there is nothing to indicate that the men even saw her. I question why she would phone her housemates to tell them she would not be back. She said that she phoned her housemates to tell them she would not be coming back to the house and that is when they told her about the documents. Why would she phone them when she was allegedly hiding from the authorities. Her friends may have willingly or under pressure passed on information about where she was. There is no reasonable explanation for her not knowing the names of her flatmates and her belated explanation for not having gone to collect the documents was that she had no money, not that she was afraid. I question why she would leave her mobile phone with the text on it behind when she went to so much trouble to bring the two court documents, taking a risk in going to collect them and in carrying them over the border. I find it highly unlikely that it is the case that at a busy border such as that between South Africa and Zimbabwe it can be said that 'no searches are made'. It may well be that not everyone is thoroughly searched but that does not mean that there is no risk of being searched.
27. I do not accept that she cannot remember where she was when she got the text. She had worked with Mr M. She said she never worked with anyone else which presumably means that he was never off work for any reason. I do take the view that in general, human nature dictates that people remember where they were when bad news is delivered. I would have expected her to remember where she was when she was told that Mr M had been killed and that the police were after her. I do not accept that she would be confused about that and her evidence about this was vague and confused.
28. One significant inconsistency in her evidence is the fact that she kept repeating that she had been with her grandmother for one month and it was only when it was put to her that this was impossible given the dates she had given that she conceded it must have been two months. However long she was there her evidence is that she had no problems there.
29. I do not accept the Appellant's account. I accept that the Respondent did not check the two court documents and that there is no documentary evidence before me to say that they are false. My task is to consider the documents in the round with the rest of the evidence. The evidence before me points to the fact that the documents were obtained by the Appellant for the purposes of her asylum claim in the UK. Her account of the way she found out about them, how they came into her hands and how she got them out of Zimbabwe is inconsistent and implausible. Applying that to my finding that there is no credible evidence that the authorities

would have any reason to be interested in her, I attach no weight to the documents.

30. For the reasons given above I do not accept the Appellant's account as true. I find that she has not established that she would face a real risk of persecution on return if she were removed to Zimbabwe. It was not out to me that there is anything in the Country Guidance decision **CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC)** to assist the Appellant but for completeness I have considered this and find that there is not.
31. It was submitted that the Appellant has a family life with her mother and that removing her would give rise to a disproportionate interference with that family life. I have considered this in terms of **Razgar, R (on the Application of) v. Secretary of State for the Home Department [2004] UKHL 27** and **Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31** and am not satisfied that the Appellant has established that she has a family life with her mother that engages Article 8. She apparently lives with her but there is no evidence that their relationship is one that goes beyond the normal emotional ties that exist between adult relatives. I have no evidence of any private life and note that the Appellant has only been in the UK since 2013.

Notice of Decision

The appeal is dismissed on asylum grounds.

The appeal is dismissed on human rights grounds

The Appellant has not established a right to Humanitarian Protection in the UK.

No anonymity direction is made.

Signed

Date: 14th March 2016

N A Baird
Deputy Judge of the Upper Tribunal