



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01877/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford

**Decision &
Promulgated
On 28 June 2017**

Reasons

On 26 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**BTM
(ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Anderson a Legal Representative
For the Respondent: Mr Diwnycz a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for asylum and ancillary protection on 8 October 2015. His appeal was dismissed by First-tier Tribunal Judge Hands ("the Judge") following a hearing on 20 January 2017.
2. I make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as this was an asylum and ancillary protection claim. 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.

The grant of permission

3. Judge Dineen of the First-tier Tribunal granted permission to appeal (27 March 2017) only on the grounds that it is arguable that the Judge erred in relation to;
 - (1) findings regarding his return to Zimbabwe as the Respondent does not intend to return him there, and
 - (2) a finding that he could return to South Africa if he concealed his true identity.

Party's positions

4. Mr Diwyncz relied on the rule 24 notice (13 April 2017) which basically said that the Judge did not err. He submitted that the comments regarding Zimbabwe were otiose as there was no intention to return the Appellant there. Accordingly, any error in referring to it was not material. The Appellant had lied when he obtained the false documents so he could do so again.
5. Miss Anderson relied on the grant of permission.

The Judge's decision

6. The Judge comprehensively rejected the account the Appellant gave of having had problems in either Zimbabwe or South Africa in a detailed assessment. She found that;
 - (1) he was born a citizen of Zimbabwe [37],
 - (2) he entered South Africa illegally and would have been unable to obtain naturalisation there [38],
 - (3) he obtained a South African passport that was not in his name through bribery but did not acquire South African nationality through that [39],
 - (4) he was as likely to have entered South Africa using his Zimbabwean passport as not, and found work in Pretoria, Durban, and Johannesburg [41],
 - (5) he was in Durban and became a father in 2008, was able to find work then, obtained hospital treatment, applied using the South African passport to come here in 2010 which was refused, and moved to Johannesburg [42],
 - (6) he formed a new relationship with a girl from Beit Bridge in Zimbabwe where he went to visit, was joined by her in Johannesburg when she fell pregnant, lived there until 2014 during which time he travelled to and from Beit Bridge where he went out with friends, and was involved in a brawl and fingerprinted in Beit Bridge in April 2013 and then used his South African ID [43],

- (7) he had relationship problems throughout 2014 but remained with his girlfriend [44],
- (8) he fabricated an account of being arrested in Beit Bridge in 2014 [45],
- (9) he found his girlfriend in bed with another man in 2015 on his return from work leading to an altercation [46],
- (10) he came here without difficulty having established he had a job, funds, and family in South Africa, was of no interest to the South African authorities, and was working and living there peacefully [47],
- (11) he had moved around South Africa for housing and employment [48],
- (12) he is TBB, a Zimbabwean national [49],
- (13) his father was granted refugee status due to his activities in Zimbabwe, his mother resides in Zimbabwe and has influential friends, her partner is involved in Zanu PF, and he (i.e. the Appellant) can reside with his mother and his 3 children [50],
- (14) his family have visited him in South Africa [52],
- (15) he had not told the truth about events in Zimbabwe following his father's departure to the United Kingdom, and had not told the truth about being arrested or detained in Zimbabwe in 2004 or 2014 [55],
- (16) he has not established he lost his Zimbabwean passport or cannot obtain a replacement, and he can return to Zimbabwe directly or via South Africa [56],
- (17) neither the South African or Zimbabwean authorities have any interest in him [57], and
- (18) he is of Manyika ethnicity, speaks Shona, lived in Harare, was educated to 'A' level standard, was never politically active, has no MDC profile, would not attract the attention of the authorities in Zimbabwe at the airport or when travelling to his family [61].

Discussion

7. There was no material error of law in relation to the Judge referring to Zimbabwe for the following reasons. He would not be returned there by the Respondent. The comments the Judge made were material to the decision as to whether he would be at real risk of return to South Africa which is where the Respondent intends to send him, as the possibility exists that he would be returned from there to Zimbabwe. This was referred to when Upper Tribunal Judge Chalkley remitted this matter to the Judge following a hearing on 18 August 2016 at [23] of his determination. The Judge was therefore required to consider it. In any event the Judge made sustainable findings as set out above regarding there being no real risk in Zimbabwe, and permission to appeal in relation to those matters was not granted.
8. It is an error of law to require someone to lie on his return to a country to avoid persecution about something as fundamental as his identity. The Judge found that the Appellant is TBB and a citizen of Zimbabwe. He cannot be required to live his life out as BM as explained in HJ (Iran)

v SSHD [2010] UKSC 31. However, the question is whether there is a real risk he would be required to live his life under a false name. The Judge rejected the account of him having problems in his real name in South Africa where he was able to obtain a work permit in his own identity to live and work there. In those circumstances, there is no real risk he would be required to lie. In addition the Judge was entitled to find that there was no real risk he would be persecuted on his return to South Africa even if he chose to lie, given her finding at [49] that “returning him with a fraudulent passport may mean he suffers prosecution for doing so but the consequences of such a prosecution do not amount to persecution” which was sustainable on the evidence.

9. I do not in all these circumstances accept that the Judge materially erred in law.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
28 June 2017