



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03319/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

Decision & Reasons

On 15th December 2017

Promulgated

On 29th January 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

SSZMM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood, of Counsel, instructed by Rochdale Law Centre
For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Zimbabwe born on 1st July 1983. He arrived in the United Kingdom in December 2000. In July 2016 he claimed asylum, which was refused by the respondent in a decision dated 16th March 2017.
2. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Chambers on 3rd May 2017. In a decision promulgated on 17th May the appeal was dismissed in all respects.
3. The claim as presented has a number of aspects to it. First of all it is said that the appellant is bisexual or will be perceived by others as being bisexual and that he is thereby at risk as a consequence. Secondly, it is

said that as a member of the Shona black population in Zimbabwe he would be at risk upon return. Thirdly, it is said that his uncle N M is a political activist and that he would be at risk because of his connections with his uncle.

4. Finally the appellant contends that by reason of his political activities in the United Kingdom he has a significant profile.
5. Linked with that is also the contention that even as a failed asylum seeker returning to Zimbabwe after a long time of absence that he would be at risk thereby as failing to show adherence to the ZANU-PF.
6. The evidence of the appellant before the Judge was that he had had two relationships of a heterosexual nature and none of a homosexual one. He had not told anybody about his bisexuality. It was the conclusion of the Judge that the appellant was not bisexual or would be perceived as such. Significantly that is a finding that is not sought to be challenged in the grounds of appeal now submitted against that decision.
7. It is said, however, in the grounds of appeal that the Judge failed to make findings on material matters, and in particular failed to consider **CM (EM country guidance: disclosure) Zimbabwe CG [2013] UKUT 0059 (IAC)**.
8. It is said that the appellant's place of birth in Manicaland Province and in Midlands Province, both of which areas, it is said, are affected by politically motivated violence, that there would be a risk to the appellant were he to return there. It is also said that the Judge failed to consider any aspect of internal relocation and whether such would be reasonable in all the circumstances.
9. The appellant further contends that his relationship with his uncle places him at risk upon return.
10. Leave was granted to appeal to the Upper Tribunal on the basis that **CM [2013]** had not been properly considered or at all. It was also granted in relation to the uncle. Thus the matter comes before me to determine the issues.
11. In terms of his own political profile the appellant contends that he attended four demonstrations in the United Kingdom between 2013 and 2016 and has gone online in protest. He contends that he has brought attention to himself by singing, marching and demonstrating. He believes that he appeared in Metro, a Zimbabwe tabloid newspaper. He heard about this from somebody who went on holiday to Zimbabwe and saw his picture. He indicated in interview that he had no other information on the matter and has received no specific threats.
12. The Judge noted the lack of direct evidence on the matter relating to the Metro and did not find that the appellant had any significant profile arising

from his demonstrations and posting online. Thus the Judge found in effect that the appellant lacked any significant political profile.

13. In terms of his uncle NM, that uncle was indeed politically active in Harare.
14. It is far from clear how long the uncle has been engaged in political activity. What is very relevant, submits Mr McVeety on behalf of the respondent, is that there is no indication that he has been in danger or is under threat as a result of his activities. Accordingly, he is able and free to canvass for his own political agenda and there is no reason to believe that the appellant would be linked with him in any adverse way. There is a small article from newsday.co.zw of 20th March 2017 speaking of the fact that in terms of the Zimbabwe Alliance the convenor NM has said if elected in next year's general elections his government will slash public spending. The article speaks of NM addressing journalists in Harare and criticising the ZANU-PF government. There is nothing to indicate that that uncle has come under any attack or is in any danger by reason of his publically expressed views.
15. Perhaps of more immediate relevance is, however, the issue of return on the basis of being Shona and having been out of the country for many years. It is said that a person without ZANU-PF connections returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabele South, may find it difficult to avoid adverse attention from ZANU-PF authority figures and those they control. Such may involve the requirement to demonstrate loyalty to ZANU-PF with the prospect of serious harm if unable to do so.
16. It is said that the issue of what is a person's home for the purpose of internal relocation should be decided as a matter of fact. It is said that this the Judge has failed to do.
17. Mr Wood submits that there has been no consideration at all as to what is the appellant's home area and whether he can reasonably return to it. It is only when that issue is determined that the question of internal relocation arises. Even in that case, it is necessary for the Judge to consider whether internal relocation is reasonable and viable in all the circumstances.
18. Mr Wood indicates that generally speaking on the decision in **CM** there could be a return to Harare or to Bulawayo which a returnee will not in general suffer the adverse attention of ZANU-PF. He said however that under footnote 8:

“(8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general more realistic but the socioeconomic circumstances in which persons are reasonably likely to find themselves will need to be considered in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.

- (9) The economy of Zimbabwe has markedly improved since the period considered in **RN**. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter”.
19. In terms of reasonable relocation to Bulawayo reliance is placed upon a report by Zimbabwe Peace Project (ZPP) Human Rights: Violations Monthly Monitoring Report February 2017 being unprepared for disaster (15.3.2017). That speaks of floods that have hit the country particularly in Matabeleland and Bulawayo have left a number dead and thousands homeless. Crops, livestock and other property were destroyed in the rains. Schools and other infrastructures had been destroyed. Mr Wood submits that in those circumstances it would not be reasonable to expect the appellant to relocate to Bulawayo given the damage to the infrastructure caused by the floods.
20. In terms of return to Harare reliance is also placed upon a report by the Zimbabwe Peace Project Alert: Displacement of vendors and disruption of businesses at Mbare Musika, 25th January 2017. It speaks of displacement of vendors and other traders from their designated trading spots at Mbare Musika as part of Harare City Council’s effort to clean up the place in a fight against typhoid. Youths affiliated to the ruling party ZANU-PF who have operated in that area have taken advantage of the exercise to claim open spaces to use as car parks. They are also victimising vendors and traders on the grounds of political affiliation. This would deprive vendors of their livelihood and they would have to relocate to Machipisa in Highfield. It is said that that is an indication that it would be difficult for the appellant to trade.
21. It is argued that had the Judge considered those reports that were indeed placed before him, that it would have been found that internal relocation would not have been reasonably available to the appellant.
22. Clearly the Judge’s failure to consider **CM** is an error of law. The question is however whether that error is in reality a material one.
23. It seems to me that on the basis of the findings of fact by the Judge the appellant has no significant MDC profile such as to prevent him from returning at the very least to Harare.
24. Although the grounds of challenge seek to criticise the Judge for failing to consider return to a home area or in the alternative internal relocation, no detail is provided as to why a return in those circumstances would be

unreasonable or unduly harsh. The appellant has a family member in a prominent position in Harare. Nothing has been advanced to indicate that the uncle would not or could not be in a position to lend financial or other support to him. Accepting that there has been some clearance of street traders in one part of Harare, such does not mean that employment in that trade or other trade is not possible in other areas. **CM** makes it clear that the socioeconomic circumstances in which persons are reasonably likely to find themselves will need to be considered in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate. As I have said, the grounds criticise the Judge for failing to do that but do not put forward a positive case that such hardship would arise.

25. The appellant in his witness statement indicates that he has a brother and two sisters in the United Kingdom who are now British citizens. He failed to indicate that they would be unsupportive of him were he to return. As I have indicated, there is his uncle in any event living in Harare. The appellant speaks Shona and English. As the Judge indicated at paragraph 9 of the determination, the Shona are the majority black population in Zimbabwe.
26. It was noted that the appellant was fit and well and the Judge noted the uncle living now in Harare.
27. The grounds fail to indicate in any way what reasons exist to make life in Harare unreasonably harsh for the appellant.
28. Mr Wood also seeks to argue that the Judge has not factored in the possibility that the appellant would engage in political activities in Harare and as such increase his political profile. It is not entirely clear to me whether that matter was ever raised in the hearing itself, and in that connection it is to be noted that the activities conducted by the appellant in the United Kingdom when he was free to do so over the period since 2000 have been very limited; as set out in paragraph 16 of the determination four demonstrations between 2013 and 2016. The Judge clearly calls into question his motivation either as a genuine believer of political activity or as a person creating his own profile. **CM** makes it clear that a returnee to Harare will in general face no significant difficulties unless he or she has a significant MDC profile or would otherwise engage political activities likely to attract the adverse attention of ZANU-PF. On the very limited participation by the appellant in political activities it is difficult to conceive that the appellant in fact meets that profile or indeed has any real genuine interest in politics. It should be noted that the Judge at paragraph 19 comes to the clear finding that the appellant has sought to bolster a weak asylum claim by inventing a number of potential problems. The Judge finds that he is an educated individual who can find the means to support himself now that he has attained his majority.
29. The Judge clearly ought to have considered and applied **CM**. Even had the Judge done so I do not find that he would have come to any conclusion than that the appellant could safely return to Harare and that it was not unreasonably harsh for him to do in all the circumstances. The appellant

has failed to show any reason why the generality of application of **CM** should not apply to him.

30. In the circumstances, therefore, I do not find that there has been a material error on the part of the Judge such that would have made any appreciable difference to the outcome.
31. In all the circumstances the appeal of the Upper Tribunal is dismissed.
32. The findings of the Immigration Judge are to be upheld.
33. In the circumstances, the appeal of the appellant is dismissed in relation to asylum, humanitarian protection and human rights.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 25 January 2018



Upper Tribunal Judge King TD