



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

Appeal Number: PA/04631/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16 January 2018**

**Decision & Reasons  
Promulgated  
On 7 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**SIPHO [N]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Muzenda, Longfellow Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The appellant is a citizen of Zimbabwe born on [ ] 1989 who appealed to the First-tier Tribunal against the decision of the respondent dated 28 April 2017 to refuse him asylum and humanitarian protection. The appellant arrived in the UK on a Tier 4 student visa on 13 September 2015 valid until 17 November 2016. The appellant claimed asylum on 7 November 2016. In a decision dated 26 April 2017 the respondent refused the appellant's

claim. In a decision and reasons promulgated on 7 July 2017, Judge of the First-tier Tribunal Onoufriou dismissed the appellant's appeal.

### **Grounds of Appeal**

2. The appellant appealed to the Upper Tribunal with permission on the grounds that:
  - (i) The judge erred in failing to correctly apply the case law in **HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094** with respect to risk assessment at the Harare Airport.
  - (ii) The appellant argued that the judge misunderstood the country guidance and in particular [34] **CM (EM country guidance: disclosure) Zimbabwe [2013] UKUT 59** in relying in particular on the headnote item (6) which says that a returnee to Bulawayo will not be at risk even if he has a significant MDC profile.
  - (iii) It was submitted that the judge erred in appearing to limit the risk to only MDC activists with a significant profile which was contrary to the additional risk category identified in **HS** of those seen to be active in association with human rights or civil society organisations. It was submitted that the two organisations the appellant is active in, ROHR and Zimbabwe Vigil, were civil society organisations and the judge accepted the evidence of the witnesses to that effect.
3. Although it was also argued that the judge may well have failed to have regard to the background information in relation to the significant increase in levels of violence, relying instead on evidence in 2013, Mr Muzenda made no further submissions in this regard and in my view such a ground was not properly arguable. The judge relied on the up to date information and evidence before him as well as the country guidance cases and the judge set out the information including the Country Policy and Information Note Zimbabwe dated January 2017.
4. Mr Muzenda initially attempted to expand the grounds of appeal before me, arguing that the judge failed to make adequate findings in relation to internal relocation. However he accepted that those grounds were not before the Tribunal and not **Robinson** obvious and did not pursue this further, confirming before me that the only ground pursued was in relation to the appellant's treatment at the airport.

### **Error of Law Discussion**

5. For the reasons set out below I do not find that any error of law has been made out. The First-tier Tribunal, in a careful and well-reasoned decision, found that the appellant's claimed fear of persecution did not arise until, at the earliest October 2016, in the United Kingdom and that the appellant had made it clear that his fear of persecution was not based on his previous activities in Zimbabwe. The judge went on to accept, at [32] that the appellant was a member of ROHR ("Restoration of Human Rights") and

that he was a member of Zimbabwe Vigil and that the appellant is a publicity officer for ROHR. The judge also accepted that the appellant had taken part in a sponsored bike ride to raise funds for human rights activities in Zimbabwe and accepted the evidence of additional witnesses, Mr Tapa and Ms Benton, regarding the activities of ROHR and Zimbabwe Vigil. However the judge identified that the key issue was whether:

“... the appellant’s activities on behalf of both organisations have brought him to the adverse attention of the Zimbabwean authorities and whether it will result in his persecution if returned to Zimbabwe.”

6. The judge went on to find that it was explained by Mr Tapa and the appellant that ROHR is a non-political human rights organisation and that the appellant accepted that he had not been an MDC activist in the UK and that he was not even a member but only a supporter of the MDC whilst he was in Zimbabwe. The judge found that there was no evidence of any persecution by the Zimbabwean authorities of any members of ROHR on return to Zimbabwe.
7. Although Mr Muzenda relied on the appellant’s bundle before the First-tier Tribunal including a letter from Zimbabwe Vigil on 22 April 2017 which contained extracts from the internet in relation to claimed difficulties experienced by Zimbabwe Vigil returnees and a letter from Mr Tapa in relation to the claimed difficulties experienced by ROHR after visiting Zimbabwe I am not satisfied that that demonstrates that the judge made any material error in finding that there was no evidence of persecution of such activists.
8. The judge also based those findings in the context of the country guidance of **CM** that it is primarily MDC and political opponents of ZANU-PF and Mugabe that may be in some circumstances be at risk if returned to Zimbabwe. The judge had also taken into consideration the background evidence provided by the appellant including that political violence increased dramatically in 2016 and the judge reminded himself that it was in that background that he had to assess the appellant’s case.
9. The Tribunal went on to find that, in line with **CM**, which adopted the findings in **EM and Others (returnees) Zimbabwe CG [2011] UKUT 98 (as amended)**, a returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF including the security forces even if he has significant MDC profile and that those persons without ZANU-PF connections returning from the UK are highly unlikely to face significant difficulty from ZANU-PF even if an MDC supporter. The Tribunal also took into consideration that Bulawayo is in Matabeleland. The appellant speaks Ndebele as well as Shona and would not be discriminated against. The Tribunal took into consideration that the economy of Zimbabwe had improved markedly and therefore the appellant’s return would be less problematic especially as a young, fit, healthy and well-educated male. The Tribunal also took into consideration, relying on paragraph 4(d) of the headnote of **CM**, that such a person would not be at an increased risk.

10. Paragraph 4(d) of the headnote in **CM** provides as follows:

“The fresh evidence regarding the position at the point of return does not indicate any increase in risk since the country guidance was given in **HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094**. On the contrary the available evidence such as the treatment of those who have been returned to Harare Airport since 2007 and the absence of any reliable evidence of risk there means that there is no justification for extending the scope of who might be regarded by the CIO as an MDC activist.”

11. It is misconceived to assert that the judge did not properly apply the country guidance (including **HS (returning asylum seekers)** as relied on in **CM**) or assess the appellant’s evidence in light of that guidance, when it is evident from the judge’s findings at [33], that that is precisely what he did.

12. The headnote of **HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094** provides as follows:

“2. The findings in respect of risk categories in SM and Others (MDC – Internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100, as adopted, affirmed and supplemented in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 are adopted and reaffirmed. The Tribunal identifies one further risk category, being those seen to be active in association with human rights or civil society organisations where evidence suggests that the particular organisation has been identified by the authorities as a critic or opponent of the Zimbabwean regime.

3. The process of screening returning passengers is an intelligence led process and the CIO will generally have identified from the passenger manifest in advance, based upon such intelligence, those passengers in whom there is any possible interest. The fact of having made an asylum claim abroad is not something that in itself will give rise to adverse interest on return.

4. The Tribunal adopts and reaffirms the findings in AA in respect of the general absence of real risk associated with any monitoring of returnees that might take place after such persons have passed through the airport and returned to their home area or re-established themselves in a new area.”

13. It was not disputed by Mr Avery that if the appellant were identified at the airport and subject to the second stage interrogation at Harare then he would be at risk of persecution. Although **CM** confirmed that **HS** still applied, this has to be read in light of **CM** which identified that generally a returnee even if an MDC member or supporter returning to Matabeleland would not generally be at risk. It is important to note that the process is intelligence led. As already identified the judge was not satisfied that the appellant was a member of MDC or that there were any MDC related activities. The judge found that whilst the appellant had a position of publicity officer for ROHR:

“His activities do not appear to be to such an extent that would have concerned the Zimbabwean authorities and he appears to be a low profile activist. As indicated above, even MDC activists of no significant profile would not face a real risk of having to demonstrate loyalty to ZANU-PF ...”.

14. The judge further noted that there were significantly less politically motivated violence in Zimbabwe than previously, as identified by **CM**. Although, as already identified, Mr Muzenda pointed to the oral evidence, and the evidence of the appellant’s activities in the UK and the letters from Zimbabwe Vigil ROHR Zimbabwe which pointed to some claimed difficulties in Zimbabwe, there was no error in the Tribunal’s findings, on the basis of all the evidence before it; there was no error in the ultimate conclusion that the appellant was no more than a low level activist and not at risk. The appellant’s claim was not based on any activities in Zimbabwe. There was no adequate evidence before the First Tribunal to suggest that the organisations with which the appellant is associated with in the UK “have been identified by the authorities as critical opponents of the Zimbabwean regime”.
15. The Tribunal made adequate and sustainable findings as to the low level of the appellant’s activities in the UK. The Tribunal did ‘not consider that those activities are at such a level as would attract the attending of the Zimbabwean authorities.’ Given those findings it cannot be said that there was any adequate evidence before the First-tier Tribunal to suggest that those activities would come to the attention of the Zimbabwean authorities or that the appellant would be identified at the airport (or elsewhere) as someone of concern and that he would therefore be at an increased risk. The appellant’s grounds of appeal are not made out.

### **Notice of Decision**

16. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

No anonymity direction was sought or is made.

Signed

Date: 2 February 2018

Deputy Upper Tribunal Judge Hutchinson