



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11578/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19th April 2018

Decision & Reasons Promulgated
On 21 May 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Billie, Legal Representative

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Ford promulgated on 14 December 2017, in which the Appellant's appeal against the decision to refuse her protection and human rights claim dated 27 October 2017 was dismissed.
2. The Appellant is a national of Zimbabwe, born on [] 1969, who claims to have first arrived in the United Kingdom on 11 September 2004 with leave to enter as a visitor, subsequent to which she was granted leave to remain as a student for successive

periods ending on 31 May 2005. The Applicant made a number of further applications for leave to remain as a student which were refused or rejected as invalid and she has remained unlawfully in the United Kingdom ever since.

3. On 28 August 2007, the Applicant applied for indefinite leave to remain on the basis of long residency which was refused and her appeal against that refusal was dismissed on 24 April 2008 and she became appeal rights exhausted on 23 May 2008. The Applicant claimed asylum on 30 May 2017 on the basis that she would be at risk on return to Zimbabwe due to her political opinion, having been politically active against the regime prior to her departure from Zimbabwe and since being in the United Kingdom.
4. The Respondent refused the application on 27 October 2017 on the basis that it was not accepted that the Appellant was a member of the MDC or that even if she was, that she had any significant profile within the organisation. The account of the Appellant's political involvement was inconsistent and none of the evidence she relied upon predated 2015. Although the Appellant had included photographs of her showing involvement in various meetings and demonstrations and a letter stating that she was a member of the ROHR, little detail accompanied the photographs and an online search showed only that the Appellant was a member of a bogus ROHR group and didn't appear on the main website. Little weight was attached to the documents and it was inferred that the Appellant had created a profile in order to disguise her immigration history and bolster an asylum claim. The Appellant's credibility was damaged by section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and overall it was not considered that the Appellant faced any risk on return to Zimbabwe. For the same reasons, her claim for humanitarian protection and under Articles 2 and 3 of European Convention on Human Rights was also refused.
5. The Respondent considered the Appellant's claims in relation to private and family life in United Kingdom but found that she did not meet the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules, in particular because she would not face very significant obstacles to reintegration in Zimbabwe where she has spent the majority of her life and where she continues to have family ties. There were no exceptional circumstances and no other grounds for the grant of discretionary leave to remain.
6. Judge Ford dismissed the appeal in a decision promulgated on 14 December 2017 on all grounds. It was not found that the Appellant had any political involvement at all in Zimbabwe and despite her claim to have been politically active since 2010 in United Kingdom there was nothing to support this which pre-dated 2015. The Appellant had not addressed the Respondent's concern that she was a member of a fake ROHR group and aside from that she had very little online presence. The Appellant's credibility was damaged by the delay in making her claim to asylum and overall, she was not found to be a genuine asylum seeker nor was she politically motivated. The risk factors which were found for the Appellant were her length of absence from Zimbabwe, her Shona ethnicity, the fact that she'd been in the United Kingdom and her very limited human rights activism in the United Kingdom. However, it was not accepted that any of these factors would lead to her being subjected to second stage

questioning by a CIO at Harare airport. Judge Ford considered that the Appellant can live safely in Harare and use the education and work experience she has acquired, as well as experience of living in urban environments in the United Kingdom to adapt to life there and secure the necessities of life to support herself. There would be no very significant obstacles to her reintegration in Zimbabwe and her removal would not be a disproportionate interference with her right to respect for private and family life protected by Article 8 of the European Convention on Human Rights.

The appeal

7. The Appellant appeals on four grounds. First, that the First-tier Tribunal materially erred in law in failing to assess the evidence of the Appellant's political profile. The evidence included membership of a number of different organisations, minutes of attendances at meetings, photographs and Google search results, but contrary to that Judge Ford found that there was only limited evidence of involvement with the groups as claimed. Secondly, that the First-tier Tribunal failed to consider the risk on arrival at Harare airport to the Appellant as a person with an online presence who would likely be asked about any political activity outside of Zimbabwe and where the authorities are known to have infiltrated and promoted organisations against the regime. Thirdly, that the First-tier Tribunal failed to consider whether the Appellant should internally relocate to Harare, given that she continues to be at risk in her home area. Fourthly, that the First-tier Tribunal failed to consider that there were very significant obstacles to the Appellant's reintegration in Zimbabwe under paragraph 276ADE of the Immigration Rules.
8. Permission to appeal was granted by Judge Keane on 25 January 2018 on all grounds.
9. At the oral hearing, Mr Billie relied on the detailed written grounds of appeal and made additional oral submissions. He highlighted that the Respondent had accepted that the Appellant was politically active in the United Kingdom since 2014 and accepted that she had an online presence since 2015. That, together with 160 pages of evidence of her membership and activities for various organisations who campaign against the regime in Zimbabwe, were overlooked by the First-tier Tribunal. Although it was suggested that Judge Ford didn't realise that the Respondent had verified the Appellant's membership of ROHR by contacting the authors of the letter, clear reference to that is made at paragraph 34 of the decision and the conflicting evidence over membership is noted from which a finding is made.
10. It was submitted on behalf of the Appellant that the issue in this case is whether her political profile had been noticed by the Zimbabwean authorities, if so, she fell within the risk categories set out in country guidance on Zimbabwe. Further although the Judge accepted that the Appellant would be stopped on arrival at Harare airport, he did not consider the risk of second stage investigation as in HS (returning asylum seekers) Zimbabwe, that she would be subject to suspicion because of her prolonged absence and likely be asked about her political activity with the consequent risk of persecution at that stage. An online search for the Appellant may discover the material about the bogus ROHR group, but it may equally show her real memberships and activities.

11. It is not in dispute between the parties that the Appellant cannot return to her home area in Zimbabwe and therefore the First-tier Tribunal were required to consider whether she could internally relocate to Harare without undue harshness, but the correct test was not considered. The Appellant had submitted evidence of hunger and starvation in Harare, which were conditions following a serious drought and wider problems and social hardship with high unemployment rates and a recession. It was submitted that this evidence was not taken into account by the First-tier Tribunal. The same points and difficulties should have been taken into account when considering whether there would be very significant obstacles to the Appellant's reintegration to Zimbabwe under paragraph 276ADE of the Immigration Rules.
12. In response, the Home Officer Presenting Officer essentially described the Appellant's first ground of challenge as one which amounted to a claim that the findings were perverse, however, it was submitted that the conclusions were open to Judge Ford on the basis of the evidence before her. It is clear from the decision letter that the Respondent did not accept that the Appellant was a member of ROHR but only of a bogus group. Although the Respondent accepted that the Appellant had an online profile, the motivation for its creation was significantly questioned in the decision letter.
13. In relation to the asylum findings, it was submitted that those made were open to the First-tier Tribunal on the evidence before it and were sufficiently reasoned. The issue of internal relocation does not arise if the Appellant is not at risk and there was no clear finding that she was at risk in her home area, nor had the Respondent accepted such a risk.

Findings and reasons

14. In relation to the first ground of appeal, Judge Ford set out in paragraph 25 of his decision that the four groups which the Appellant claimed to be involved with in the United Kingdom and in paragraph 34 stated that there was only limited evidence in support of those claims and none predating 2014 despite the claimed activity since 2010. Detailed consideration is then given to the claim of membership of ROHR which is rejected on the basis that the Respondent found a bogus ROHR had been set up and that that false group actually disrupted the genuine activities of the real ROHR at the ZimVigil. It was noted that the Appellant had not responded to this at all, nor has she secured any additional letters or evidence as to her claimed membership of the real ROHR.
15. Although the First-tier Tribunal does not deal with the claim to membership of the other organisations by name, the majority of the material relied upon by the Appellant related to ROHR with a very limited number of references to her actually attending other meetings and photographs with little or not details as to when they were taken or where. Judge Ford did however expressly consider the Appellant's online profile and found that a search conducted against the Appellant's name yielded very little information apart from limited involvement with a branch of ROHR whose legitimacy had been questioned, and limited ZimVigil attendance (paragraph 40). Before the First-tier Tribunal, the Appellant relied upon a printout of a Google search of her name

which showed one reference to her name in connection with ZimVigil in 2015 and three hits relating to ROHR.

16. The submissions on behalf of the Appellant made orally before me as to what the Respondent accepted in terms of the Appellant's membership of organisations or online presence, was significantly exaggerated and/or mis-stated from the decision letter in which it was clear that membership of ROHR was not accepted, nor was it accepted that there was online presence of any significance or significant profile.
17. On any view, it was reasonably open to the First-tier Tribunal to conclude that only very limited information and evidence of claimed activism was available and that which would be available in an online search was even more limited still. Further, an online search would also likely reveal the bogus ROHR membership. For these reasons, I do not find any material error of law on the first ground of appeal - there has been no failure to assess the Appellant's evidence of her claim to have a political profile.
18. Judge Ford deals with the risk on return at Harare airport to the Appellant in paragraph 43 of the decision, noting a number of risk factors but without accepting that these would lead to her being subjected to second stage questioning such that she would be able to pass safely through the airport. These factors include taking into account very limited human rights activism in the United Kingdom and the fact that she could legitimately say that she was an economic migrant to the United Kingdom who arrived initially as a student. Given the preceding findings about, inter alia, the lack of political motivation for the Appellant's actions and the rejection of her claim that her father was harassed in 2017 because of her activities, those findings were ones which were reasonably open to the First-tier Tribunal and in accordance with country guidance on Zimbabwe (that the return of a failed asylum seeker who has no significant MDC profile would not face a real risk of having to demonstrate loyalty to Zanu-PF or face any significant difficulties on return to Harare). Similarly, the country guidance is that only those known to the security services to be MDC activists and targeted as such might still be at risk of ill-treatment by the CIO at the airport. Judge Ford found that the Appellant was not an MDC supporter (nor had she undertaken any activities at all against the regime in Zimbabwe or prior to 2014) and taking the evidence at its highest of the Appellant only engaging in very limited human rights activism in the United Kingdom; there was no real risk on arrival at Harare airport of second stage questioning. On the evidence, it was open to the First-tier Tribunal to find that the Appellant had not established such a risk even to the lower burden and there is no error of law in the conclusions reached on that point.
19. In relation to the third and fourth grounds of appeal, the issue of relocation to Harare and whether there would be very significant obstacles to reintegration there, was dealt with in paragraph 45 of the First-tier Tribunal's decision. Consideration is given expressly to the Appellant's length of absence, education and work experience, ability to adapt to life and urban environments and to secure the necessities of life to support herself there despite the economic difficulties facing citizens of Zimbabwe. It was considered that whoever was supporting the Appellant was in the United Kingdom would likely continue, at least in the short term on return. The Appellant was in good

health and despite the evidence of difficult conditions in Harare, some of which dated back to 2015, there is nothing to show that her return to Harare would be unduly harsh. That conclusion was open to the First-tier Tribunal on the evidence before it, including the assumption that support would continue (as there was no reason to consider otherwise) and is consistent with country guidance that internal relocation to Harare is generally realistic with consideration of the socio-economic circumstances which a person is reasonably likely to find himself in. Those circumstances were clearly considered in the present appeal by the First-tier Tribunal. Essentially the same factors, together with existing family ties in Zimbabwe and the ability to attend church there, show that there would be no very significant obstacles to reintegration pursuant to paragraph 276ADE of the Immigration Judge. The Appellant had not identified any such obstacles before the First-tier Tribunal other than general socio-economic conditions. For these reasons I find no error of law in relation to the third and fourth grounds of appeal either.

20. In conclusion, the First-tier Tribunal's decision contained findings which were open to it on the basis of the evidence submitted by the Appellant with adequate reasons given for the findings made and conclusions leading to the appeal being dismissed on all grounds. There was no material failure to consider any specific pieces or categories of evidence submitted by the Appellant; nor any failure to consider risk on return at Harare airport; nor failure to consider whether internal relocation would be unduly harsh in all of the circumstances and no failure to consider very significant obstacles to reintegration on return. The appeal is therefore dismissed on all grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

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 their 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

15h May 2018

Upper Tribunal Judge Jackson