



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

Appeal Number: PA/04051/2019

THE IMMIGRATION ACTS

**Heard at Bradford
On 29 October 2019**

**Decision & Reasons Promulgated
On 20 November 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**RUJEKO OSCARS (AKA PERPETUA KATEHWE)
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Acharyas of Acharyas Solicitors.

For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

- 1.** The appellant appeals with permission a decision of First-Tier Tribunal Judge Saffer ('the Judge') promulgated on 28th June 2019 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant, a female citizen of Zimbabwe born on 19 June 1970, appealed the respondent's refusal dated 15 April 2019 of her claim for international protection.
3. The Judge noted the appellant has had a previously unsuccessful application and appeal (AA/04367/2010) heard on 23 April 2010. The Judge notes the basis of the appellant's claim before setting out findings of fact from [30] of the decision under challenge.
4. The Judge reminds himself that the previous findings in the 2010 decision form the starting point in this appeal as per the *Devaseelan* principles. In that earlier case it was found the appellant had lied about the length of time she intended to come to the United Kingdom, her motivation for coming to the UK, and her past in Zimbabwe. The Judge finds at [32] that the appellant had lied to him regarding lack of family or support available in Zimbabwe which, for this and other reasons set out in the determination, led to the finding at [36] in the following terms:
 36. For all these reasons, the Appellant has failed to establish it is reasonably likely she has any political profile whatsoever that would be of interest to the authorities in Zimbabwe and her asylum claim is, and always has been, a complete fabrication. She has therefore failed to establish she will be reasonably likely to be subject to second stage interrogation at the airport in Harare or of any interest to the authorities at any time thereafter for any reason.
5. The Judge considers article 3 ECHR writing at [38]:
 38. Given the facts I have found, and the facts that her sister is able to live in and work in Zimbabwe, Mrs Couper was able to stay there for 3 months as recently as January 2019, and that Claire was able to live there until as recently as August 2018, I am not satisfied that the political, financial and economic position is such as to mean that her article 3 rights will be breached if returned to Zimbabwe, or that any of the conditions for humanitarian protection apply.
6. Thereafter the Judge considers family and private life accepting the appellant has a genuine and subsisting relationship with a Mr Brown. The Judge finds Mr Brown has never been to Zimbabwe and does not want to go but that he entered into the relationship at the time the appellant's status was unlawful and precarious and he knew that it was. The Judge finds at [40] that it was not accepted it will be unduly harsh or even unreasonable for the appellant and Mr Brown to live in Zimbabwe as they have significant family support available, somewhere to stay, and that Mr Brown has an income from rental property together with investments and that any ties to the UK do not even remotely establish they go beyond normal emotional ties existing between adults.
7. The Judge also finds it would not be unduly harsh, unreasonable or disproportionate for Mr Brown to remain in the UK whilst the appellant

returns to Zimbabwe where she can make an application to re-enter the United Kingdom lawfully. The Judge is unable to conclude the appellant has prospects of success with such a claim as Mr Brown failed to produce the specified evidence required by the Rules to establish his financial position. It was found the appellant could continue her church activities in Zimbabwe.

8. The Judge concludes the appellant cannot succeed under the Immigration Rules and that she had failed to establish circumstances outside the Rules sufficient to warrant a finding the respondent's decision is not proportionate.
9. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal; the operative part of the grant being in the following terms:
 2. The grounds assert that the FTT Judge had erred in law in failing to make a finding as to whether the appellant had an adverse political profile and whether she would be subject to a second stage interrogation at Harare airport; that the judge had failed to consider as to whether there were very significant obstacles to the appellant's integration on return; that the Judge failed to consider the impact of removal and had made an error of law in stating that her daughter had not filed a statement and had failed to take into account the statement from the appellant's partner.
 3. This was the second appeal by the appellant. The appellant had stated that she had written anti Zanu newspaper articles and blog in Zimbabwe and supported the Zimbabwean vigil and attended meetings and demonstrations in London.
 4. The Judge considered the issue of credibility and noted that the appellant had been found not to be credible in her earlier appeal in 2010. It was noted that she had not claimed to have any political profile either in Zimbabwe or in the UK.
 5. In this current appeal the appellant claimed that she had become politically active in 2010 and attended demonstrations and writing political blogs for the African Aristocrat website. The Judge considered the evidence from her witness, who was living in Zimbabwe, but failed to give it any due weight on the basis that the appellant had made no application for her witness to give evidence through electronic means. The failure to make any findings on this evidence arguably amounts to an error of law which in turn arguably undermine such findings which have been made as to the appellant's political profile.
 6. At [33] the Judge noted that there was no evidence from the appellant's daughter before the Tribunal but this was incorrect as there was statements at 30 to 31 B of the appellant's bundle. This omission is arguably an error of law.
 7. There had been before the Judge in the appellant's bundle a statement from the appellant's husband, explaining that the appellant's daughter lived with them as she was a student and that he had mental health issues. Such issues are material but the judge made no findings in relation thereto. There was a further omission in that the Judge failed to consider the issue of integration on return.

8. In all it is considered that the determination discloses arguable errors of law.

Error of law

- 10.** Mr Acharyas on behalf of the appellant submitted the Judge was wrong to find the appellant did not have an adverse political profile that will place her at risk on return to Zimbabwe. It was argued sufficient evidence had been provided, including evidence of newspaper articles, and that although the Judge set out the issues at [21] he failed to make any findings upon the same.
- 11.** At [21] the Judge writes:
21. Mr Kudzayi said that he had been granted asylum in January 2013 due to his journalistic work. He returned to Zimbabwe where he works as a journalist. He was the editor of the Sunday Mail. He criticised the regime and was detained (articles relating to which I have seen) and then remanded on bail before the charges were dropped. He was then fired, and computers tablets and phones in excess of the value of \$10,000 was seized. Since then he has repeatedly been harassed by the authorities and was arrested in 2019. The charges against him were thrown out by the magistrate. He is the editor of a WhatsApp newspaper which has in excess of 35,000 subscribers. The Appellant was a contributor to publications he was previously involved with. The relevant website is no longer online that can be accessed through the Internet archive and be found by the Zimbabwean authorities who have a sophisticated and well-resourced intelligence apparatus. The Appellant said orally that she had last spoken to him 2 days ago.
- 12.** The Judge at [22] confirms that he has seen two undated articles written by the appellant, undated screenshots of her on ZBN where she is identified as a human rights activist and a letter from Rose Benton dated 29 July 2011 noting the appellant's involvement in vigils.
- 13.** At [34 – 36] the Judge sets out his findings in relation to these issues and also the question of whether the appellant had established she possessed the relevant adverse profile in the following terms:
34. The Appellant has produced 2 article she says have been published in Zimbabwe which are critical of the authorities. They are both undated. I place little weight on the evidence from Mr Kudzayi as no request was made for him to give evidence through electronic means and it has not therefore been tested. The relevant website is no longer online. In those circumstances she has failed to establish they have appeared anywhere currently accessible or that the Zimbabwean authorities would have any interest or reason to seek to access it.
35. The Appellant did not claim to attend vigils before 2010. The evidence from Rose Benton is 8 years old and she has not attended to have that evidence tested. The Appellant said she attended until 2014 and again in December 2018. I have seen no pictures to confirm that and have no evidence from anyone who was with her or from the organising group to confirm what she says. That is evidence that can be obtained from within her protective host country. I do not have to believe what the appellant says just because she says it particularly given her long-standing dishonesty over many years including at the hearing before me. Even if she did attend a vigil, I am satisfied it was to fabricate a

claim and she did not have a role of any prominence such as to bring her to the attention of the authorities, and she would not engage in anti-government activity in Zimbabwe and she has no such interest. She would not need to lie about her behaviour on her return as she will either say she did not attend, or only attended to fabricate a claim.

36. For all these reasons, the Appellant has failed to establish it is reasonably likely she has any political profile whatsoever that will be of interest to the authorities in Zimbabwe and her asylum claim is, and always has been, a complete fabrication. She has therefore failed to establish she will be reasonably likely to be subject to second stage interrogation at the airport in Harare or of any interest to the authorities at any time thereafter for any reason.
- 14.** The assertion the Judge placed little weight upon the evidence of Mr Kudzayi as no request had been made for him to give evidence through electronic means misrepresents the Judge's actual findings. The Judge was particularly concerned that the lack of any ability to interact with the witness regarding his evidence meant that evidence had not been tested. That is clearly stated at [34]. The weight to be given to the evidence was a matter for the Judge. The Judge did not place 'no weight' upon the evidence but only 'little weight' for which adequate reasons were given. This evidence was adequately assessed by the Judge.
- 15.** The Judge was not required to make findings in relation to each and every aspect of the evidence. The Judge clearly took all the evidence into account and considered the evidence with the required degree of anxious scrutiny. Whilst matters may have been mentioned in the bundle the Judge cannot be criticised for not producing a determination dealing with each and every aspect which would, by its nature, result in a publications and considerable volume, an arguably unnecessary.
- 16.** The Judge's primary finding that the appellant had failed to discharge the burden of proof upon her to establish she has an adverse political profile such as to place her at risk on return is a conclusion reached having assessed the evidence as a whole and a conclusion which has not been shown to be infected by arguable legal error.
- 17.** One basis on which permission to appeal was granted is that it is said the Judge in finding at [33] that there was no evidence from the appellant's daughter was incorrect. It is necessary to read the content of [33] which is in the following terms:

33. I do not accept it is reasonably likely that her mother or Claire would have had any problem at all in Zimbabwe as there is no evidence from Claire (who is here but chose not to make a statement) to support that assertion, and there is no evidence from the sister in Zimbabwe despite there being contact as evidenced by Mrs Couper's recent three-month visit. Whilst I accept that there is no requirement to produce corroboration, in this case it will be readily available with no risk to anyone and oral evidence can be given using modern means of communication.

- 18.** The finding of the Judge is not that there is no evidence from the appellant's daughter but that there was no evidence from the daughter to support the claim the appellant experienced problems in Zimbabwe as she claimed. The Judge clearly took the statement provided by the appellant's daughter into account and it is factually correct that that material did not provide the type of evidence the Judge is specifically referring to. There is no arguable legal error made out on this basis.
- 19.** The Judge considered the human rights aspects both within and outside the Immigration Rules. The appellant takes issue with an integration point claiming there was no assessment of whether there were very significant obstacles to reintegration into Zimbabwe and asserting the Judge failed to assess adequately the situation in Zimbabwe. The appellant claims to have been integrated as a result of time in the United Kingdom, to be in a relationship, and that her daughter is also in the United Kingdom, and claims there has been no assessment of the same or the impact upon the daughter, who is in education, if the appellant is returned. The appellant asserts the Judge failed to assess that there are health issues and that it will be harsh for Mr Brown to have to go to Zimbabwe and that greater weight should have been given to the factors relied upon in support of the appellant.
- 20.** As noted, the Judge found the appellant has a genuine and subsisting relationship with Mr Brown who had never been to Zimbabwe. The Judge was arguably entitled to note the relationship was formed at a time when both parties knew the appellant's status in the United Kingdom was unlawful/precarious. The finding of the Judge it would not be unduly harsh or even unreasonable for the appellant and Mr Brown to live in Zimbabwe for the reasons given has not been shown to be a finding outside the range of those reasonably available to the Judge on the evidence. Family members in the United Kingdom are all adults in the appellant's daughter has only been in the UK for 10 months and is an adult at university. The Judge's finding the relationship with such adults had "not even remotely established as going beyond the normal emotional times existing between adults" is a finding available to the Judge on the evidence.
- 21.** The Judge's primary finding is therefore that family life can continue in Zimbabwe where there will be no insurmountable obstacles to integration. Whilst the appellant disagrees it has not been shown to be a finding outside the range of those available to the Judge. What the Judge also does at [41] is consider another option in the following terms:
 41. I do not accept that it would be unduly harsh, unreasonable, or disproportionate for him to remain here whilst she returns to Zimbabwe as she would have significant family support available from her sister, he can support her financially, he can visit, and he can support her application for entry clearance in the usual way. It will be for the Entry Clearance Officer to assess the evidence in the usual way as the most recent HMRC Annual Summary is from 2016 - 2017, and his most recent payslip is dated for October 2018 as it is most recent bank statement

and they do not cover any 6 month period let alone the 6 months just before the application for leave to remain for the 6 month period prior to the hearing. He has objectively failed to produce the specified evidence required by the rules.

- 22. It is not been made out this is a finding outside the range of those available to the Judge on the evidence. Accordingly the appellant's challenge to the Judge's conclusions regarding Mr Brown fail. Similarly it is not established that the Judge erred in concluding the appellant could be expected to return to Zimbabwe where she could make an application for entry clearance which, if granted, would enable her to return to the United Kingdom lawfully.
- 23. It is also noted at [42] that the Judge records the appellant's daughter did not even file a statement or give evidence regarding the extent of the ties between her and the appellant. This is correct. The appellant had chosen to live apart from her daughter for 17 years and they only lived together in the same house for 10 months. The Judge's conclusion their relationship did not go beyond the normal emotional ties existing between adults is a finding open to the Judge on the evidence. Whilst the time the appellant spends with her daughter is part of her private life the Judge concluded the decision is proportionate which has not been shown to be a finding outside the range of those available to the Judge on the evidence.
- 24. Reading the evidence available to the Judge and the decision as a whole I find it is not made out the Judge has erred in law in a manner material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter. No arguable legal error material to the decision to dismiss the appeal has been made out.

Decision

- 25. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

- 26. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 14 November 2019

