



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001865

(PA/52160/2020); IA/01950/2020

THE IMMIGRATION ACTS

**Heard at Field House
On the 20th October 2022**

**Decision & Reasons Promulgated
On the 16th November 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

LG

(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, counsel instructed by CB Solicitors

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

DECISION AND REASONS

An anonymity direction was not made by the First-tier Tribunal (“FtT”). As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, LG is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction

applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. The appellant is a national of Zimbabwe. She claims to have arrived in the United Kingdom on 11th September 2018 having previously travelled from Zimbabwe to Dublin for a church conference. The basis of the appellant's claim for international protection is that she will be at risk upon return because of her political opinion. The claim for international protection was refused by the respondent for reasons set out in a decision dated 22nd December 2020. The respondent accepted the appellant is a national of Zimbabwe but rejected the core of the appellant's account relating to the events leading to her departure from Zimbabwe and her claim that she will now be at risk upon return. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Plowright for reasons set out in a decision dated 24th June 2021.
2. The appellant claimed that in reaching his decision, Judge Plowright gave insufficient reasons for his finding that the appellant's rape in 2012 was unconnected to her association with the MDC. The appellant also claimed Judge Plowright applied an incorrect test when considering whether internal relocation is open to the appellant. It is said that CIO operatives are all over Zimbabwe, and the Judge should have considered whether internal relocation would be unduly harsh.
3. Permission to appeal was granted by First-tier Tribunal Judge Neville on 29th September 2021. No rule 24 response has been filed by the respondent. Before me, Mr Williams submitted that the respondent does not accept the decision of the FtT is vitiated by material errors of law as set out in the grounds of appeal.
4. At the outset of the hearing before me, Mr Pipe sought to rely upon a further ground of appeal. That is, at paragraph [54] and [55] of his

decision, Judge Plowright referred to the appellant's evidence regarding incidents in April 2018. The appellant had claimed she was elected to be a polling agent for the MDC for the July 2018 elections. She was approached on 14th April 2018 and told to stop her activities and on 18th April 2018, when she was at home with her family, three men raided her home and she was raped. Mr Pipe submits that crucially, there are no findings by Judge Plowright regarding those events, but they are important because they are capable of showing an escalation in the interest in the appellant and form part of her profile and so are relevant to the analysis of the risk upon return.

5. On behalf of the respondent, Mr Williams, quite sensibly and pragmatically in my judgment, did not object to the appellant relying upon the further ground identified by Mr Pipe.
6. Having had an opportunity to consider the additional ground, Mr Williams was prepared to accept, again quite properly in my judgment, that there is no finding by the First-tier Tribunal Judge on a significant sexual assault that occurred in April 2018, in circumstances where the judge accepted the appellant was raped in 2012 by unknown assailants albeit for reasons unconnected to her MDC activity, and accepted that she was a member of the MDC and active on behalf of the MDC at a low level. Mr Williams accepted the appellant did give evidence of a rape in April 2018, and he accepted that was relevant to the risk upon return and should have been considered when the evidence was considered as a whole.
7. It was in the end common ground that there is a lack of a finding on a key issue, and that vitiates the assessment as to the risk upon return. The parties agree that the decision of the First-tier Tribunal must be set aside with no findings preserved and I do not therefore need to say anything further about the other grounds of appeal. I must then consider whether to remit the case to the FtT, or to re-make the decision in the Upper Tribunal.

Both Mr Pipe and Mr Williams submit that in light of the errors of law, and the fact sensitive assessment that will be required afresh, the appeal should be remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved. Having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012, the nature and extent of any judicial fact-finding necessary will be extensive. No findings can be preserved. I am satisfied that the appropriate course is for the appeal to be remitted to the FtT for hearing afresh. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

NOTICE OF DECISION

8. The decision of First-tier Tribunal Judge Plowright dated 24th June 2021 is set aside.
9. The appeal is remitted to the First-tier Tribunal for rehearing, with no findings preserved.
10. The parties will be notified of a fresh hearing date in due course.

Signed **V. Mandalia**

Date: 20th October 2022

Upper Tribunal Judge Mandalia