Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-000872
IA/03262/2021

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 11 August 2022	**On 23 February 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

B M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Forbes, Lifeline Options Community
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Although there has been some delay in the promulgation of this decision, what follows is taken from the ex-tempore decision that I handed down immediately after hearing from the parties at the hearing before me on 11th August 2022. In my judgement handed down at the hearing, I set out my reasons for dismissing the appeal before me.

2. The appellant is a national of Zimbabwe. She is said to have arrived in the United Kingdom on 5 March 2005 and was granted a six month visit visa. She remained in the United Kingdom unlawfully when her leave to enter

expired. On 14 April 2008 she made an application for leave to remain as a student. That application was refused by the respondent for reasons set out in a decision dated 23 November 2009. The decision did not attract a right of appeal. On 1 February 2010, the appellant made a claim for asylum. That claim was refused by the respondent for reasons set out in a decision dated 24 February 2010. The appellant's appeal against that decision was dismissed for reasons set out in a decision of the First-tier Tribunal dated 18 May 2010. The appellant had exhausted her rights of appeal on 2 June 2010.

3. The appellant made further submissions in December 2012. They were refused by the respondent in June 2015. She made yet further submissions in August 2019. They too were refused by the respondent in October 2020. Undeterred, the appellant made further submissions on 20 October 2020. Those submissions were refused by the respondent for reasons set out in a decision dated 12 March 2021. Although the respondent rejected the appellant's claims, the respondent accepted the further submissions amount to a fresh claim that gave rise to a right of appeal. The appellant's appeal was heard by First-tier Tribunal Chohan on 13 September 2021. The appeal was dismissed for reasons set out in his decision dated 7 October 2021. Permission to appeal was initially refused by the First-tier Tribunal, but granted by Upper Tribunal Judge Lindsley on 18 January 2022. The appellant relies upon six grounds of appeal that are set out in summary on the application for permission to appeal (form IAUT:1) received by the Upper Tribunal on 10 December 2021.

4. The appeal was listed for hearing before me this morning. I am grateful to the representatives for their brief submissions that are focused upon the six grounds upon which permission has been granted. I propose to deal with each of the six grounds in turn.

5. First, the appellant criticises Judge Chohan's approach to the evidence of the appellant that she attended an interview with what she describes in her witness statement as a 'hostile' official in the Zimbabwean Embassy in 2019. Judge Chohan records at paragraph [14] of his decision that according to the appellant she was placed in a room and asked about her address in Zimbabwe. She claimed she was told that she was 'black labelling' the government of Zimbabwe and she would have to face the consequences. Mr Forbes submits the judge does not challenge the appellant's account that the official's tone was threatening or that she was accused of disloyalty. Mr Forbes refers to paragraph 339IA of the Immigration Rules and submits that for the purposes of examining individual applications for asylum, the respondent is prevented from disclosing information provided in support of an application and the fact that an application has been made. He submits the respondent arguably acted contrary to paragraph 339IA of the rules and in any event, Judge Chohan was required to consider whether the threat made by the hostile official that interviewed the appellant, in itself, gave rise to a well-founded fear of future persecution on return to Zimbabwe. Mr Forbes submits the judge did not adequately address whether the 'tirade' directed to the

appellant during the interview implied that the official was aware that the appellant had made an application for asylum as an opponent of the government.

6. This ground in my judgment is entirely misconceived. In his submissions before me, which I accept, Mr Williams submits that the reality is that there is no reason to believe that the respondent would have provided information to the Zimbabwean official conducting the interview. There is guidance that is issued to caseworkers that makes it plain that caseworkers should not disclose an asylum claim that has been made. Mr Williams submits the appellant complains that she was asked about her last address in Zimbabwe, and that is perhaps unsurprising, given the purpose of the interview is to satisfy the official of the appellant's nationality and ties to Zimbabwe.

7. The decision must be read as a whole and paragraphs [14] and [15] must be read in context. Judge Chohan said:

> "14. Mr Rahman pointed out that the appellant had been interviewed by an official from the Zimbabwe embassy. According to the appellant's account, she had been invited to attend the immigration offices in Birmingham in 2019 and without any prior notice, she was placed in a room with a Zimbabwean official to undertake an interview. According to the appellant she was asked about her address in Zimbabwe. The appellant claims that she was told by the Zimbabwean official that the British people did not want her in the United Kingdom and that she was black labelling the government of Zimbabwe and she would have to face the consequences.
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> 15. I must agree with Mr Rahman that at no stage did the appellant give evidence to the effect that she had been questioned about MDC membership in this country or her activities. In my view, had the Zimbabwean authorities had an adverse interest in the appellant, it stands to reason she would have been asked those questions and, no doubt, the appellant would have mentioned that during her oral evidence. Mr Forbes submitted that it was reasonable to assume that the respondent would have supplied information about the appellant to the Zimbabwean official. That is speculation and I did point out to Mr Forbes that it was the policy of the respondent not to disclose any claim that an individual may have made in this country to an official of that individual's country. Mr Forbes appeared to accept that. Certainly, there is nothing before me to suggest the contrary or that the respondent would have intentionally placed the appellant at risk. It stands to reason that the interview conducted by the Zimbabwean official was in respect of travel documentation and nothing else. Therefore, the interview with the Zimbabwean official does not place the appellant at risk on return to Zimbabwe."

8. Judge Chohan considered the claim advanced by the appellant. He accepted, as was open to him, that at no stage did the appellant give evidence to the effect that she had been questioned about any MDC membership in this country or about her activities. The judge concluded in

paragraph [15] that the interview with the Zimbabwean official did not place the appellant at risk. That was a conclusion open to the judge, given the judge's conclusion that the interview conducted by the Zimbabwean official was in respect of travel documentation and nothing else.

9. Second, the appellant claims Judge Chohan was referred to a decision; **Mkundi v SSHD** December 2019, that offered some guidance and it was not open to the judge to ignore that guidance. In his submissions before me, Mr Forbes accepts no further citation for that decision was provided to the First-tier Tribunal Judge, and neither was a copy of any judgment provided. When I pressed Mr Forbes for further information about the decision that he was relying upon, and the guidance provided by the Court or Tribunal, Mr Forbes referred me to an article that appears at page 38 of the respondent's bundle. That is an article that I am told appeared in the Guardian on Sunday 5 January 2020. At pages 38 and 39 of the respondent's bundle, there is reference to lawyers acting on behalf of Chishamiso Mkundi making an application for judicial review after his asylum claim was rejected. The article goes on to say:

> "Granting permission for the review last month, judges said: 'It is at least arguable that the respondent [the home secretary, Priti Patel] failed to consider whether her own actions, in inviting an official from the Zimbabwean embassy to an interview with the Home Office in December 2018, might have brought the applicant to the direct attention of the Zimbabwean authorities."

10. Mr Forbes was unable to give me any further assistance regarding the claim for judicial review that is referred to in that article. In any event, there was, he accepts, no evidence in the material before the First-tier Tribunal Judge regarding that claim for judicial review, including the relevant statements of case that might shed some light on the factual background to that claim, and more importantly, the judgment handed down. Surprisingly, if the grant of permission to claim judicial review was to be relied upon, the order granting permission setting out any observations made, was not before the First-tier Tribunal Judge. The bare reference to a decision that is not reported, adds nothing to the appellant's claim. A simple assertion in an article that a judge had found that it was at least arguable that the respondent had failed to consider whether her own actions might have brought the applicant in that case to the direct attention of the Zimbabwean authorities, could provide the First-tier Tribunal Judge no assistance whatsoever in determining the appeal before him when the Judge knew absolutely nothing about the background to the claims being advanced in an entirely unconnected claim. There is therefore no merit whatsoever to the second ground of appeal.

11. Third, the appellant claims that the judge failed to consider whether the applicant's 2012 *sur place* activities or subsequent similar evidence were significant new factors that followed the 2010 determination, and the adoption of the '**Devaseelan** procedure' was arguably unlawful. Mr

Forbes submits there was evidence before the First-tier Tribunal that post-dates the decision of the First-tier Tribunal in 2010 relating to the appellant's MDC activities. He drew my attention in particular to a letter dated 10th April 2012 from S L Mushonga that was before Judge Chohan, and the reference in that letter, to the appellant being instrumental in raising women's awareness in Chiweshe's Mazowe constituency and that she was the backbone of a campaign in 2005. The letter claims the appellant was threatened by ZANU-PF youths and CIO operatives on several occasions for her role in campaigning for the MDC. There is also reference to the death of the appellant's brother due to injuries caused by ZANU-PF youths in the Mazowe constituency on the 12 September 2005.

12. This ground too has no merit. Judge Chohan clearly considered the content of the letter referred to by Mr Forbes, which obviously post-dates the previous determination in 2010. At paragraph [10] of his decision he said:

> "10. The difficulty with this letter is that it is over nine years old. It is also interesting to note that at the previous hearing the appellant had not produced any evidence from the MDC regarding her activities. In fact, the above letter was obtained two years after the first hearing. Considering the appellant's claim of being an active member in Zimbabwe, been threatened by ZANU PF, and her brother being killed, the letter is lacking in detail and substance. I can attach no weight to the letter."

13. Judge Chohan plainly acknowledged the letter postdates the previous decision of the First-tier Tribunal Judge, in 2010. He explains why he can attach no weight to the letter. Devaseelan makes it clear that evidence that was available previously or should have been available previously, and was not relied on or brought to the attention of the First-tier Tribunal in a prior decision, must be treated with the greatest of circumspection. That is precisely what Judge Chohan did here, for the reasons set out in paragraphs [10] and [11] of his decision. He addressed the various strands of evidence relied upon by the appellant and it was, in my judgment, open to Judge Chohan to note that the letters were lacking in detail and that they added very little to the appellant's claims.

14. Fourth, the appellant claims the available evidence in no way supports the conclusion of the judge that the appellant has failed to establish family life in the UK. At paragraph [17] of his decision, Judge Chohan said:

> "With respect to Mr Forbes, this aspect of the appellant's claim was somewhat neglected. During her oral evidence, the appellant stated that she had family in the United Kingdom, i.e., a nephew; and her sister and her children. There is very little evidence of what family life the appellant has in this country. Although the appellant's nephew gave brief oral evidence, but it was in line with his witness statement and nothing that enhanced the appellant's claim. To what extent the appellant has a family life with her sister and her children I do not know because there is little or no evidence. The appellant may have blood relations in this country but due to a lack of evidence, I am not satisfied

> that she has established family life in this country. Accordingly, I take the matter no further."

15. Mr Forbes submits the appellant relied upon the letter from an individual that I shall refer to as [TCM], who describes himself as the cousin of the appellant, albeit, in accordance with custom, he refers to her as his aunt. Mr Forbes submits there is a lot of detail in his statement as to how the family interact. When pressed as to what detail in that evidence would be sufficient to allow a judge to conclude that the appellant has established a family life in the United Kingdom, Mr Forbes drew my attention to a single sentence that appears in the fourth paragraph; "We have regular family gatherings and my aunt (second cousin) [B] is always part of these.". On the evidence before the Tribunal, it was undoubtedly open to Judge Chohan to conclude as he did, that although the appellant may have blood relations in this country, his is not satisfied that the appellant has established a family life in this country. The fourth ground of appeal too, therefore, has no merit.

16. Fifth, the appellant claims Judge Chohan gave scant attention to the issue of 'imputed political opinion'. Mr Forbes submits the appellant also relied upon the witness statement of [TCM] to support her claim for international protection on the basis that this is a family that is known to support the opposition.

17. I accept, as Mr Williams submits, it does not follow that the judge was bound to find that the appellant would be at risk upon return to Zimbabwe because other members of her family have been granted refugee status. Even taking the witness statement of [TCM] at its highest, there was a lack of evidence regarding the basis of the claims that had been made by various family members. The only detail is in relation to the grant of refugee status made to [TCM]. There was, as Mr Williams properly submits, no evidence before the First-tier Tribunal that the appellant's connection to [TCM] or his father would be known to the authorities. The fifth ground of appeal too, therefore, has no merit.

18. Finally, the appellant claims the judge gave inadequate consideration to the evidence of an adverse economic and political climate in Zimbabwe and the very significant difficulties to reintegration this poses, when balanced against the appellant's private life in the UK. Mr Forbes drew my attention to the witness statement of Mr Izwi Muyambi who is chairman of the MDC-A Birmingham branch, dated 6 September 2021. He refers to a visit to Zimbabwe in January 2020 and describes that as a traumatic time. He refers to the opposition now effectively being silenced and states that knowing the appellant as he does, he believes the appellant is likely to be detained without charge and without bail, as others who speak out are. He states there is no monitoring of conditions or events under detention and women are particularly vulnerable to abuse. The states there is a severe ongoing economic crisis for the ordinary population exacerbated by four years of drought.

19. The claims made by the appellant fail to engage with the analysis that is apparent at paragraphs [18] to [20] of the decision of Judge Chohan regarding the appellant's private life claim. He noted the appellant must establish that she would face very significant obstacles to integration in Zimbabwe. He noted the appellant has been in the United Kingdom since 2005, which is a significant period of 16 years. He accepted the appellant will have established some private life. He noted the appellant speaks the English language and there is nothing to suggest that she is reliant financially on the state. He noted that despite having been in the United Kingdom for the last 16 years, the appellant spent the bulk of her life in Zimbabwe and that she remains a part of the Zimbabwean community. There is nothing to suggest that the appellant is not familiar with the culture, customs and language of Zimbabwe. He states the 'very significant obstacles to integration' were not argued before him, but in any event, bearing in mind the appellant does not succeed in her protection claim, there is no reason why she cannot return to Zimbabwe and continue her life in that country. It was undoubtedly open to Judge Chohan to conclude that the appellant's removal would not be a disproportionate interference to her private life.

20. The assessment of an international protection and Article 8 claim such as this is always a highly fact sensitive task. The findings and conclusions reached by Judge Chohan are neither irrational nor unreasonable, or findings that are wholly unsupported by the evidence. Having heard the parties submissions I am satisfied that the evidence or points in question were considered by Judge Chohan but not resolved as desired by Mr Forbes. The grounds have no merit and are in truth, no more than a disagreement with the conclusions reached by Judge Chohan. It follows that I dismiss the appeal.

Notice of Decision

21. The appeal is dismissed and the decision of First-tier Tribunal Judge Chohan stands

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 **V. Mandalia** Date 1st February 2023

Upper Tribunal Judge Mandalia