IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001924
First-tier Tribunal No:
PA/50248/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 May 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UT JUDGE FARRELLY

Between

The Secretary of State for the Home Department

Appellant

and

Miss T M
(anonymity order made made)

Respondent

For the Appellant: Mr A Mullen, Senior Home Office Presenting Officer
For the Respondent: Mr Winter, Counsel, instructed by Latta and Co, Solicitors.

Heard at Edinburgh on 22nd March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent and any member of her family or other person the Tribunal considers should not be identified is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent nor other person. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The parties are as above, but the rest of this decision refers to them as they were in the FtT.

2. The appellant is a citizen of Zimbabwe, aged 35. She came to the UK as a student in September 2009 with leave to July 2012. She married in June 2021

and applied for leave to remain as the spouse of a settled person. This was refused in March 2013.Her appeal was dismissed in April 2013.

3. In June 2019 she was arrested, subsequently convicted and sentenced to a term of imprisonment. That was, however, quashed an appeal , the appellant being subject only to an admonishment. She was advised she was liable to removal.

4. In September 2019 she claimed asylum. She did not claim to have been politically active but argued political beliefs were imputed to her because her family historically supported the MDC.

5. Her claim was refused in April 2020.

6. Her appeal was heard by Ft.T Judge McLaren on 21 June 2021.The FTTJ did not find the claim for protection established. Her credibility was in issue and the judge found she did not have a political profile.

7. The judge allowed the appeal on humanitarian protection grounds. The judge felt able to depart from the country guidance decision of CM (EM country guidance; disclosure) Zimbabwe CG 2013 UKUT 00059(IAC) and concluded the up-to-date evidence indicated country conditions were such there was a real risk of breach of article 3. The judge found the appellant as a single woman would face difficulties and discrimination . The judge referred to problems in the healthcare sector, an area where the appellant would seek work if returned.

8. In line with this, the judge found that paragraph 276 ADE(1)(vi) applied to her circumstances. The judge also concluded removal would be a disproportionate breach of her article 8 family and private life rights, bearing in mind her time in the United Kingdom and her studies and her family life with her uncle.

9. The respondent challenged the decision . The grounds are as follows:

   (a) At [46] and [47] of the determination the First Tier Tribunal Judge (FTTJ) concludes that due to the prevailing economic conditions in Zimbabwe, the appellant's removal there would breach Article 3. It is respectfully submitted that the FTTJ has materially erred in law in concluding that the general situation in Zimbabwe, in itself, would lead to a breach of Article 3.

   (b) It is noted at [44] of the determination that the Appellant is not found to be at risk due to her political opinion or profile. Therefore, there is no specific risk on return to the appellant highlighted by the FTTJ. It is submitted that the evidence relied on by the FTTJ at [46] of the determination does not indicate that the general country situation in Zimbabwe gives rise to a breach of Article 3 for the appellant, simply by being present in the country. As a result, it is submitted that the FTTJ has materially erred in law in allowing the appeal on Article 3 grounds.

   (c) In addition, it is submitted that the FTTJ has erred in finding that the Appellant would face very significant obstacles to integration on return to Zimbabwe. At [48] the FTTJ states the following (emphasis added), "Given my findings that the conditions in Zimbabwe are such that the Appellant is entitled to humanitarian protection, I find too that she would face very significant obstacles on any return to Zimbabwe under paragraph 276ADE(1)(vi) of the Immigration Rules even though she

speaks the language, is familiar with the customs and could well find employment in the healthcare sector given her skills."

(d) It is asserted that the FTTJ has failed to identify the "very significant obstacles" that the appellant would face on return and instead appears to accept that the Appellant would have no issues with reintegration as she speaks the language, is aware of customs and could obtain employment. It is submitted that the FTTJ has erred in finding that the general economic situation, in itself, amounts to a "very significant" obstacle to integration. It is submitted that that it is contradictory to find that the economic situation would amount to a significant obstacle, whilst simultaneously finding that the appellant could obtain employment in the healthcare sector within Zimbabwe.

(e) It is further submitted that the FTTJ has also erred in their assessment of the Article 8 proportionality balancing exercise and has failed to afford the correct weight to the public interest. It is submitted that the FTTJ has not correctly considered any of the statutory public interest considerations outlined at section 117B of the Nationality, Immigration and Asylum Act 2002 and afforded them the appropriate weight in the balancing exercise.

(f) For example, at [55] of the determination the FTTJ accepts that little weight should be attached to the Appellant's private life, as it was established with a precarious Immigration status, yet goes on to find that this outweighs the public interest in the maintenance of effective immigration control. Similarly, the FTTJ accepts that the Appellant was convicted of a criminal offence at [53] of the determination, yet considers this to be of minimal weight.

(g) It is submitted that the FTTJ has materially erred in failing to afford the correct weight to public interest factors, whilst simultaneously attaching greater weight to the appellant's private life, contrary to that required by statute.

10. On 21st September 2021, FtT Judge Grant gave the Secretary of State permission to appeal to the UT. The grant states the Judge appeared to give conflicting findings regarding the appellant's skills and ability to find work when set against the economic situation and has arguably given inadequate reasons for finding that there are significant obstacles to reintegration. Under the heading Humanitarian Protection the Judge has allowed the appeal under Article 3 but did not appear to have considered how the appellant would suffer a real risk of inhuman or degrading treatment upon return. Regarding article 8 the Judge had arguably given little consideration to the factors weighing in favour of removal including the appellant's conviction, the failure to meet the requirements of the Immigration Rules and the statutory considerations. It was arguable the Judge erred in law by giving inadequate reasons for her findings.

11. There was a rule 24 response submitting there was no material misdirection in law by the judge. It was submitted that the grounds advanced do not identify any material error of law but simply are a disagreement with the assessment of the evidence and a finding of fact. The judge had considered the factors in section 117 B and the weight to be given. This was a matter for the judge and again the grounds do not state what the legal error is.

12. At hearing, Mr Mullen said that in the absence of a finding indicating a specific mechanism whereby there was a risk of article 3 being breached what remained was an implication. This was reliant upon country conditions being so bad they could be a breach.

13. The tribunal referred Mr Mullen back to the first ground (a),on which permission was sought. This referred to a material error in law in concluding country conditions would breach article 3. However, it appeared that the grounds as pleaded amounted to mere assertions and did not specifically identify the error of law claimed. There was no suggestion in the grounds that the judge's findings of fact were perverse.

14. Mr Mullen then referred to the high bar which had to be met to sustain the conclusions. .

15. Mr Winter referred us to the rule 24 response. In summary he submitted that the grounds as pleaded did not identify a material error of law. Rather, they amounted to a dispute about the weight to be attached to the evidence and assertions. The judge had referred to the general country situation and also made reference to the appellant's specific situation, including the absence of family support. He also agreed that the article 8 claim was superfluous if the finding on article 3 was upheld.

16. Mr Mullen did not have anything further to add in response.

17. It was our conclusion that the grounds as pleaded do not properly identify a material error of law. As is set out in the rule 24 response, the challenge is simply a disagreement over the assessment of the evidence and did not state what, if any, the legal error claimed was. It is not said that the findings were perverse, nor is there any submission that the judge applied an incorrect test.

18. We agree with this and the submissions made by Mr Winter. Properly considered, the challenges to the judge's findings with respect to article 3 do not specify how it is argued that the judge erred in law. There is no indication that the judge was not aware of the relevant law or did not apply it. The decision was generous, but it was grounded in the evidence and the particular difficulties that this appellant would face. Accordingly, we are satisfied that the conclusion that returning this appellant to Zimbabwe would, on the particular facts, amount to a breach of her article 3 rights is adequately reasoned and sustainable.

19. As Mr Mullen acknowledged that if the article 3 grounds succeeded then a challenge under paragraph 276 ADE or a freestanding article 8 was otiose, there is no need for us to consider those grounds as the cannot have affected materially the outcome of the appeal.

Decision

No material error of law has been established. The decision of First-tier Tribunal Judge McLaren allowing the appeal shall stand.

Signed. Date: 27th April 2023

Francis J Farrelly
Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber