



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-002395**  
**First-tier Tribunal No:**  
**PA/01552/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 24 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**ED (ZIMBABWE)**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr O Sobowale, Counsel, instructed by Latitude Law  
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 16 May 2023**

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

**DECISION AND REASONS**

1. These written reasons reflect the oral decision and reasons which I gave to the parties at the end of the hearing.

**Background**

2. The appellant appeals against the decision of Judge Parkes of the First-tier Tribunal, who, in a decision promulgated on 26<sup>th</sup> April 2022, dismissed the

appellant's appeal against the respondent's refusal on 4<sup>th</sup> November 2021 of her protection and human rights appeals. By way of further background, the appellant had previously made protection claims which had been rejected by two Judges of the First-tier tribunal in separate decisions dated 19<sup>th</sup> June 2009 (Judge Obhi) and 13<sup>th</sup> December 2011, (Judge Robertson). At the core of the appeals were the appellant's claim to have a well-founded fear of persecution based on perceived opposition to the Zimbabwean regime. In her initial claim before Judge Obhi, the appellant did not claim to be politically active but said that she received threats because of her involvement, in her work in a school, in granting permission for children to be absent from school and those children later left the country. Before Judge Robertson, the appellant relied on fresh evidence, not available in 2009, that because her brother had been granted refugee status in South Africa as a member of the MDC, and he and his family had been harassed by Zanu PF members, she would face risk by association. Judge Robertson took into account the fact of the appellant's return to Zimbabwe, with no adverse treatment, and that she had delayed making any attempt to join any organisation outside Zimbabwe until her appeal rights were nearly exhausted. She had only joined the 'Zapu' organisation in 2010. Even then, she only had a low-level profile and the Judge rejected her claim that she would be interrogated or required to demonstrate loyalty to the Zimbabwean regime. Judge Robertson also considered the appellant's article 8 claim, based on her relationships with siblings in the UK and a partner. The Judge rejected her claims about the strength of those relationships and concluded that she had far stronger ties in Zimbabwe, where her five children continued to live. The Judge concluded that while she had been lawfully present in the UK for much of the time, refusal of leave to remain was proportionate.

3. Judge Parkes took the decisions as his starting point, citing the well known authority of Devaseelan (Second Appeals - ECHR - Extra-Territorial effect) Sri Lanka [2002] UKAIT 702. Judge Parkes considered the appellant's support from two siblings in the UK, but also her six siblings in Zimbabwe and absence of any adverse interest in them. The appellant referred to cancer treatment and 'sur place' activities in the UK. The Judge considered whether, regardless of the genuineness of those sur place activities, the consequence of them meant that the appellant had a well founded fear of persecution. While the Judge noted expert evidence on the general poor human rights situation in Zimbabwe, the Judge was concerned that the expert report did not deal with the risk to someone in the appellant's position. It did not address the respondent's suggestion that the appellant could relocate to Bulawayo, in circumstances where the expert accepted that she would not be at risk of so-called "second-stage questioning" at Harare airport. The Judge concluded, at paragraph 26 of his decision, that the evidence did not show that the appellant be of interest, if returned to Zimbabwe. The Judge considered the appellant's family ties in the UK and also her cancer treatment, but did not regard the latter as meeting the Article 3 threshold, with no evidence that she would be unable to access healthcare in Zimbabwe. The Judge rejected the appellant's appeal.

### **The grounds of appeal and grant of permission**

4. The grounds argue that the Judge erred in failing to explain adequately why the appellant was not a genuine political activist, despite a decade of political activism within the UK. The Judge had also failed to address an issue raised before him, of the impact of the 2021 Patriotic Bill, legislation in Zimbabwe, which criminalised conduct or actions whilst abroad of any returnees, which were

perceived as harmful to the Zimbabwean state. The organisation of which the appellant was an active member, ROHR, had organised weekly demonstrations outside the Zimbabwean embassy in London, at which the appellant had been photographed over many years and she also had a significant online public profile, which was anti-regime.

5. The appellant's grounds also argue that the Judge was wrong to place weight on the fact that her family had not been targeted in Zimbabwe (they had not been politically active) and was also wrong to have attached less weight to the expert report because the expert had not given specific examples of the targeting of people with a similar profile to the appellant.
6. Whilst permission to appeal was initially refused, Upper Tribunal Judge Kamara granted permission at all grounds in her decision dated 8th September 2022.

### **Discussion and conclusions**

7. I do not recite the parties representatives submissions, which I have nevertheless considered in full, except to explain why I have reached the decision I have made.
8. Both parties accepted that the country guidance case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC), was relevant. The headnotes included the following:

“(1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.

(6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile”

9. Importantly, at summary paragraph F (page 79 of the appellant's bundle, 'AB') the expert accepted that the appellant would not merit “second stage” interrogation off-site on her arrival at Harare International Airport and would be subject to post-airport monitoring by state intelligence officers. It might therefore be said that where one of the claimed errors of law was in relation to whether the appellant's UK activities were contrived, that error was arguably not material, because even if here activities were motivated by genuine belief, she could return to Bulawayo. However, I accepted the appellant's challenge that the expert report had also discussed, in detail, at paragraphs 61 to 64, (pages 96 to 97 AB) the general risk of criminal prosecution as a result of sur place activities, and the risk to the appellant as a result of her profile, even if contrived, because of the 2021 Patriotic Bill. The appellant's representative had also specifically raised the issue in the skeleton argument before the FtT (paragraph 22). The Judge did not engage with that issue, and to the point that a judge can be expected to have considered all of the evidence, the Judge's decision does not explain why the Patriotic Bill does not present an additional risk, since CM in 2013.

10. I also accept the challenge that the Judge did not adequately explain why he did not accept the appellant's sur place activities since 2010 as genuine. He considered them as potentially relevant, at paragraph 19. His reasons for rejecting the genuineness of motivation, entirely comprised the following:

"26. Given the timing of the Appellant's entering into her work for ROHR and the way it has increased after the second dismissed appeal I am not satisfied that her activities have been motivated by a genuine interest any more than it was before Judge Robertson."

11. The Judge did not err on the basis that his conclusion was not open to him, i.e. that it was perverse. It may be that extensive sur place activities, even for a decade, may be motivated to bolster a weak protection claim. However, when considering evidence of such activities over such a long period (including attendance at demonstrations, on-line activities, and fund-raising for political groups, as corroborated by witnesses), it was an error to reject the appellant's claimed motivation, purely on the basis that the evidence all post-dated Judge Robertson's decision in 2011 (which had made adverse credibility findings), without engaging, for example, in the witness evidence of others who were aware of the appellant's sur place activities. The reader of the Judge's decision is left wondering why the genuineness of motivation has been rejected, other than it post-dating the 2011 decision.
12. I do not accept that the Judge erred in considering whether the expert's report was too general in some of its comments about the regime in Zimbabwe, or that it was impermissible to have considered what adverse attention, if any, the appellant's family members in Zimbabwe have suffered. The Judge's views on general comments in the expert report were part of an overall assessment of that report, some of which was favourable to the appellant. Moreover, the Judge had clearly explained at paragraph 24 that the Zimbabwean regime had been known to target family members. Nevertheless, the Judge's decision did contain material errors of law, such that it is not safe and cannot stand.

### **Disposal**

13. With reference to paragraph 7.2 of the Senior President's Practice Statement, given the nature and extent of the judicial fact finding which is necessary in order for the decision in the appeal to be re-made (namely the appellant's credibility and the Patriotic Bill issue), having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.  
I remit this appeal to the First-tier Tribunal for a complete rehearing, without preserved findings of fact.**

### **Directions to the First-tier Tribunal**

This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact. The remitted appeal shall not be heard by First-tier Tribunal Judge Parkes

The anonymity directions continue to apply.

**Case No: UI-2022-002395**  
**First-tier Tribunal No: PA/01552/2021**

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

23rd May 2023