



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

Case No: UI-2021-000658

First-tier Tribunal No: PA/03449/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 21 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**  
**DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**KHOLWANI SIKHOSANA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Masih instructed by Optimus Law.

For the Respondent: Mr Lawson, a Senior Home Office Presenting Officer.

**Heard at Birmingham Civil Justice Centre on 6 June 2023**

**DECISION AND REASONS**

1. On 19 January 2023 the above panel of the Upper Tribunal, ('the Panel') heard the appellant's application challenging a decision of the First-tier Tribunal which dismissed her application for leave to remain in the United Kingdom on protection and/or human rights grounds.
2. In its decision promulgated on 29 March 2023 the Panel set out their reasons for finding the First-tier Tribunal Judge had materially erred in law by failing to deal with, and make specific findings upon, the issue of the appellant's nationality, as pleaded in the grounds. It was not found that the First-tier Tribunal Judge had erred in law in relation to any other matter raised as a ground of appeal challenging that decision.
3. At [21] the Upper Tribunal wrote:
  21. Whilst, if there is no evidence of real risk on return to Namibia, the result may be the same, we consider the error material as nationality is an important point in dispute between the parties that needs to be resolved

which is directly relevant to the question of the country of removal and whether the appellant will face any real risk on return.

4. The appellant's case is that she is a citizen of Zimbabwe. A reading of the First-tier Tribunal determination shows that the basis on which her claim was pursued at that time was risk on return to Zimbabwe. The findings of the First-tier Tribunal, which are preserved, is that the appellant's claim lacks credibility and that she faces no risk on return to Zimbabwe.
5. When the appellant arrived in the United Kingdom, however, she was in possession of a Namibian passport. That passport was accepted as being genuine by an Immigration Officer although the appellant claimed she obtained it through a Pastor and that it was not genuine.
6. In the error of law finding at [19] it is written:
  19. Mr Williams and his submission place specific reference to the reported decision of the Upper Tribunal in Hussein and Another (Status of passports: foreign law) [2020] UKUT 00250 (IAC) the head noted which reads, (1) a person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the States that issued the passport (2) the burden of proving the contrary lies on the claimant in an asylum case. (3) foreign law (including nationality law) is a matter of evidence, to be provided by expert evidence directed specifically to the point in issue.

#### Decision and analysis

7. The appellant relied upon a number of documents provided after her arrival in the United Kingdom in support of her claim to be a national of Zimbabwe. These were considered by the decisionmaker who wrote at [36] of the Refusal letter:
  36. Overall when looking at all three documents in the round, it is considered that they are not considered to add any additional weight to your claim that you are of Zimbabwean nationality. Objective information shows that having possession of this documentation does not necessarily mean that you are of Zimbabwean nationality as those living in South Africa are able to obtain citizenship of Zimbabwe by obtaining certain documentation.
8. The documents included a birth certificate to support the appellant's claim that she is of Zimbabwean nationality, although it was found there was no evidence to support that the document is verified to be true, a national identity card, although it was noted that possession of a Republic of Zimbabwe National Registration Card does not necessarily signify that a person is a Zimbabwe citizen, for the reasons set out in the refusal.
9. A specific direction was given by the Panel in the error of law finding that the appellant, no later than the stated date, must send to the Upper Tribunal and Secretary of State's representative an updated, paginated, and indexed bundle containing all the evidence she is seeking to rely on in relation to the sole outstanding issue of her correct nationality.
10. An application was made for an adjournment by email on 20 April 2023 as the original birth certificate, national ID card and O-level certificates of the appellant were said to be with the Secretary of State and were needed to compile a bundle as directed. A reply from the Secretary of State's representative, Mr Bates, stated that the information shows that Optimus Law are already able to access, digitally at least, copies of the evidence they require, namely the original documents provided in the interview on 2 December 2019.

11. In a further email dated 2 June 2023 the appellant's representatives indicated to the Home Office Presenting Officer that it will be helpful if they will provide the original documents as well as the Namibian passport so they could instruct an expert to verify the documents, that they will need to obtain a quote and that depending on the cost their client may or may not be able to afford the cost of the expert. It was also stated that before the expert can be instructed they need the documents.
12. In his reply, dated 6 June 2023, Mr Bates indicated that the Home Office would not return original documents required to facilitate removal to an appellant absent lawful leave to remain, and that any document verification would need to be considered on Home Office secure premises.
13. A further application to adjourn was made by Ms Masih on the day. The purpose of the application was confirmed as being to enable the appellant to obtain an expert report upon the validity or otherwise of the Zimbabwean documents. The application was refused as:
  - a. The appellants claim to face a real risk if she is returned to Zimbabwe was found to lack credibility on the facts by the First-tier Tribunal. Those findings are preserved. Bar the appellant's claims in relation to return to Zimbabwe there was no other evidence challenging the Namibian passport or issues relating to Namibia before the First-tier Tribunal.
  - b. It is a preserved finding that the appellant's claim to face a real risk on return to Zimbabwe has been dismissed, and so even if the documents produce a different conclusion in relation to the weight that could be placed upon them, it was not made out how they would impact the decision of the First-tier Tribunal that the appellant faces no real risk if returned to Zimbabwe.
  - c. The Namibian passport was accepted as being genuine in 2019 by the Immigration Officer who examined the same when the appellant entered the United Kingdom.
  - d. No evidence has been provided, despite the specific direction, which shows the Namibian passport is not genuine.
  - e. The reliance by Ms Masih upon the decision of the Upper Tribunal in QC (verification of documents; Mibanga duty) China [2021] UKUT 33 (IAC) was noted, but not found to assist the appellant. In relation to verification of documents the Presidential Panel in that case found, as recorded in the head note:

### **Verification of documents**

- (1) *The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals. The overarching question for the judicial fact-finder will be whether the document in question can be regarded as reliable. An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any "live" issue as to the reliability of its contents. It is for the tribunal to decide, in all the circumstances of the case, whether the obligation arises. If the respondent does not fulfil the obligation, the respondent cannot challenge the authenticity of the document in the proceedings; but*

*that does not necessarily mean the respondent cannot question the reliability of what the document says. In all cases, it remains the task of the judicial fact-finder to assess the document's relevance to the claim in the light of, and by reference to, the rest of the evidence.*

It was not made out on the facts that this is a case in which there was a legal obligation upon the Secretary of State to take steps to verify the authenticity of the documents relied upon by the appellant. Nor is it a case where the documents were central to the claim as the appellant had given evidence from other sources and it was not made out the Zimbabwe documents could easily be authenticated. There was also material in the public domain, referred to in the Refusal letter, that allowed consideration of the weight to be given to such documents.

14. The date for the production of the additional evidence, set out in the Panel's error of law finding, was no later than 4 PM 14 April 2023. Notwithstanding such a clear indication the direction was breached by Optimus Law. No satisfactory explanation has been provided for the delay and why they left everything until the last minute.
15. A witness statement was provided by the appellant together with a medical report attached to an email sent on 5 June 2023 at 17:14 hours, the day before the hearing and after office hours.
16. The medical report was written by the appellant's GP at the Tudor Medical Centre, is dated 12 April 2021, and refers to the appellant receiving treatment for her HIV infection.
17. There is reference in the Refusal letter to the appellant stating she had been born in Namibia. There is also evidence from a fish market indicating the appellant was employed there. Terms of the contract of employment signed by the appellant in a different name but dated 13 March 2019 and a letter dated 5 April 2019, bearing the stamp of the Namibian Police Force, confirming the appellant is a salesperson at Meat and Fish Supply and had been working with the company since its inception were provided. The letter from her employer states that she was on holiday from 10<sup>th</sup> April to 30 April 2019 and wishes her a wonderful holiday in the UK.
18. That evidence contradicts the appellant's chronology in which she claims to have left Zimbabwe in June 2018, to have lived in Namibia between June and August 2018, and to have lived in South Africa between August 2018 and April 2019.
19. In her recent witness statement dated 5 June 2023, the day before the hearing, albeit Mr Lawson agreed to its admission, the appellant repeats the claim to be a national of Zimbabwe and to have spent all her life in Zimbabwe, never to have held a Zimbabwean passport due to problems in Zimbabwe, claiming to have been able to travel by bus and to have entered Namibia without a passport, and to have stayed with a friend of an auntie in Namibia.
20. We have considered the statement but note the claim in the chronology to have left for South Africa in August 2018 yet in the recent statement claims it was September 2018, the claim that if returned to Namibia the appellant will be unable to work as she has no ID documents when there is no evidence the Namibian passport is not a genuine document, and there is evidence the appellant has been employed in Namibia in the past. The claim at [12] that if checks were carried out it would be shown the Namibian passport was false contradicts the fact an Immigration Officer has inspected the passport and accepted the same as genuine.

21. Despite the guidance provided in Hussain in the error of law finding the appellant has failed to produce sufficient evidence to discharge the burden upon her to show that the Namibian passport is not a genuine passport issued to her and not falsified or altered. On that basis we find that it is a genuine passport reflecting that the appellant holds a valid travel document which will enable her to be returned to Namibia.

22. We note in particular from the judgement in Hussain:

10. Secondly, there is no presumption of the continuance of nationality. There is a presumption about the continuance of domicile, but that is a totally different matter. On the evidence, a person who shows that he had a particular nationality at birth may not be subject to any serious challenge about still having that nationality, if there is no evidence to the contrary: but where there is evidence of a different nationality the matter has to be determined on the evidence, and in a refugee claim the burden of proof is on the claimant. In this case, it was and is for the appellant to establish to the requisite standard that he is at risk of persecution in any country whose nationality he has, and the starting-point is for him to establish his nationality.

11. Passports have international recognition as assertions and evidence of nationality. On their face they constitute an address by the authorities of one State to the authorities of another at diplomatic level. The authority in whose name the passport is issued makes demands on the basis that the individual named in the passport is a national of and is entitled to be regarded as a national of the issuing state. Other States recognise that by treating the holder as a national of that State, and, in most circumstances, endorsing the passport to indicate that they have done so, particularly when a national border is crossed. Passports are the lubrication that allows international travel: without a reliable passport system each individual would have to prove identity, nationality and good standing by individualised evidence at every international border.

12. It is simply not open to an individual to opt out of that system by denouncing his own passport; and it is not open to any State to ignore the contents of a passport simply on the basis of a claim by its holder that the passport does not mean what it says. It is considerations such as these that lie behind the passage in the UNHCR Handbook, paragraph 93:

"93. Nationality may be proved by the possession of a national passport. Possession of such a passport creates a prima facie presumption that the holder is a national of the country of issue, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country's nationality, must substantiate his claim, for example, by showing that the passport is a so-called "passport of convenience" (an apparently regular national passport that is sometimes issued by a national authority to non-nationals). However, a mere assertion by the holder that the passport was issued to him as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. In certain cases, it might be possible to obtain information from the authority that issued the passport. If such information cannot be obtained, or cannot be obtained within reasonable time, the examiner will have to decide on the credibility of the applicant's assertion in weighing all other elements of his story."

13. Of course the target of these observations is a passport that genuinely has been issued by the named State to the person named in it, and that is why, all over the world and particularly at international borders, such attention has to be given to the detection of forgeries and alterations in passports. A document detected as deceptive will not have the effect of a genuine passport. But the converse is also true: a document not detected as a forgery does have that effect, both at the

diplomatic level and in the way its holder is perceived in a country that is not his country of nationality.

23. The only basis on which the appellant impugns the Namibian passport is through her own assertions to that effect. Nobody other than the appellant is claiming there is anything wrong with the Namibian passport. The First-tier Tribunal found the appellant's claim not credible in relation to a real risk of harm or persecution on return to Zimbabwe and her argument she cannot return to Namibia is unsupported by any evidence.
24. We find having reviewed the matter as a whole that there is insufficient evidence to enable us to find there is any reason to believe that the Namibian passport is not exactly what it appears to be, namely a valid passport issued to the appellant.
25. We find that the Namibian passport recognises the appellant's nationality.
26. In terms of the country to which the appellant may be returned, the passport shows it is Namibia. The appellant argues that it is Zimbabwe where she has family and that she will be permitted to enter Zimbabwe. Whichever country it is, there is insufficient evidence to show the appellant faces a real risk of harm or anything that entitles her to a grant of leave to remain in the United Kingdom in either.
27. We rejected the submission by Ms Masih that if we were going to find the appellant was Namibian we should find legal error and remit the matter to the First-tier Tribunal to enable them to consider the case on this basis, because it was not put to the First-tier Tribunal that the appellant faced any real risk in Namibia. The case was solely on the basis of the risk in Zimbabwe, which was rejected, which is a preserved finding.

### **Notice of Decision**

28. We dismiss the appeal.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**12 June 2023**