IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002340

First-tier Tribunal No: PA/50858/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 July 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

TS
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr K Scott, Pickup & Scott Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 30 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant,n any member of his family and his witness 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, his family or witness. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge J W H Law promulgated on 28 April 2022.

2. Permission to appeal was granted by Upper Tribunal Judge O'Callaghan on 28 October 2022.

Anonymity

3. No anonymity direction was made previously, nonetheless this matter is now anonymised as it concerns a protection claim.

Factual Background

4. The appellant us a national of Zimbabwe who is now aged in his fifties. He has a lengthy immigration and offending history which is summarised by the respondent as set out below.

> You arrived in the UK on 03 October 2001 using a passport in the name of (EM) and you were given six months' leave to enter as a visitor. It later transpired that you were using a false document. You were arrested on fraud charges by Midland police and served with an IS.151A notice – entry with a deception document.
>
> On 27 March 2002, you applied for further leave to remain as a student and this was refused on 20 May 2002 with a right of appeal. The appeal was dismissed on 14 April 2003.
>
> On 01 December 2005, you were arrested by police for fraud and you admitted you were an illegal entrant, and consequently served with an IS.151A notice- as an illegal entrant.
>
> On 17 March 2006 at Wolverhampton Crown Court, you were convicted of having a false instrument and sentenced to 18 months imprisonment and court recommended for deportation.
>
> On 07 August 2006, you claimed asylum whilst in prison. On 16 April 2007, your claim for asylum was refused.
>
> On 18 April 2007, you were served with a Notice of Intention to Deport (ICD.1070). On 04 May 2007, you lodged an appeal against this decision which was dismissed on 26 June 2008. A High Court review was refused on 18 July 2008 and on 30 July 2008 you became appeal rights exhausted (ARE).
>
> On 11 June 2009, you submitted a fresh asylum claim. On 11 March 2011, your asylum and humanitarian protection claim was refused. On 1 April 2011, an appeal was lodged (and your then spouse's appeal was allowed). Your appeal was dismissed on 4 September 2012 and you became appeal rights exhausted on 14 September 2012.
>
> On 15 November 2012 (which was detailed on our records as 5 December 2012), further submissions were submitted on your behalf by your solicitors....
>
> On 23 July 2014, further submissions were received regarding family life with your children.
>
> Representations were received from (MM) dated 19 May 2016.
>
> On 16 May 2017, representations were received regarding a further asylum claim and family/private life.
>
> On 1 March 2018 at Nottingham Crown Court, you were convicted of possess/control identity documents with intent and dishonestly make false representations to make gain for self/another or cause loss to other/expose other to risk. You were sentenced on the same day to 12 months' imprisonment. You did not appeal against your conviction and/or sentence.
>
> On 1 October 2018, your notice of decision to make a deportation order – ICD.4936- (Stage 1) was emailed to Probation to be served on you.
>
> On 15 October 2018, you made an application for Settlement (SET(P))-(Protection Route- ILR). This application was refused on 9 January 2019. The basis for his refusal was that you had not been

granted Refugee/HP status or leave under family reunion provisions in the UK; therefore, there was no route through SET(P) for the applicant to acquire leave to remain in the UK.

On 16 October 2018, you submitted representations in response to your Stage 1 notice.

On 24 October 2018, you further submitted a naturalisation BIO application under the Windrush Scheme. This application was rejected as you did not meet the criteria under the Windrush Scheme. On the same day, your No Time Limit application was refused.

On 23 October 2020, representations were submitted on your behalf by (your) solicitors.

You have been convicted of a criminal offence(s), as set out in our notice of decision dated 1 October 2018. The Secretary of State deems your deportation to be conducive to the public good and in accordance with section 32(5) of the UK Borders Act 2007

In addition to your conviction of 1 March 2018 for which you are now subject to deportation action; you have committed further criminal offences. You have amassed 7 convictions for 22 offences since 1 July 2002 to 7 October 2015 in relation to fraud (2006); theft and kindred offences (2015); offences relating to police/court/prisons (2010) and miscellaneous offences (2010 -2010).

5. In response to the notification that he was to be deported, the appellant raised a protection claim based on a fear of the Zimbabwean authorities, owing to his criminal record as well as his support for the Movement for Democratic Change (MDC). He also relied on his claim to be in a relationship with MM, being the father of two British citizen children and his long residence in the United Kingdom.

6. The Secretary of State refused the appellant's protection and human rights claims by way of a letter dated 9 February 2021. Reference was made to the determination of the appeal of the appellant's wife, at which the appellant was a witness. The previous judge rejected the appellant's evidence that he was an MDC supporter and recorded that the appellant had relied on false documents. Reliance was also placed on the appellant's convictions for fraud as well as the refusal of the appellant's own asylum appeal in 2008. The respondent rejected the new evidence produced by the appellant, rejected his claim to be politically active and concluded that the events he complained of occurred 18 years earlier under a different government. As for the article 8 ECHR claim, the respondent noted that the appellant's partner was neither British nor settled, that it would not be unduly harsh for MM to remain in the United Kingdom after the appellant's deportation, that the appellant's children were now adult that the appellant could not meet any of the requirements of the private life exception to deportation contained in paragraph 399A of the Immigration Rules and that no very compelling circumstances had been identified.

The decision of the First-tier Tribunal

7. Following the hearing before the First-tier Tribunal, at which the appellant gave evidence, the appeal was dismissed on all bases. The judge found that the most which could be said was that the appellant had not resigned correctly from the police force in Zimbabwe, and he had been convicted of serious offences abroad. The judge concluded there was no evidence to show that any punishment would involve serious harm. The judge found there to be no family life between the appellant and MM by the time of the hearing and that the appellant could not succeed on private life grounds nor very compelling circumstances.

The grounds of appeal

8. The two points made in the grounds were that, firstly, the judge erred in attaching less weight to the evidence of a witness, Ms C, who did not attend the hearing and secondly, the judge failed to consider all the points made in submissions, including that the appellant met the long residence Rules on the basis of his twenty years of residence.

9. Permission to appeal was granted on the first ground alone, with the judge granting permission making the following remarks.

> The Judge may arguably have descended into speculation in circumstances where questions could have been put to the appellant as to whether he had or had not informed (Ms C) as to the deterioration of his relationship with (his uncle), and if not why. It will be for the appellant to establish the materiality of any error, if established.

10. The respondent filed a Rule 24 response dated 15 November 2022, in which the appeal was opposed, with details reasons provided.

The error of law hearing

11. The appellant was provided with a video link to enable him to observe the error of law hearing. For unclear reasons, the appellant did not appear on the screen during the hearing and nor could he be heard. Mr Scott stated that wished to proceed with the hearing, nonetheless. I then heard submissions from both representatives. In short, Mr Scott repeated the points made in the grounds and argued, in essence, that had the judge attached some weight to the evidence of the witness Ms C, it could have affected the outcome of the protection appeal.

12. Ms Everett relied on the Rule 24 response and added that it was not unreasonable for the judge to reach the findings he did regarding the witness, notwithstanding that the witness attended a previous hearing which was adjourned. The judge had noted that the witness did not feel able to attend as to being unable to attend rather than owing to being abroad. It was difficult for the judge to attach weight to the evidence of the witness when her evidence was not tested. Even had the judge engaged in speculation, it was not a material error as the core of the appellant's claim was disbelieved.

13. In reply, Mr Scott emphasised that the witness said that she had been told by the appellant's uncle in Zimbabwe that the appellant would be arrested upon setting foot in Zimbabwe, that it was credible that the appellant had not told Ms C about the breakdown of his relationship with his uncle and that the witness evidence was deserving of some weight.

14. At the end of the hearing, I informed the parties that was no material error of law in the judge's treatment of the witness evidence and that his decision was upheld. I give my reasons below.

Decision on error of law

15. The grounds amount to a complaint as to the weight attached by the judge to the written evidence of Ms C. It is well established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law, applying *Green* (Article 8 – new rules) [2013] UKUT 254. It appears to be accepted in the grounds that the fact that this evidence was not tested by way of cross-examination reduced the weight which could be attached

to it, which is precisely what the judge found at [34]. Nowhere in the decision and reasons is it contended that the judge attached no weight to Ms C's evidence.

16. The grounds suggest that the witness was 'not able' to give evidence before the First-tier Tribunal on 10 February 2022. Mr Scott informed me that this was because the witness was in Zimbabwe at the time of the hearing. This was not the explanation given to the judge.

17. It can be seen from [33] of the decision that the witness explained in her second letter of 25 February 2022 that she would not attend the hearing because, 'she did not now feel mentally able to give evidence because of a difficult situation at work and possible redundancy.' Given the foregoing facts, the judge was entitled to attach less weight to this evidence.

18. I now turn to the specific complaint in the grounds that the judge speculated in finding that Ms C ought to have known about the deterioration of the relationship between the appellant and his uncle prior to going to Zimbabwe in 2018. The claimed breakdown in this relationship was a key component of the appellant's case and as the judge records, the first letter from Ms C emphasises her closeness to the appellant who she states she knew in Zimbabwe as well as in the United Kingdom. Accordingly, the judge did not err in reaching this finding.

19. Notwithstanding the foregoing points, the key evidence from Ms C's letter is not about the relationship between the appellant and his uncle but her evidence that the uncle informed her that the appellant would be arrested as soon as he set foot in Zimbabwe and that the uncle's promotion prospects had been adversely affected by the appellant. It is further relevant that a previous judge concluded that the appellant was not an MDC supporter, no further evidence was provided which would permit Judge Law to depart from those findings and that there is no challenge to any other aspect of Judge Law's findings on the protection claim. Consequently, it is not open to the appellant to claim that his uncle's promotion prospects had been spoiled owing to being accused of being in contact with an MDC-supporting nephew.

20. The grounds suggest that the judge ought to have raised his concern with Ms C's evidence at the hearing so that it could be addressed by the appellant. In this, I note that the appellant was found to be a wholly unreliable witness in relation to his various claims and the judge was further entitled to take into account his convictions for serious crimes of dishonesty. The argument that the appellant could be relied upon to provide an honest explanation as to why Ms C lacked knowledge of his relationship with his uncle, is an unsustainable one.

21. Lastly, the materiality of this alleged error is further thrown into doubt owing to the judge's unchallenged findings at [35] that the evidence of the claimed relationship between the appellant and the person he states was his uncle was lacking in credibility because the appellant had previously claimed that the person was not his uncle but a police officer who had a similar surname.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 July 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email