IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002989
First-tier Tribunal Nos:
HU/55302/2023
LH/00304/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

The Secretary of State for the Home Department

Appellant

and

AB
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the appellant: Mr. N. Wain, Home Office Presenting Officer
For the respondent: Ms. A. Jones, Counsel instructed by Tann Law Solicitors

Heard at Field House on 17 September 2024

Order Regarding Anonymity

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

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Mulready (the "Judge"), dated 21 May 2024, in which she allowed AB's appeal against the Secretary of State's decision to deport him and to revoke his refugee status.

2. For this purposes of this decision I refer to the Secretary of State as the respondent and to AB as the appellant, reflecting their positions as they were before the First-tier Tribunal.

3. I continue the anonymity direction made in the First-tier Tribunal given the nature of the appeal and the involvement of children.

4. Permission to appeal was granted by First-tier Tribunal Handler in a decision dated 25 June 2024 as follows:

> "2. Ground 1 is arguable. It is arguable that the Judge has made a material misdirection of law and/or failed to give adequate reasons for findings. It is arguable that the Judge has erroneously proceeded on the basis that the appellant needed to show that the impact of his deportation would be unduly harsh on his wife and/or children and has not applied the correct test of very compelling circumstances under s117C(6). It is therefore arguable that the Judge has misdirected themselves as to the correct legal test and/or failed to give adequate reasons by restricting their consideration to the exceptions in s117C(5). It is also arguable that the Judge has not given adequate reasons for his conclusion that the appellant had a well founded fear of persecution if he was deported to Zimbabwe for the reasons given in paragraph 27 of the grounds.
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> 3. The grounds under the heading of 'Further or alternatively' at paragraphs a, b and g do not add anything to ground 1 and are effectively subsumed in ground 1.
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> 4. The grounds under the heading of 'Further or alternatively' at paragraphs c-f are not arguable. The Judge has made well reasoned findings in respect of s72 and the unduly harsh test and has properly applied binding case law in respect of these aspects of the decision."

5. The appellant provided a Rule 24 response dated 10 August 2024, and a skeleton argument dated 5 September 2024. At [12] of the skeleton argument, the appellant accepts that the Judge did not go on to determine whether there were compelling and compassionate circumstances over and above the undue harshness test, and accepts that this is an error of law. However, the appellant submits that it is not a material error because the Judge also allowed the appeal on asylum grounds. It was submitted that, if there was no error in the asylum decision, any error in relation to the undue harshness test was not material.

The hearing

6. The appellant and his wife attended the hearing.

7. At the outset of the hearing, it was agreed between the parties that there was no error of law in the Judge's consideration of the undue harshness test. Further,

it was agreed there was no error of law in the consideration of whether or not the appellant had rebutted the presumption under section 72. Permission had not been granted in relation to those grounds, which are set out in the "Further and alternatively" part of the grounds of appeal.

8. However, as stated in the skeleton argument, it was accepted by the appellant that the Judge had failed to consider section 117C(6), and had therefore failed to go on to make an assessment as to whether there were any exceptional or compelling circumstances over and above the undue harshness test. It was not accepted that this was material, as the decision had also been allowed on asylum grounds.

Error of Law

9. Mr. Wain submitted that, irrespective of the consideration and decision in relation to refugee status, the decision was incorrect and the findings in relation to human rights needed to be reconsidered. I do not accept this. The materiality of the error is the issue before me, and in order to decide whether it is material, consideration needs to be given to the Judge's treatment of the appellant's refugee status.

10. The Judge considered the appellant's refugee status from [61] to [66]. It was the respondent's position that the appellant should be assessed as a failed asylum seeker and it was submitted that the Judge erred in failing to assess his return to Zimbabwe on this basis. The grounds state that the Judge did not explain "how the appellant's case was not analogous to a failed asylum seeker who had no significant MDC profile". Mr. Wain further submitted that the Judge had not looked at whether or not the appellant still had a significant MDC profile, but instead at [66] had found that the appellant had had asylum status in the United Kingdom for thirteen years and could not be expected to lie about this.

11. He further submitted that the Judge's finding that the appellant had had asylum status for 13 years was incorrect. He had asylum status from 2009 to 2014, and from then onwards had ILR. Following the case of PS (Zimbabwe) [2021] UKUT 283, Mr. Wain submitted that the appellant would be a failed asylum seeker because his status had been revoked. The respondent's decision had made clear that this was a cessation case, and cessation related not just to a change in the country circumstances but also to a change in the appellant's personal characteristics. It was submitted that the basis on which the appellant was granted refugee status had ceased to exist with reference to all of the appellant's circumstances, including his offending. This had not featured in the Judge's assessment of whether the appellant would be at risk on return to Zimbabwe.

12. Ms. Jones submitted that it was not the case that the Judge had incorrectly identified the appellant's immigration status. It was not right to say that he had ceased to be a refugee in 2014 when his form of leave had changed from limited leave to indefinite leave. Further, it was for the respondent to establish that a change had taken place in Zimbabwe. The Judge had considered the relevant case law and had found that the appellant was not a failed asylum seeker because he had been granted asylum. There was sufficient detail in her decision. The Judge was not under an obligation to deal with every argument put forward. It was clear why she had made her decision, and it was open to her.

13. The Judge states in relation to asylum:

"62. It is for the Respondent to establish that there has been a significant and durable change in Zimbabwe so as to warrant revocation of the Appellant's protection status under Art 1C(5) of the Refugee Convention and/or Paragraph 339A(v) of the Immigration Rules.

63. In support of the Respondent's position that revocation was warranted, my attention was drawn to the current country guidance case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC) which has updated the position since the Appellant's asylum appeal was considered. In particular, my attention was drawn to the headnote which sets out that:

> *(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.*

64. However, as was argued for the Appellant, he is not a failed asylum seeker, but a person who was granted asylum in the UK as a result of MDC related risks and his brother's service in the British Army.

65. The headnote in CM also provides that:

> *(2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).*
>
> *(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high -density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.*

66. The Appellant has had asylum status in the UK for 13 years, and if asked about his status on return to Zimbabwe, could not be expected to lie. He would have to say he had been granted asylum in the UK. I am persuaded by the argument made for the Appellant argument that this would immediately prompt further investigations on his return and discovery of the reason for his grant of asylum, thereby generating the risk of persecution identified above."

14. I attach no weight to Mr. Wain's submission in relation to the length of the appellant's asylum status. It is not right that the grant of ILR had effectively cancelled his status as a refugee. The appellant clearly had asylum status which the respondent revoked in her decision. There would be no need for her to have considered revocation of his asylum status at all in her decision if the grant of ILR

had effectively wiped it out. Further, at [28] of the grounds the respondent submits that "the appellant's previous grant of refugee leave was revoked with effect from 16 March 2023". She has not suggested that he did not have leave as a refugee when she made her decision.

15. As to whether the appellant would be considered to be a failed asylum seeker on return to Zimbabwe, it is clear that the appellant had been granted refugee status by the respondent in 2009. He did not fail in his asylum claim. This is acknowledged in the grounds which state "it is arguable the appellant would be under no duress to reveal he was previously granted refugee status on his return to Zimbabwe". The grounds do not submit that the appellant is a failed asylum seeker.

16. I have considered whether, as submitted by Mr. Wain with reference to the case of PS, his offending forms part of his "personal characteristics" and means that he has become a failed asylum seeker. Mr. Wain referred me to no particular paragraphs of PS and there is no reference to the case in the grounds of appeal. In particular, Mr. Wain did not point me to anywhere in the case of PS which indicates that an appellant's offending forms part of his "personal characteristics" when considering whether the grounds on which a person has been granted refugee status have ceased to exist.

17. I have carefully considered the case of PS. The headnote states:

> *"(1)(i) There is a requirement of symmetry between the grant and cessation of refugee status because the cessation decision is the mirror image of a decision determining refugee status i.e. the grounds for cessation do not go beyond verifying whether the grounds for recognition of refugee status continue to exist – see Abdulla v Bundesrepublik Deutschland (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08) [2011] QB 46 at [89] and SSHD v MA (Somalia) [2019] EWCA Civ 994, [2018] Imm AR 1273 at [2] and [46].*
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> *(ii) The circumstances in connection with which [a person] has been recognised as a refugee" are likely to be a combination of the general political conditions in that person's home country and some aspect of that person's personal characteristics. Accordingly, a relevant change in circumstances might in a particular case also arise from a combination of changes in the general political conditions in the home country and in the individual's personal characteristics, or even from a change just in the individual's personal characteristics, if that change means that she now falls outside a group likely to be persecuted by the authorities of the home state. The relevant change must in each case be durable in nature and the burden is upon the respondent to prove it – see Abdulla at [76] and SSHD v MM (Zimbabwe) [2017] EWCA Civ 797, [2017] 4 WLR 132 at [24] and [36].*
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> *(iii) The reference in the Qualification Directive (as replicated in paragraph 339A) to a "change in circumstances of such a significant and non-temporary nature" will have occurred when the factors which formed the basis of the refugee's fear of persecution have been "permanently eradicated" – see Abdulla at [73] wherein it was pointed out that not only must the relevant circumstances have ceased to exist but that the individual has no other reason to fear being persecuted.*
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> *(iv) The relevant test is not change in circumstances, but whether circumstances in which status was granted have "ceased to exist" and this involves a wider examination - see SSHD v KN (DRC) [2019] EWCA Civ 1655 at [33]."*

18. The headnote goes on at (2) to state:

> *"(2) It is therefore for the SSHD to demonstrate that the circumstances which justified the grant of refugee status have ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention. The focus of the assessment must be on: (i) the personal circumstances and relevant country background evidence including the country guidance ('CG') case-law appertaining at the time that refugee status was granted and; (ii) the current personal circumstances together with the current country background evidence including the applicable CG."*

19. I note in particular that at (ii), when referring to a change in an individual's personal characteristics, the change must mean that the individual "falls outside a group likely to be persecuted by the authorities of the home state". Mr. Wain did not explain how the appellant's offending would mean that this would apply to him.

20. (2) of the headnote to PS makes clear that the burden of proof lies on the respondent to "demonstrate that the circumstances which justified the grant of refugee status have ceased to exist". The respondent did not, either in the First-tier Tribunal, or before me explain how the appellant's offending meant that this was the case. I do not accept Mr. Wain's submissions, which do not appear to have been put in the First-tier Tribunal in any event, nor referred to in the grounds.

21. I have considered whether, as submitted in the grounds, the Judge erred by failing to give legally adequate and sustainable reasons for the conclusion that the appellant had a well-founded fear of persecution. The Judge correctly set out at [62] that it was for the respondent to establish that this was the case. She referred to the case of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC). She rejected the argument that the appellant was a failed asylum seeker. She therefore correctly found that he did not fall within headnote (1) of CM. It is clear that the Judge was aware of the argument being put forward by the respondent with reference to headnote (1) of CM, but it is an argument which she rejects. She did not accept that the appellant's position was analogous to a failed asylum seeker with no significant MDC profile.

22. The grounds state that "it is arguable the appellant would be under no duress to reveal he was previously granted refugee status on his return to Zimbabwe". As set out in the appellant's skeleton argument, this is not the issue before me. It was argued by the respondent in the First-tier Tribunal, and rejected by the Judge. That the respondent disagrees does not make it an error of law, but merely a disagreement with the Judge's conclusion.

23. In relation to the Judge's consideration of the appellant's position as she considered it to be, the Judge referred to (2) and (5) of the headnote to CM. The grounds submit that the Judge had to address "at least the following factors: that the appellant's asylum statues (sic) had ceased" – I have set out above that she adequately addressed this. Second she needed to address "that the appellant had resided in the UK for a considerable period with ILR". It is not submitted why this is relevant, and I do not accept that this changes the situation with regards to his grant of asylum. The kind of leave he had as a refugee does not affect the fact that he had been granted refugee status. Thirdly, "the appellant's current profile and affiliation with the MDP (or lack thereof)". The Judge found that the

appellant could not be expected to lie about his previous grant of asylum which would indicate an affiliation with the MDC. Finally, "the current country situation in Zimbabwe". The Judge referred to the relevant country guidance caselaw of CM.

24. I find that the Judge dealt adequately with the respondent's submission in relation to the appellant's asylum status, and rejected it. The respondent disagrees with this, but identifies no error of law. The Judge's reasons are not overly long, but are adequate. It is clear from the decision that she rejected the respondent's submissions and found that the respondent had not discharged the burden of proof that was on her to show that there had been a significant and durable change to warrant revocation of the appellant's asylum status.

25. Having found that there is no error of law in the Judge's consideration of the appellant's asylum status, I find that the error in failing to consider whether there were any exceptional or compelling circumstances over and above the undue harshness test is not material.

Notice of Decision

26. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside.

27. The decision of the First-tier Tribunal stands.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
6 October 2024