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

Case No: UI-2024-003371

First-tier Tribunal No: PA/51998/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

3rd December 2024

**Before**

**UPPER TRIBUNAL JUDGE PINDER**

**Between**

**G M**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms A Radford, Counsel instructed by Turpin Miller LLP.
For the Respondent: Mr Lindsley, Senior Presenting Officer.

**Heard at Field House on 23 October 2024**

**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. The Appellant appeals with the permission of Upper Tribunal Judge Mahmood granted on 21st August 2024 against the decision of First-tier Tribunal Judge Phull. By her decision of 28th May 2024, Judge Phull ('the Judge') dismissed the Appellant's appeal against the Respondent's decisions to cease the Appellant's entitlement to refugee status, to exclude him from the Refugee Convention and

following the making of a Deportation Order against the Appellant, to refuse his protection and human rights claim.

## Background

2. The Appellant is a Zimbabwean citizen, who entered the UK in 2008 with entry clearance under the Family Reunion Immigration Rules. He was 11 years old at the time. He applied for Indefinite Leave to Remain ('ILR') in 2012 but this application remained outstanding until it was considered as part of the Appellant's later human rights claim submitted in response to the decision to make a deportation order. The Appellant has a number of criminal convictions and was convicted most recently of aggravated burglary on 23rd June 2016, for which he was sentenced in 2018 to 12-years' detention in a young offender's institution, subsequently reduced on appeal to 9 years, and dangerous driving and other related driving offences on 7th July 2022 for which he received an interim driving disqualification, a fine and a victim surcharge.

3. As a result of those most recent criminal convictions, the Appellant was served with a Notice of Decision to deport on 8th October 2018 with the Deportation Order being signed on 19th February 2021, after consideration of the Appellant's written representations and the Respondent's decision of the same date to refuse what the Respondent had understood to be the Appellant's protection and human rights claim. Following inter-parties correspondence with the Appellant raising that he already held refugee status, as a result of having joined his father, a recognised refugee in 2008, the Respondent agreed to consider this separately whilst maintaining the decision of 19th February 2021.

4. The Appellant was then served on or around 22nd December 2021 with a Notice of intention to cease the Appellant's refugee status. Following receipt of written representations from the Appellant and UNHCR, the Respondent decided to cease the Appellant's status and issued a decision to that effect on 30th June 2022. The Appellant appealed against the decisions issued to him, which carried a statutory right of appeal, namely the Respondent's refusal dated 19th February 2021 to refuse a protection and human rights claim and the decision to cease the Appellant's refugee status dated 30th June 2022. Those decisions were the subject of the same appeal proceedings in the First-tier Tribunal and the Appellant's appeal was heard by the Judge on 4th April 2024.

5. Before the Judge, the Appellant was represented by Mr Vokes, Counsel and the Respondent by a Presenting Officer. The Judge heard oral evidence from the Appellant and his mother and submissions from both advocates, before reserving her decision.

## The Decision of the First-tier Tribunal Judge

6. At [19]-[25], the Judge considered the certificate pursuant to s.72 of the 2002 Act issued in relation to the Appellant's protection claim, concluding at [25] that the Appellant had not rebutted the presumption that he posed a danger to the community. She went on to consider at [26]-[44] the issue of cessation and the Respondent's decision of 20th June 2022, finding at [44] that "the Respondent ha(d) shown that the circumstances were justified and the grant of refugee status to the Appellant have ceased to exist and that there are no other circumstances which now give rise to a well-funded fear of persecution for reasons covered by

the Refugee Convention. The Judge's reasons for that finding are summarised in more detail in the section further below with my analysis and conclusions.

7. The Judge then proceeded to consider the Appellant's appeal in relation to his claims that returning him to Zimbabwe would be in breach of Article 3 ECHR as a result of his ill-mental health and of Article 8 ECHR as a result of him meeting the test of 'very compelling circumstances' over and above the statutory exceptions to deportation. The Judge rejected both claims setting out her reasons at [46]-[50] for the Appellant's Article 3 claim and [51]-[74] for the Appellant's Article 8 claim.

## The Appeal to the Upper Tribunal

8. Permission to appeal was granted to the Appellant on all grounds pleaded. The Appellant argued that the Judge had erred in law by not providing any or any adequate reasoning as to why the views of the UNHCR and the country expert were rejected on the issue of whether there were fundamental and durable changes that have taken place in Zimbabwe. It was also argued by the Appellant that the errors in relation to the cessation of refugee status considerations have materially affected the Judge's findings on the Appellant's Article 8 claim and the test of 'very compelling circumstances' over and above the exceptions to deportation. In relation to the latter, it was submitted that the country expert relied upon by the Appellant was also relevant to the Judge's assessment as to the general country conditions that the Appellant would face on return, including in light of his mental health difficulties.

9. The Respondent had not sought to file and serve a response to the grounds of appeal under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Ms Radford on behalf of the Appellant made further oral submissions before me maintaining both grounds of appeal. Mr Lindsley duly responded defending the Judge's decision maintaining that no material error of law had been made. I have addressed those respective submissions in the section immediately below when setting out my analysis and conclusions.

10. I reserved my decision at the conclusion of the parties' submissions.

## Analysis and Conclusions

11. I am satisfied that the Judge has erred in law when assessing the issue of cessation for the reasons pleaded in the Appellant's grounds of appeal. It is entirely correct that the Judge's decision is comprehensive and detailed in recording the relevant history as well as when she sets her findings out but the only mention of the country expert report, relied upon by the Appellant is at [33]-[34]. The first paragraph summarises the expert's background in terms of qualifications, research, expertise, fieldwork and that he has previously provided expert witness to the asylum, family and criminal courts in the UK. The second paragraph states as follows:

> 34. Dr Cameron says that the Appellant is at risk of arbitrary arrest and detention at the airport due to his risk profile as someone deported back to Zimbabwe. He will be detained off site and screening interview will take place by state security forces and during this stage there is a risk of torture. In terms of the Patriotic bill the expert says that the Appellant is at a real risk of being targeted by state security forces on his arrival for "… wilfully communicating messages intended to harm the image and reputation of the

> country on International platforms... intended to harm the country's positive image and/or to undermine its integrity and reputation...' page 185-187, RSB).

12. The Judge otherwise takes into consideration the evidence of and relating to the Appellant's witnesses, including his mother and his sister ([37]-[38]), that of the Appellant not being politically active in the UK ([39]), summaries of the country guidance case of *CM (EM country guidance; disclosure) Zimbabwe CG* [2013] UKUT 00059 (IAC) ([40]) and of the CPIN for Zimbabwe ([41]-[42]), reaching her conclusions on that evidence in the same paragraphs.

13. The Judge does not otherwise return to the country expert report of Dr Cameron, relied upon by the Appellant, in support of his claim that the conditions in Zimbabwe have not ceased to exist and that specifically, there has not been a fundamental and durable change capable of supporting a cessation decision in respect of his refugee status.

14. I am satisfied that the country expert report was clearly addressed before the Judge in submissions, both in writing at §23 of the Counsel's skeleton argument and in oral submissions, as recorded by the Judge at [33] and [35]-[36] where she stated that the Appellant relied on the country expert report and recorded a brief summary of the advocates' competing submissions on the expert report.

15. I am also satisfied that the expert report was relevant evidence that the Judge needed to consider and address in her findings. In particular, and as specifically referenced in the skeleton argument before the Judge, the expert opined at §23-28 of their report on the Appellant's risk of arbitrary arrest and/or detention at the airport due to his risk profile as someone deported back to Zimbabwe. That screening interviews take place by the state security forces, where the person may be transported and detained off-site and that following this, there is a risk of torture. The expert also focused on the Patriotic Bill, enacted in July 2023, and on which the expert stated as follows at §28 of their report:

> However, it is my opinion that since the passing into law of the "Patriotic Bill" , enacted on 14 July 2023, the Appellant, having failed in his bid for asylum in the UK and arriving on a deportation flight, is at some risk of being identified by intelligence officers at the airport as an individual who has, in his asylum application, wilfully communicated messages intended to harm the image and reputation of Zimbabwe in the UK, thereby harming the country's positive image and/or undermining its integrity and reputation. and be subjected to criminalisation in terms of the Criminal Law (Codification and Reform) Amendment Bill 2022.

16. The discernible findings of the Judge in rejecting the Appellant's claim against the Respondent's decision on cessation can be summarised as follows:

(a) There was nothing in the mother's evidence to suggest that she had any difficulties at the airport as the wife and ex-wife of an MDC member, on return to Zimbabwe when visiting there. Similarly, there was nothing in her evidence that she had lived in hiding when returning to Zimbabwe - [37];
(b) There was no evidence to support the claim that the Appellant's brother was in South Africa and what was claimed to have happened to him prior to him moving to South African from Zimbabwe – [37];

(c) There was no challenge to the Presenting Officer's submission that one of the Appellant's sisters had travelled to Zimbabwe with her father in 2021 on a British passport and that they had not experienced any problems. Therefore, there would be less inclination at the airport to check the Appellant and he would not come to any adverse attention – [38];
(d) The Appellant was not politically active in the UK, he had not had any involvement with his father (who had been involved with the MDC) for some years, he had not engaged with any MDC organisation in the UK, does not have a significant profile with that party – [39] & [43];
(e) There what is no evidence before the Judge to suggest that the Appellant would engage in political activity, which is likely to draw attention of the ruling party in Zimbabwe – [43];
(f) His family members have returned to Zimbabwe without difficulties – [43];
(g) Even if there was any element of risk, if he were to move to a high density area/suburb in Harare, he would not be at risk of persecution. The Appellant could therefore safely return to Harare –[43];
(h) The Respondent had shown that the circumstances were justified and the grant of refugee status to the Appellant have ceased to exist, there being no other circumstances which now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention – [44].

17. As I have already addressed above and as can be seen from my summary of her findings above, the Judge did not return in her decision to the opinions of the country expert report relied upon by the Appellant. The information contained in that report was clearly relevant and capable of supporting the Appellant's position that the Respondent had not discharged the burden of proof that rested upon her to demonstrate fundamental and durable changes to the country conditions in Zimbabwe capable of supporting a cessation decision. I find that this amounts to a material error of law considering the centrality of the cessation issue in this appeal.

18. I also note that there is considerable force in Ms Radford's submission that the Judge has overly focused on the circumstances of the Appellant's various family members when visiting Zimbabwe and failing in such instances to consider that their circumstances are potentially considerably different: they hold British passports and were not being subjected to enforced returns. The latter was specifically addressed by the expert in his report and thus this further satisfies me that the Judge has materially error in law when failing to either consider in any detail the matters reported on by the expert, or in the alternative, by failing to set out any reasons why she rejected those opinions.

19. I am also satisfied that the Judge has committed the same error of law in respect of the matters reported on by the UNHCR in their letter dated 17th June 2022. As is customary in cessation cases, the Respondent seeks the views of UNHCR prior to making her decision. Those views were duly set out and considered by the Respondent in her decision. The Judge summarised the contents of the UNHCR's letter at [30] of her decision, but as was the case with the country expert, she does not return to those views anywhere else in her decision. There is no indication in the Judge's findings, as can also be seen from my summary above, that she has considered those views, nor set out any reasons for rejecting them. Those views were clearly relevant when the UNHCR had concluded in their letter that the Respondent had not fully discharged the burden of proof in the Appellant's case. The reasons for that conclusion included that they noted with concern that the Respondent had not provided any basis for

their conclusion that the Appellant did not have a political profile or that he would not face persecution in Zimbabwe as the son of a political activist, nor with any information on his area of origin in Zimbabwe. The UNHCR continued:

> In UNHCR's view, the cited country of origin information indicates that MDC activists and those perceived to have links to the MDC may be at risk in Zimbabwe, depending on their area of origin. UNHCR therefore calls on the HO to assess (the Appellant's) personal circumstances in light of the COI, before making a decision in this case.

20. I do not accept Mr Lindlsey's submission that the Judge's summaries of the UNHCR letter and of the expert report are sufficient indications that all of the key conclusions of those two documents were taken into consideration by the Judge. Nor that the Judge's finding that the Appellant does not have any political profile was effectively dispositive of the cessation issue since the Judge failed to consider the position of a person forcibly returned to Zimbabwe and who may be at risk of being *perceived* as having such a political profile. Mr Lindsley also submitted that the opinions of the expert were speculative but even if that were so, there is no indication that that is what the Judge concluded of Dr Cameron's evidence. For the reasons above, I am satisfied that the Judge has materially erred in law in respect of these two expert documents.

21. Turning to the Appellant's second ground of appeal, I am satisfied that the Judge's errors of law on the issue of cessation will have affected her assessment of whether or not there were very compelling circumstances over and above the relevant exceptions to deportation such that the Appellant's deportation would be in breach of his rights under Article 8 ECHR. The Judge referred at [70] to her finding that the Appellant was not at risk of persecution or harm should he be removed to Zimbabwe.

22. I agree with the submissions and the ground of appeal pursued by the Appellant that Dr Cameron had also opined on the country conditions that the Appellant would face on return, from a social, economic and healthcare perspective. Thus the expert report was also relevant evidence to the Article 8 assessment, particularly in the context of the Appellant's ill-health and cognitive difficulties, for which there did not appear to be any challenge from the Respondent. There is simply no mention of this report in the context of the Judge's assessment of that aspect of the Appellant's claim. This is despite express references to, as well as extracts and summaries of, the expert's conclusions, in so far as they relate to the matters relied upon by the Appellant in his Article 8 ECHR claim, in the skeleton argument at §30.

23. Mr Lindlsey asked me to consider that the Judge's assessment of the Appellant's Article 8 claim was in the context of serious criminality with the Appellant having been sentenced to 9 years' detention in a youth offenders' institution and that none of the factors raised in the expert report or elsewhere, were capable of displacing the public interest in ensuring that the Appellant is deported. Whilst the Judge is not required to list every aspect of an appellant's evidence tendered in support of their claims, I am satisfied that the country expert report was relevant to the Appellant's Article 8 claim, as addressed above, and in those circumstances, it was incumbent on the Judge to engage with this. It is simply not appropriate for me to surmise on what the Judge would have found had she considered the same.

24. It is also appropriate to briefly mention that although the Judge has referred to the Appellant's mental health diagnosis as reported upon by Dr Preston, (independent) Psychologist, the Judge did not refer to the Appellant's cognitive difficulties as also reported upon by the same psychologist. I do not observe any further since this did not form the basis of a separate ground of appeal before me but I am satisfied that this would also be relevant to the Appellant's abilities to adapt on return to Zimbabwe and thus to any assessment under Article 8 ECHR. Mr Lindsley very fairly acknowledged the lack of consideration of the Appellant's cognitive abilities by the Judge.

25. For the reasons above, I am satisfied that the Judge has materially erred in law and the Judge's decision to dismiss the appeal is therefore set aside pursuant to s.12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

26. With regards to disposal, the errors of law committed concern the cessation decision and the Appellant's country expert evidence in response, as well as the Appellant's Article 8 claim in response to the decision to deport him. Thus, it is appropriate in my view, pursuant to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal at [7.2], to remit the matter back to the FtT for a hearing *de novo.* This is considering the level of fact-finding that will need to be re-made.

27. Both parties did agree before me that the Judge's findings on the Respondent's invoking of the s.72 certificate should be preserved, there having been no challenge by the Appellant to those findings, set out at [19]-[25]. For the avoidance of doubt however, I am not preserving the Judge's findings on the Appellant's Article 3 claim, since this is both bound up with the cessation issue and the need to consider the matters reported upon by the Appellant's country expert. This will also need to be considered as at the time of the hearing and I am further concerned at the lack of consideration thus far of the Appellant's medical report relating to his cognitive abilities.

**Notice of Decision**

28. The decision of the First-tier Tribunal is set aside. The Judge's findings at [19]-[25] are preserved.

29. The Appeal is remitted to the First-tier Tribunal for a hearing *de novo* (save for the s.72 certificate), before any Judge of the First-tier Tribunal, other than Judge Phull.

**Sarah Pinder**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**29.11.2024**