



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/03571/2013

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 22 October 2013**

**Determination  
Promulgated  
On 30 October 2013**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**AM**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION AND REMITTAL**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

2. The appellant is a citizen of Zimbabwe who was born in 1978. On 23 February 2013, the appellant claimed asylum. His application was refused on 25 March 2013 and a decision made to remove him by way of directions to Zimbabwe.
3. The appellant appealed to the First-tier Tribunal. In a determination dated 16 May 2013, Judge James dismissed the appellant's appeal. On 11 June 2013, the First-tier Tribunal (DJ Taylor) granted the appellant permission to appeal to the Upper Tribunal. Thus, the appeal came before me.
4. In dismissing the appellant's appeal, Judge James made an adverse credibility finding and rejected the appellant's evidence in relation to events which had occurred before, as he claimed, he had come to the UK in 1999. Applying the country guidance decision in CM (EM Country Guidance; Disclosure) Zimbabwe CG [2013] UKUT 0059 (IAC), Judge James concluded that the appellant had failed to show that he was at risk of persecution or serious ill treatment on return to Zimbabwe.
5. In his grounds of appeal, the appellant argued that the Judge had erred in law in two respects: (1) in failing to consider at all whether his removal to Zimbabwe, having been in the UK since 1999, would breach Article 8 of the ECHR and (2) in failing properly to apply the country guidance decision in CM in considering the risk to the appellant on return to Harare.
6. At the outset of the hearing, Mr Richards drew to my attention that the Home Office had documentation showing that the appellant had in fact entered the UK in 1999 contrary to the finding made by the Judge. Mr Richards accepted that had the Judge been aware of this she would have gone on to consider the appellant's Article 8 rights. It was, of course, through no fault of the Judge that she did not have this evidence before her and therefore could not consider it in reaching her findings. Mr Richards accepted that there was, nevertheless, an error of law and a judicial decision needed to be made on the application of Article 8 to the appellant.
7. Following some discussion, Mr Richards also recognised, when I drew the matter to his attention, that the Judge's adverse finding in relation to the appellant's claim to have entered the UK in 1999 had been part of the Judge's overall adverse credibility finding made in respect of the appellant's account including his family and other circumstances in Zimbabwe. Those matters are germane to the appellant's Article 8 claim.
8. In my judgement, it is clear that the Judge did take into account the fact that the appellant could not establish, and therefore that his evidence was unreliable generally, that he had entered the UK in 1999 as he claimed. That was a demonstrable mistake of fact as the Home Office document now established. Consequently, in reaching her adverse findings, the Judge made a mistake of fact which, applying the approach set out in E &

R v SSHD [2004] EWCA Civ 47, amounts to an error of law. It is an “established” fact; the mistake was not the responsibility of the appellant or his advisers; and that mistake played a material part in the First-tier Tribunal’s decision to dismiss the appeal, in particular to reach adverse credibility findings.

### **Decision and Disposal**

9. For these reasons, as Mr Richards accepted, the decision of the First-tier Tribunal cannot stand and it is set aside.
10. Given the nature and extent of the fact finding required, this is an appropriate case to be remitted to the First-tier Tribunal for a *de novo* hearing. The adverse credibility findings cannot stand and fresh findings, on the evidence submitted to the First-tier Tribunal, will need to be made in respect of both the appellant’s asylum claim and also his reliance upon Article 8. Even if believed, the appellant will have to establish that he is at risk applying the country guidance decision of CM. Fresh findings will need to be made relevant to the appellant’s Article 8 claim.
11. For these reasons, the appellant’s appeal to the Upper Tribunal is allowed and the appeal is remitted to the First-tier Tribunal for a *de novo* rehearing (not before Judge James).

Signed

A Grubb  
Judge of the Upper Tribunal

Date: