



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

Appeal Number: AA/08872/2012

THE IMMIGRATION ACTS

**Heard at Birmingham
On 25th June 2013**

**Determination Sent
On 3rd July 2013**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

**GLADMORE DLAMINI
(NO ORDER FOR ANONYMITY)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr J Singh, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a male citizen of Zimbabwe, born on 15th June 1981. He entered the UK illegally on 12th April 2001, but did not apply for asylum until 13th July 2012. That application was refused for the reasons given in the Respondent's letter of 14th September 2012. The Appellant appealed and his appeal was heard by Judge of the First-tier Tribunal A W Khan (the

Judge) on 30th October 2012. He decided to dismiss the appeal on asylum, humanitarian protection, and human rights grounds for the reasons given in his determination dated 9th November 2012. The Appellant sought leave to appeal that decision, and on 4th January 2013 such permission was granted.

2. The appeal first came before Deputy Upper Tribunal Judge McCarthy on 14th May 2013. On that occasion it was found that there was an error of law in the decision of the Judge for the reasons given in the written Decision of Deputy Upper Tribunal Judge McCarthy dated 14th May 2013. However, Deputy Upper Tribunal Judge McCarthy, although he decided to set aside the decision of the Judge, did not proceed to remake the decision but instead adjourned the hearing for the decision to be remade on the basis that the findings of the Judge set out at paragraphs 12 to 17 inclusive of his Determination be preserved. That is the matter which comes before me today

The Hearing

3. At the hearing I heard submissions from both parties. Mr Singh addressed me first when he argued that it was safe for the Appellant to return to Zimbabwe. It was now more than ten years since the Appellant had left Zimbabwe and the authorities would have no interest in him. He had no political profile, and had not been politically active in the UK. Even taking the Appellant's case at its highest, he was not at risk on return to his home town of Masvingo. Following the decision in **CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC)** it was also safe for the Appellant to relocate to Harare or Bulawayo.
4. In response, the Appellant, who was unrepresented, said that he had been active in the MDC at the time that he had left school, and was opposed to ZANU-PF. Therefore it would not be safe for him to return to Masvingo. He had been born in Bulawayo, but now had no home or family there. These comments also applied to Harare.

Findings and Reasons

5. I must decide this appeal in accordance with the findings of the Judge made at paragraphs 12 to 17 inclusive of his Determination. To summarise, those findings were that the Appellant had fabricated his account of being involved in political activities with the MDC whilst living in Zimbabwe, and the Judge found that the Appellant had never had any political involvement in Zimbabwe, nor in the UK. The Judge went on to find that the Appellant was not homosexual, and had fabricated a false asylum claim that he was. The Appellant had never had any problems whilst living in Zimbabwe on account of the fact that he was gay.
6. I must now apply this matrix of facts to the relevant Country Guidance cases.

7. The current Country Guidance case is that of **CM**, the relevant parts of which state as follows:
- (1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in **RN (Returnees) Zimbabwe CG [2008] UKAIT 00083**. 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.
 - (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.
 - (3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.
 - (4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.
 - (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.

- (6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.
8. The Appellant last lived in a town called Masvingo which is situate roughly half way between Harare and Bulawayo. He has no political profile at all, and no connection to the MDC. He would not therefore have to face a real risk of having to demonstrate loyalty to the ZANU-PF. The Appellant has been absent from Zimbabwe for a significant time, but he will not be returning to an area where he might be at risk. There was no evidence before me that the Appellant will return to an area that is under the sway of a ZANU-PF chief or the like. In any event, it will be safe for a person of the Appellant's profile to return to both Harare and Bulawayo. I accept that the Appellant has no family nor home in either city, but the economy of Zimbabwe has markedly improved in recent times, and there was no evidence that it would be unreasonable by way of being unduly harsh to expect the Appellant to relocate to those cities.
9. I therefore find that the Appellant is not at risk on return.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

I remake the decision in the appeal by dismissing it on asylum, humanitarian protection, and human rights grounds.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. There has been no application that I should vary that order and I do not do so.

Signed

Date

Upper Tribunal Judge Renton