IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04035/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 13th August 2015	**On 14th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS FURTHERMORE SHIPTON
(ANONYMITY NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Sachav
For the Respondent: Miss Johnstone

DECISION AND REASONS

Introduction

1. The Appellant born on 8th December 1961 is a citizen of Zimbabwe. The Appellant who was present was represented by Mr Sachav. The Respondent was represented by Miss Johnstone, a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for asylum and that application had been refused by the Respondent on 22nd May 2014 and removal directions had been issued. The Appellant had appealed that decision and her appeal was heard by First-tier Tribunal Judge De Haney sitting at Manchester on 16th July 2014. The judge had allowed the Appellant's appeal on both asylum grounds and under the Human Rights Act.

3. The Respondent had made application for permission to appeal on 23rd July 2014. Permission to appeal had been granted by First-tier Tribunal Judge Saffer on 4th August 2014. The judge found that there were arguable grounds as set out in the application. In summary the Respondent had asserted that the judge had failed to give adequate reasons as to why the Appellant would be at risk as a result of her surname and the fact that she had married a white Englishman. It was also asserted that the judge had failed to resolve an issue regarding the reliability of the expert report and had failed to consider the country guidance cases of **EM CG [2011] UKUT 98** and **CM CG [2013] UKUT** and **NN CG [2013] UKUT 00198**. Directions were issued for the Upper Tribunal first to consider whether an error of law had been made in this case and the matter comes before me in accordance with those Directions.

Submissions on Behalf of the Respondent

4. Miss Johnstone relied upon the detailed grounds contained within the Respondent's application in particular the failure of the judge to provide adequate reasons in respect of findings made.

Submissions on Behalf of the Appellant

5. I was referred to a skeleton argument. It was submitted that the judge had found the Appellant and witnesses credible and had looked at all of the evidence. It was further stated that the judge had followed the principle in **Devaseelan** and it was submitted that no error of law had been made.

6. At the conclusion of the submissions I reserved my decision to consider the documents and submissions raised. I now provide that decision with my reasons.

Decision and Reasons

7. There were two central issues for the judge to resolve in this case. Firstly, did the Appellant face a real risk of persecution if returned to Zimbabwe and secondly was the Appellant in a genuine relationship (marriage) to Mr Shipton such that Article 8 of the ECHR was engaged.

8. The judge in deciding those issues was greatly assisted by two features. Firstly as he correctly identified at paragraph 29 he followed the principles of **Devaseelan** by taking as his starting point the findings on fact and credibility as set out by a judge at an earlier appeal hearing on 15th August 2013. The judge had further noted at paragraph 29 that the decision had been upheld by the Upper Tribunal.

9. Secondly as the judge himself noted at paragraph 27 “This appeal once again highlights the importance of the First-tier Tribunal in being able to see and hear witnesses deliver evidence”. In this case the judge had heard oral evidence from seventeen witnesses (noted at paragraph 11) and statements from three others who were unable to attend.

10. In respect of the asylum claim the judge had within the documents the previous First-tier Tribunal decision referred to above. The judge at that hearing had found the Appellant truthful and her evidence cogent. He had accepted that she was an MDC member with an MDC profile and had suffered physical abuse by Zanu-PF as recently as 2011. He further accepted that her husband had also been a member of MDC, had been beaten and forced to leave the country. The judge however had concluded that she would not face a real risk of harm by Zanu-PF now, given the passage of time and could in any event reasonably relocate to Matabeleland North where her father still resided.

11. The judge clearly had in mind the findings of the earlier Tribunal decision and summarised them at paragraph 32. He however concluded that there had been significant changes to the position since 2013 namely that she had married a white Englishman and had taken and would use his name (Shipton). The judge was entitled to conclude following **HJ Iran** that given her religious beliefs she would seek to use her married name if returned to Zimbabwe (paragraph 33). The judge had in part relied upon the expert report produced to conclude that she would be at heightened risk as a result of using a name identifiable as that of a white Englishman.

12. The judge was clearly alive to the criticisms of this particular expert and referred in detail to those points raised by the Presenting Officer at paragraph 17. At paragraph 34 the judge noted that despite the shortcomings pointed out by the Presenting Officer he found the report useful and that the issue of risk through the name “sustainable”.

13. The judge had, as he was entitled to do, taken the earlier findings on fact and credibility attaching to the Appellant and had thereafter found additional risks emanating from the changes related to her marriage, change of name, further length of time in the UK and had also noted at paragraph 35 the continued antipathy from the regime towards the UK.

14. It could be argued that the judge perhaps should have given rather more reasons for deciding that the expert report in this particular regard was useful bearing in mind the criticisms levelled against that expert as noted by the judge in his decision. It could also be argued that the judge gave no real reasons behind his finding that the Appellant would now be at risk in all parts of Zimbabwe given the findings of the judge at the earlier decision that she could reasonably relocate to Matabeleland North. It was perhaps incumbent upon the judge to have provided rather more reasoning as to why her marriage to a white Englishman and the use of his name would lead to a reasonable risk of persecution in that particular area. However that is not to say that those potential shortcomings amounted to a material error of law.

15. Separately the judge had found the Appellant was in a genuine marriage and given the circumstances of her husband, in particular his age, health and the fact that he was a white Englishman, had concluded that it would not be reasonable to expect him to relocate to Zimbabwe. The judge had therefore concluded that the Appellant was entitled to remain under the terms of Article 8 of the ECHR. Those findings made by the judge were clearly based on the significant volume of evidence that he had received both from the Appellant and the substantial number of witnesses and other material that he had considered. The judge's conclusions upon Article 8 were therefore based upon properly reasoned facts based on a substantial body of evidence and the conclusion that he reached was a conclusion that was both open to him and reasonable. It is further noteworthy that the Respondent's application for permission to appeal does not seek to criticise the judge's findings on Article 8 of the ECHR.

16. Accordingly whilst there may be some merit in the potential lack of reasoning referred to above, even if it was concluded that that could amount to a material error of law, it would leave unchanged the judge's findings on Article 8. That would mean that any remaking of the decision on the asylum issue alone would be largely an academic exercise and would not materially affect the fact that the Appellant had been allowed to remain within the United Kingdom and it does not seem to be an appropriate use of public money nor in the interests of justice to perpetuate this case on a largely academic basis only that does not materially affect the outcome.

Decision

17. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

18. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date

Deputy Upper Tribunal Judge Lever