



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04694/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Newport
On 25 January 2018**

**Decision & Reasons
Promulgated
On 14 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**BDG
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Billie, A. Billie Law Ltd
For the Respondent: Mr. I. Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lebaschi, promulgated on 14 July 2017, in which she refused the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. As this is an asylum appeal, I have made an anonymity direction.
3. Permission to appeal was granted as follows:

"The grounds do not seek to challenge the findings made on the asylum claim however they do challenge the A8 findings in particular with

reference to extensive background material about drought and starvation in Zimbabwe. The FtJ has not properly considered whether there are significant obstacles to the appellant's return to Zimbabwe and this impacts on the balancing exercise on proportionality.

I have read the Record of Proceedings and checked the bundle filed by the appellant. Pages 80-87 of the Appellant's bundle contains a news report from the Guardian dated February 2016 about the state of disaster due to the drought in Zimbabwe. Another report refers to unemployment levels of 90% and a hardships demo. This report is undated. Reference to this material is in the skeleton argument and the appellant's witness statement but no findings are made thereon."

4. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.
5. Although the Rule 24 report acknowledges that the grounds of appeal appear to challenge the asylum decision, contrary to the statement in the grant of permission, at the hearing before me Mr. Billie stated that he was not relying on the ground of appeal in relation to the decision on asylum grounds. His challenge to the decision was only in relation to Article 8.

Submissions

6. Mr. Billie submitted that an assessment under paragraph 276ADE(1)(vi) must involve the personal circumstances of the Appellant and the conditions in the country of return. He submitted that paragraph [33] of the decision disclosed an error of law, as the Judge had made findings which were uninformed by the evidence provided. There was evidence that there were no employment prospects in Zimbabwe and that unemployment was running at 90% (page 86). There was evidence of acute shortages (page 83). He submitted that the balancing exercise was flawed as the Judge did not take into account very relevant information.
7. In response Mr. Richards submitted that the thrust of the Appellant's appeal was his protection claim and the Judge had dealt adequately with that. The Judge had dealt with the Article 8 claim at [33]. He accepted that there was not a detailed analysis of the objective material submitted, but the Judge had taken into account the Respondent's and Appellant's bundles as stated at [11]. The Judge came to the conclusion that, given that the Appellant had lived in Zimbabwe and been educated to university level, he had the skills to find work on return. The Judge was entitled to find that there were no significant obstacles. Although the objective evidence set out difficulties in respect of life in Zimbabwe, the Judge was entitled to come to a conclusion that the Appellant was well placed to establish himself in the community in Zimbabwe. Even if the Judge had erred in failing to refer to the specific items of evidence, this was not a material error given her findings in [33]. The findings were open to the Judge.

8. Mr. Billie submitted that the error in [33] was more than not making specific reference to the evidence, but that the Judge was unaware of and had overlooked the evidence. The Judge had come to her conclusions regarding the Appellant's prospects of finding employment based on the Appellant's level of education and skills. The background information indicated that this did not place him in any better situation than others because of the circumstances in Zimbabwe. The Judge would not have reached the same conclusion had she noted the evidence.

Error of law

9. I have carefully considered the decision. Mr. Billie did not pursue the ground in relation to the asylum claim, and I therefore find that there is no challenge to the Judge's decision to dismiss the appeal on asylum grounds.
10. In relation to Article 8, the Judge deals with this at [33]. She states:

“I have considered whether the Appellant should succeed under Article 8. The Appellant relies on Article 8 but has provided very little evidence in relation to this aspect of his claim. He has lived in Zimbabwe for most of his life, he speaks the language and is educated to University level. I find he has the skills that would enable him to find work and integrate into the community upon his return. There are no significant obstacles to the Appellant's return to Zimbabwe. Given the evidence the Appellant has provided in relation to his family and private life for the purposes of this appeal, I find the Appellant's return to Zimbabwe would not result in consequences of such gravity as to engage the operation of Article 8 ECHR. I am satisfied the Respondent's decision in relation to Article 8 is proportionate to the legitimate aim of the Immigration Rules , and there are no grounds for the Appellant to be granted leave to remain outside of them.”
11. The Judge has not referred to the evidence provided by the Appellant in this paragraph although I find that she has referred to it earlier in the decision where she states that she has taken it into account [11]. She states that very little evidence had been provided in relation to this aspect of the Appellant's claim. Her finding that he has lived in Zimbabwe for most of his life, speaks the language and is educated to university level has not been challenged. What is challenged is that this would not place him in a better position to find work.
12. I have considered the Appellant's witness statement. At [53] to [59] he addresses the reasons for refusal letter where that dealt with the issue of whether there were very significant obstacles to his reintegration. He refers to hardships protests and the difficulties which ordinary Zimbabweans are experiencing. He refers to the economy slipping into recession following the 2013 elections. He states that he will be unemployed if he returns as it would not be possible for him to secure employment, when millions of Zimbabweans are unemployed. He states that he does not have any special skills.

13. He then refers at [60] to [63] to the “unprecedented and devastating drought”. He states that he will be stranded for food if he returns.
14. I have considered the evidence provided at pages 80 to 87. The decision of the First-tier Tribunal was promulgated on 14 July 2017. The article from the Guardian is dated 5 February 2016, some 17 months prior to the decision (pages 80 to 82). The article at pages 83 to 85 was published on 6 July 2016, a year prior to the decision. The article at pages 86 to 87 is dated 10 August 2016, 11 months prior to the decision.
15. I find that, even had the Judge set out this evidence in greater detail at [33], it would not have made a material difference given that the evidence is dated between 11 and 17 months prior to the decision. There was no up-to-date evidence before the Judge. In his witness statement the Appellant has referred to the drought, but without reference to any dates, and the evidence provided in relation to the drought is dated February 2016. The Appellant also referred to the hardship protests, but the background evidence that he provided in relation to these is dated a year prior to the decision. The statements made in the Appellant’s witness statement are not corroborated by the background evidence which he has provided.
16. I find that there is no material error in the Judge’s consideration of Article 8. She found that the Appellant had spent most of his life in Zimbabwe, he spoke the language, and that he was educated to university level. There is no error in her consequent finding that his skills would enable him to find work and integrate into the community on his return. The evidence in the bundle pre-dated her decision by a significant period of time, and the evidence in the Appellant’s witness statement was therefore not corroborated by any objective evidence. She was entitled to find that there were no significant obstacles to his return to Zimbabwe. While it might have been better had the Judge referred to the evidence at [33], there is no material error of law in her failure to do so.

Decision

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

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant

and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 9 February 2018

Deputy Upper Tribunal Judge Chamberlain