



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

Appeal Number: PA/12621/2017

THE IMMIGRATION ACTS

Heard at Field House
On 12 April 2018

Decision and Reasons Promulgated
On 17th April 2018

Before:

UPPER TRIBUNAL JUDGE GILL

Between

F M
(ANONYMITY ORDER MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Anonymity

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 a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

The parties at liberty to apply to discharge this order, with reasons.

Representation:

For the Appellant: Ms K Joshi, of Solomon Solicitors.

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The issues in this appeal are:
 - (i) whether Judge of the First-tier Tribunal Abebrese (hereafter the “judge” unless otherwise indicated) materially erred in law in reaching his conclusion that the appellant’s evidence about the basis of her asylum claim was incredible. The grounds contend, in summary, that the judge misapprehended the evidence, overlooked relevant evidence, and otherwise erred in law in his assessment of credibility; and
 - (ii) whether the judge materially erred in law in assessing the risk of persecution following the appellant's return to Zimbabwe.
2. The appellant had appealed to the First-tier Tribunal (“FtT”) against a decision of the respondent of 13 April 2017 to refuse her asylum claim. Her claim was also refused on humanitarian protection grounds and on human rights grounds.
3. The judge dismissed the appeal on asylum grounds, humanitarian protection grounds and (in relation to Article 3) on human rights grounds. Article 8 of the ECHR was not argued before the judge.
4. The appellant is a national of Zimbabwe, born on [] 1990.

Basis of asylum claim

5. The appellant said that she was politically involved with the MDC-T party in Zimbabwe, having joined the party in 2013. She was elected into the Youth Assembly as an Executive Committee Member in 2014.
6. The appellant said that she participated in a nationwide demonstration on 6 July 2016 in Mufakose. She was attacked by Zanu-PF supporters and then handed over to the police. The police detained her for one week, during which period she was verbally assaulted and tortured. She was then released and told to sign on every week at the police station in Marimba. On 2 September 2016, she was told that there was a lack of evidence and the case was closed.
7. Subsequently, Zanu-PF supporters came to her house on three separate occasions, the first time being in October before December 2016. On all three occasions she was not at home.
8. The appellant was granted a visa to enter the UK on 14 November 2016 as a visitor until 14 May 2017. She arrived in the United Kingdom on 8 December 2016.
9. On 27 December 2016, she received a message from her husband informing her that Zanu-PF and the police had gone to her house. She also received a text message from her uncle informing her that Zanu-PF had returned looking for her in December 2016. Her husband fled Zimbabwe on 30 December 2016 to South Africa leaving their son behind with the appellant's maternal grandmother.
10. The appellant claimed to have been involved in *sur place* activities, including attending MDC meetings in London and vigils. Her photographs are on the Zimvigil Flickr website. She says her surname is shown. There have been many views of her photographs. Zanu-PF and the Zimbabwean authorities know what she looks like due to her activities in Zimbabwe.

11. The appellant submitted documentary evidence in support of her asylum claim, including a letter from the MDC in Zimbabwe and two membership cards, photographs of her attendance at Zimvigil vigils in London and evidence of her photographs on Flickr.

The judge's decision

12. The judge heard oral evidence from the appellant and an uncle in the United Kingdom.
13. In relation to the membership cards (para 38), the judge noted that one was issued for the period 2013 and the other had expired because it had an expiry date of December 2016. He noted that one was a MDC card and not an MDC-T card which he considered was inconsistent with the appellant's evidence. He also considered it lacking in credibility that the appellant at her interview did not appear to know that her card had expired even though she claimed that she had paid her monthly fee.
14. In relation to the letter from the MDC (para 39), the judge said that the appellant had not provided proof of posting of the letter to her.
15. At para 41, the judge noted that the appellant had not mentioned the text message at her screening interview. He did not accept her explanation, that the reason for not mentioning it at her screening interview was that she was told at the interview to keep her answers brief.
16. In relation to the photographs on Flickr (para 43), the judge said that the photographs do not have any name or details and that, in his view, there was no evidence that the appellant would be identified from the photographs.
17. At para 43, the judge said that he did not find credible the appellant's evidence that she had been arrested and verbally and physically abused in Zimbabwe because she had not mentioned this at her screening interview.
18. At para 44, the judge said that he did not find the appellant's evidence that she had worked with a local MP credible because she subsequently changed her evidence and said that he was not a local MP but a Councillor and she could not recall his full name. He also took into account the fact that, during the course of her interview, she was unable to name the person who founded the MDC or recite the core aims and values of the party.
19. In assessing the future risk of persecution, the judge considered the country guidance in CM (EM Country guidance disclosure) Zimbabwe CG [2013] UKUT 59. He found that the appellant did not have a profile such as would lead her to be on a list of targeted people or such that she would be recognised at the airport or be at real risk of persecution thereafter.
20. The judge's reasoning is set out at paras 36-46 which read:
 - "36. I now refer to the objective evidence in this appeal. The appellant provided objective material at pages 81-339 of their bundle. The appellant at pages 81-196 provides background evidence which provides information on a variety of political events leading up to the recent change of leader in that country. The suggestion from the reports is that there will not be any changes in respect of the conduct of Zanu-PF.

37. The appellant at pages 197-214 provides information on Zimvigil which was launched in 2002 and provides a forum for people to meet every Saturday. The group have made it clear that despite the change of leader they will continue until there is a democratic Zimbabwe. The appellant is named at page 218 of the objective material as having attended a vigil it is the case of the appellant that the mention of her name in the public domain puts her at real risk if she were to be returned. The appellant claims also that based on the information provided at pages 227-235 that all the Zimbabwean authorities do have the capacity to monitor diaspora opposition in this country.
38. I have considered all of the subjective, objective evidence and submissions and make the following findings. I do not find the appellant credible in relation to his *[sic]* membership of the MDC-T because the appellant provided two membership cards and a letter from the MDC. One of the membership cards is for the period 2013 and the other is dated with an expiry date of December 2016. The first card indicates membership of *[sic]* MDC and not MDC-T in my view this is inconsistent with the appellant *[sic]* claim that she has been a member of MDC-T since 2103. It was also noted by the respondent that the membership card did not have a start date and the appellant at the interview did not realise that the card had indeed expired even though the appellant maintained that she pays her monthly fee. There *[sic]* difficulties with the evidence of the appellant in that the documents do support the contention that she has been a member of MDC-T since 2013 and she also should have been aware that the card had expired. Following on from *[sic]* I do not find it credible that Zanu-PF were looking for the appellant on 27 December 2016 when she had a valid card as at the interview she thought that the card was valid.
39. I also find that the letter from the MDC does not support the appellant's contention that she has had continuous membership of the party because the letter does not indicate the date which the appellant joined the party. The letter does provide her national identification number. The appellant has not been able to provide proof of posting of the letter to her and she indicated that this would be available at the hearing of the appeal. The letter also predates the application of the appellant for asylum and it tends to support a view that she should not return to Zimbabwe. The appellant however, states that she had not yet made a decision whether she was going to return. I considered the letter and the membership cards in line with the principles enunciated in Tanveer Ahmed 2002 in that it is for the appellant to show that any documents the appellant intends to rely on are reliable. I have not looked at the documents in isolation but alongside the totality of the evidence.
40. I do not accept the appellant's claim that Zanu-PF were indeed looking for her in March 2017 and that this was because of her having been active in the MDC where she held a position and that she had been wrongly associated with events on 27 March 2017 where MDC members had been attacked by Zanu-PF in Mbare.
41. I also find that the text messages sent to the appellant *[sic]* is not reliable for the following reasons. The text messages are at pages D3 and D4 of the respondents bundle. The appellant claims that the authorities did not believe that she was in the UK and they were trying to instil fear in her and her family. The appellant however, did not mention the text messages in her screening interview and I did not find her explanation that she was told at the interview to keep her answers brief plausible as she was given ample opportunity to elaborate on her case. I find that the appellant has provided the letter from MDC in order to bolster her asylum claim.

42. I also did not find the evidence of the appellant's uncle to be plausible because she was provided with the opportunity during the course of the screening interview and she did not do so. When the appellant was asked to explain at the hearing she stated that her uncle was not a part of her immediate family. The appellant's uncle's role forms a core part of the appellant *[sic]* as she claims that it was he who told her that Zanu-PF had returned again looking for her.
43. I also find that the appellant became involved in the MDC activities in this country again in order to bolster her asylum application. The photographs and the attendance of vigils/meetings and protest etc have all in my view been obtained by the appellant in order to bolster her application for asylum. The photographs have been uploaded on flicker, the pictures do not have any names or details and there is in my view no evidence to suggest that the appellant would be identified from the photos. The appellant also has not persuaded me that the authorities would be monitoring the activities on the website. I do not accept the evidence of the appellant that she would face charges if she were to be returned to her country because the charge sheet shows that the charges have been dropped. I do not find it plausible that the authorities based on the evidence would in this instance have renewed their interest in the appellant. I also do not find that the appellant is credible in respect of her evidence that she was arrested and verbally and physically abused because she did not mention this at her screening interview and this would have been the opportunity for her to describe the incident.
44. I also do not find it credible that the appellant was working with a local MP. The appellant subsequently changes her position to indicate that he was not an MP but a Councillor. This is compounded by the fact that she could not recall his full name. I do not accept her explanation that the reason why she could not remember his full name is because she always referred to him by his surname. The appellant also was not able during the course of the interview to name the person who found MDC or recite the core aims and values of the party this in my view further damages the credibility of the appellant.
45. I considered the position in respect of risk on return and the case of CM (EM Country guidance disclosure) Zimbabwe CG 2013 UKUT 59 where it was stated that: "As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. 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". The position is different for a returnee with no Zanu-PF connections who is returning to a rural part of the country, such a person is likely to receive adverse attention. The appellant is however from Harare and not from the rural parts of the country. It was also stated a returnee to Harare is unlikely to face significant difficulties if a person is returning to a low or medium density area. The appellant does not in my view have a *[sic]* such a high profile that would still lead her to be on the list of targeted people. I am also of the view that the appellant does not have such a high profile that they *[sic]* are likely to recognised at the airport. The objective evidence does not suggest that a person with no significant MDC profile who is a failed asylum seeker would result in them being at risk on return at the airport.
46. The objective evidence provided by the appellant does show that Zimbabwe is still going through a period of turmoil politically, however, I am not of the view that the appellant according to the objective *[sic]* could not

be returned. The appellant is named in one of the articles as a person who attended an activity organised by the MDC in London and also that photographs taken at some of the events have been uploaded on to the internet. However, looking at the totality of the subjective and objective evidence the appellant is [sic] not shown that they [sic] have a fear of persecution on the basis of their [sic] political opinion. I have found the core of the appellant's account not to be credible in respect of their [sic] political activities in this country and Zimbabwe. I also find that the appellant is a person who could relocate internally in their [sic] own country."

21. Although the judge refers to text messages (in the plural) at pages D3-D4 of the respondent's bundle, there is only one text message at pages D3-D4.

The grounds and the appellant's skeleton argument

22. In relation to the judge's assessment of credibility, the grounds and the appellant's skeleton argument contend:

- (i) The judge erred, at para 44, in holding against the appellant that she could not name the person who founded the MDC or recite the core aims and values of the party, in that, he failed to take into account that the background evidence shows that the person who founded both the MDC and the MDC-T are one and the same person, i.e. Morgan Tsangirai.

It is contended that this error led the judge to take into account against the appellant, at para 38, that "*The first card indicates membership of [sic] MDC and not MDC-T in my view this is inconsistent with the appellant claim [sic] that she has been a member of MDC-T since 2103.*"

- (ii) The judge erred, at para 39, in holding against the appellant that she had not provided the original proof of posting in relation to the letter from the MDC because the appellant had provided such proof at the hearing before the judge.
- (iii) The judge erred, at para 41, in holding against the appellant that she had not mentioned at her screening interview the text message from her uncle because the text message was in existence before the screening interview and therefore would "*evidently*" have formed part of her claim.
- (iv) The judge erred at para 42 in his consideration of the appellant's explanation as to why she had not mentioned her uncle at her screening interview. She had explained that this was because he was not part of her immediate family.
- (v) In her skeleton argument, Ms Joshi argues that the judge erred in holding against the appellant the fact that one membership card had expired. She says: "*It is worth acknowledging that a country going "through political turmoil" does not harbour activists group [sic] who routinely check the expiry dates of its member's membership card*" and that membership cards alone are sufficient evidence of the appellant's involvement. It was "*unduly harsh*" for the judge to place weight on the fact that the membership card had expired.
- (v) The skeleton argument also argues, inter alia, that it was "*unduly harsh*" for the judge to place weight on the fact that the appellant had not mentioned the text message at her screening interview or her arrest and verbal and physical abuse.

23. In relation to the assessment of the appellant's *sur place* activities, the grounds contend that the judge had failed to properly engage with the appellant's evidence and/or erred as follows:

- (i) The judge erred at para 46 when he said that the appellant "*is named in one of the articles as a person who attended an activity organized by the MDC in London*", whereas various news articles on the internet, at pages 215 to 226 of the appellant's bundle, link her specifically by name to Zimvigil. Furthermore, the publications indicate that the appellant was named over the course of several dates as associated with Zimvigil. At para 15 of her witness statement, the appellant said that not only were her photographs shown on the relevant Zimvigil website but a search of her forename and surname on the "Google" search engine throws up results which link her with Zimvigil. For example, in March 2017, May 2017, July 2017 and December 2017. The information in the public domain states that she arrived early at the vigils along with others and helped set up and pack at the end.
- (ii) The judge erred at para 43 when he said that the photographs of the appellant on Flickr do not have any names or details and that there was no evidence to suggest that the appellant would be identified from the photographs.
- (iii) The judge further erred, at para 43, in saying that the appellant had not persuaded him that the authorities would be monitoring the activities on the website by failing to engage with the relevant background evidence.
- (iv) At para 15 of her statement, the appellant said that a search on Zimvigil Flickr would show photographs of her and that, as soon as one clicks on the "*About*" section of the Zimvigil Flickr website, she is shown wearing a black T-shirt displaying the word: "*#Tajamuka*" with the Zimbabwean flag tied round her waist. The "*About*" section shows the website has had 10.4 million views and her photograph of 8 July 2017 had had 139 views as at the date of her witness statement in relation to just one of her photographs pictures. The photograph shows her surname below it. It would be known by reference to her photographs who she is. There are several other photographs of her on the Zimvigil Flickr website. ZANU(PF) youths and the authorities would know what she looks like because she is known in her area.
- (v) Pages D6-D10 are minutes of two MDC meetings in London, held (respectively) on 1 April 2017 and 3 June 2017, that the appellant attended. She is named by her first name and her surname in the list of those present.

24. In his assessment of the future risk, the judge failed to take into account the background evidence concerning Zimvigil which has been a critic of the Zimbabwean regime both during Mugabe's time and currently. He also erred in failing to apply YB (Eritrea) v SSHD [2008] EWCA Civ 360 and BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC).

Submissions

- 25. In relation to the expired membership card, Ms Joshi submitted that activists in Zimbabwe would not focus on the expiry dates of their membership cards, given the political turmoil. The judge therefore placed weight on an immaterial matter. Furthermore, the appellant thought that her membership card was valid.
- 26. I noted that the judge recorded, in his Record of Proceedings ("ROP"), that the original of the proof of posting in relation to the MDC letter was produced at the hearing. It was common ground before me that the appellant's bundle contained a copy.

27. Ms Joshi submitted that it was unduly harsh for the judge to take into account the appellant's failure to mention the arrest and the text message at her screening interview. The judge failed to take into account the appellant's evidence of her arrest and abuse at question 159 of her substantive interview.
28. I was taken to the photographs on Flickr in the appellant's bundle and shown the appellant's name (pages 52 and 53 of the bundle).
29. In making his finding, at para 43, that he did not accept that appellant would face charges if returned to Zimbabwe, the judge failed to take into account that the appellant had already come to the adverse attention of the authorities in Zimbabwe.
30. I was taken to pages D6, D9 and D10 of the respondent's bundle. These are minutes of two MDC meetings in London. The list of attendees at pages D6 and D9 include the appellant. The record of the meeting at page D10 states that the appellant had suggested the idea of campaigning by spreading a message (i.e. a message of Vice President Khupe about devolution of power) to rural areas through flying helicopters distributing 'flyers'.
31. In relation to the future risk, the judge failed to consider the appellant's role in *sur place* activities and the role she had played in Zimbabwe.
32. I heard briefly from Mr Kotas who made helpful submissions which I will deal with in the course of my assessment below.

Assessment

33. The judge noted the guidance in the country guidance case of CM which said that a person with no significant MDC profile was not at real risk. Accordingly, the key issue before the judge was whether the profile that the appellant had (if any) in relation to her political activities was such as to expose her to a real risk of persecution in Zimbabwe, i.e. whether she had a significant MDC profile. It is clear that he found that the appellant did not have an MDC profile such as would place her at real risk of persecution.
34. In relation to the appellant's account of the alleged events in Zimbabwe, I do not accept Ms Joshi's submission that the judge had accepted that the appellant was a member of the MDC-T. In this regard, Ms Joshi relied upon the sentence in para 38 that reads: "...the documents do support the contention that she has been a member of MDC-T since 2013..". However, in my view, the judge was merely recording at this point what the documents state and not what finding he was making. When the judge's decision is read as a whole, it is clear that he did not accept that she was a member of the MDC-T in Zimbabwe or that she was arrested and detained or that Zanu-PF members visited her home at all.
35. In relation to the appellant's *sur place* activities, the judge found, inter alia, that there was nothing to link the appellant to the photographs on Flickr as, in his view, there was no name or any details on the photographs and nothing to suggest that the appellant would be identified from the photographs.
36. Having explained what the judge found, findings which are plainly implicit from his reasoning, I shall turn to consider the appellant's submissions that he erred in his reasoning, beginning with his reasoning in relation to the appellant's evidence about

her alleged political activities in Zimbabwe and the events which she alleged happened in Zimbabwe.

37. I accept that the judge erred in law by overlooking relevant evidence when he said that the appellant had not provided the original of the proof of posting in relation to the MDC letter. He recorded in his ROP that the original was shown in court. However, the issue is whether this was a material error. I will return to this after considering the remainder of the challenges to the judge's assessment of credibility.
38. The judge did not consider it credible that the appellant did not mention at her screening interview that she had been arrested, detained and abused in detention and that she did not mention the text message. He considered her explanation, that she was told to keep her answers brief, but he did not accept the explanation.
39. It is correct that the appellant was told at her screening interview: "*Please briefly explain all of the reasons why you cannot return to your home country*" (question 4.1). A person is not expected to give every minute detail but one can reasonably be expected to mention an important aspect of one's case. On the appellant's account, she was only ever arrested and detained once. She said she had been tortured during that detention (question 159 of her substantive interview). On her account, the text message from her uncle showed that the authorities were looking for her in Zimbabwe.
40. In my view, these alleged events were the core of her case in relation to what she said had happened in Zimbabwe and why she claimed asylum when she did. In my judgment, the judge was entitled, on any reasonable view, to take the view that the appellant could reasonably be expected to have mentioned her alleged arrest and detention and the alleged text message at her screening interview and that the fact that she had not done so materially undermined her credibility. He plainly took into account her explanation. He was entitled to reject her explanation. Ms Joshi submitted that it was "*unduly harsh*" for the judge to hold it against the appellant that she had not mentioned these matters at her screening interview. In my view, Ms Joshi is merely trying to re-argue the appellant's case in making this submission.
41. Ms Joshi submitted that the judge had failed to take into account the fact that the appellant had mentioned at question 159 of her substantive interview that she had been arrested, detained and tortured in Zimbabwe in reaching his adverse view of her credibility on this aspect of her evidence. This submission is without substance. The point the judge was making was that the appellant's failure to mention the arrest, detention and ill-treatment at her screening interview goes against her. In other words, late disclosure, i.e. at her substantive interview, went against her. This being the point, it is of no help to say that the judge failed to take into account her answer to question 159 of her substantive interview. In any event, there is no reason to suppose that the judge was not aware that the appellant had mentioned her arrest, detention and ill-treatment at her substantive interview. It is plain that he had taken into account her evidence at her substantive interview, since he mentioned her substantive interview several times (paras 9, 34, twice at para 38 and para 44).
42. There is no substance in the contention in the grounds that the mere fact that the text message was in existence as at the date of the appellant's screening interview means that it was "*evidently*" part of her claim. This simply ignores the point the judge made, i.e. that her failure to mention the text message at her screening interview went against her credibility.

43. The appellant's explanation that she had not mentioned her uncle at her screening interview because he was not part of her immediate family makes no sense in the context of the credibility issue relied upon by the judge, i.e. that her failure to mention the text message goes against her. The judge was entitled to reject that explanation (para 42).
44. In the appellant's skeleton argument, it is said that the judge erred in holding against the appellant the fact that her membership card had expired because "*It is worth acknowledging that a country going "through political turmoil" does not harbour activists group [sic] who routinely check the expiry dates of its member's membership card*" and it was "*unduly harsh*" for the judge to place weight on the fact that the membership card had expired. These arguments amount to no more than an attempt to re-argue the evidence.
45. In my judgment, the judge was fully entitled to reject the appellant's account of her alleged activities and experiences in Zimbabwe, for the reasons he gave. The appellant had not mentioned at her screening interview the core events, i.e. that she had been arrested, detained and tortured and that she had received a text message telling her that the Zimbabwean authorities were looking for her. In addition, the judge was entitled to consider that it went against her credibility that her evidence that she had worked with a local MP was inconsistent with her subsequent evidence that he was a Councillor and that she could not remember his full name (para 44).
46. Before dealing with the challenge to the judge's assessment of the appellant's *sur place* activities, it is important to note that the judge's summary of the appellant's evidence at paras 20-30 and 36-37 is very detailed, as Mr Kotas submitted. The appellant's attendance at Zimvigil demonstrations and her MDC activities in London are mentioned more than once, i.e. at paras 22, 24, 27, 28, 29 and 37. He summarised the submissions of the appellant's representative at paras 33-35, again mentioning, at para 35, that her photographs are on Flickr.
47. I therefore agree with Mr Kotas that it is clear that the judge was plainly aware of the appellant's case, that her photographs are on Flickr and she can be identified from them.
48. Ms Joshi helpfully took me through the material on the internet that was relied upon in support of the submission that the appellant's name is on the internet in a way which associates her with *sur place* activities against the Zimbabwean government, as follows:
- (i) On Zimvigil's website, there are four articles, posted (in chronological order) on the following dates: 13 March 2017 (pages 224-225 of the appellant's bundle), 8 May 2017 (pages 221-223), 9 July 2017 (pages 219-220) and 11 December 2017 (pages 216-218). These articles relate to Zimvigil demonstrations that it appears took place on the dates in question. At the end of each article, individuals who gave assistance at the demonstration by helping to set things up or pack up at the end of the demonstration are named and thanked. This shows a varying number of people who gave assistance on the four occasions, from 9 to 30. The appellant (whose first name and surname is stated) is stated to have arrived early to help set up things on all four occasions. In addition, on one occasion (11 December 2017, page 218), she helped at the front table. On another occasion (9 July 2017, page 220), she handed out flyers and sold wristbands.

- (ii) If the appellant's name is searched on the "Google" search engine, this throws up 5 results that show her name (i.e. first name and surname), four of which correspond with the four Zimvigil articles mentioned at (i) above. The fifth result also relates to a similar (undated) article about a vigil on the Zimvigil website.
- (iii) Pages 52 and 53 are photographs of the appellant on Zimvigil Flickr, as follows:
 - (a) Page 52 is a photograph of the appellant on her own. The appellant is shown wearing [].

Underneath this photograph and outside the black frame, the following appear: "Zimbabwevigil + Follow 139 view [illegible] Taken [] © All rights reserved".

Below this, two names appear next to a star, one of which is the appellant's surname.
 - (b) Page 53 is a photograph of the appellant in the forefront and four persons in the rear.

The same information appears outside the black box except that the number of views is 113 and there is only one name, i.e. the appellant's surname.
- (iv) The appellant's evidence at para 15 of her witness statement that the "About" section of the website has had 10.4 million views and that her photograph of 8 July 2017 had had 139 views at the date of the witness statement.

49. I shall deal first with the photographs.

50. The judge said (para 43 of his decision) that the photographs do not have any names or details and that there is no evidence to suggest that the appellant can be identified from them.

51. I have concluded that the judge did not misapprehend this evidence, for the following reasons:

- (i) In the first place, both photographs only show the appellant's surname, although I accept that, given the evidence referred to at my paras 48(i) and (ii) above, it may be possible to link the person whose surname appears on these two photographs with the appellant whose first name and surname appears in the documents referred to at my paras 48(i) and (ii) above.
- (ii) The names on pages 52 and 53 appear outside the black box. I agree with Mr Kotas that it is not clear that the names actually appear on the Zimvigil Flickr website, as opposed to being the names of the person or persons whose accounts are being used to view the photograph on the Flickr website.
- (iii) However, even leaving aside (i) and (ii) above, two names appear on the photograph at page 52 of the appellant on her own. The names cannot therefore have been intended to identify the person in the photograph since two names are given for a photograph of one person, nor would anyone viewing the photograph conceivably think that the two names were intended to identify the one person shown in the photograph.

At page 53, only one name is given, i.e. the appellant's surname. However, whilst the appellant is prominently in the forefront of the photograph, there are five people in total who are visible in the photograph. There was no evidence before the judge that the number of people in Zimbabwe with the appellant's

surname were so few that it is reasonably likely that anyone seeing this photograph would be able to make the link to the appellant, given that, on the judge's findings, she had not come to the adverse attention of the Zimbabwean authorities when she was in Zimbabwe.

52. Accordingly, in my judgement, the evidence that is relied upon which is said to link the appellant on the internet to Zimvigil is extremely weak. In my judgment, on this evidence, the judge was entitled to conclude that the appellant cannot be identified from the photographs. It is clear that he had this evidence sufficiently in mind. I agree with Mr Kotas that the appellant is in fact attempting to re-litigate this evidence.
53. I turn to the evidence referred to at my paras 48(i) above. It is plain that the judge considered this evidence. He referred to it specifically when giving a summary of the appellant's evidence, for example, paras 22 and 28 and in summarising the submissions on the appellant's behalf, at para 35. At para 36, he said: "*I now refer to the objective evidence in this appeal*". At para 37, he referred specifically to the evidence about Zimvigil and, importantly, specifically mentioned that the appellant was named at page 218. This is the article dated 11 December 2017, i.e. one of the four articles referred to at my para 48(i) above.
54. Whilst I acknowledge that the judge only specifically mentioned one of the four articles relied upon, the fact is that there is no need for judges to refer to every piece of the evidence before them. The fact that he mentioned in terms one of the four articles relied upon, taken together with his earlier summary of the evidence and the submissions on the appellant's behalf, is sufficient to show that he had in mind the full extent of the evidence relied upon in this respect on the appellant's behalf. Again, I agree with Mr Kotas that the appellant is in reality seeking to re-argue this aspect of her evidence.
55. Turning to the evidence referred to at my para 48(ii) above, i.e. that the result of a "Google" search of the appellant's name reveals five results, this evidence does not add anything to the evidence referred to at my para 48(i) above. It is, in effect, the same evidence. There was no need for the judge to refer to it specifically.
56. Next, the grounds contend that the judge erred at para 46 of his decision when he said that the appellant, "*is named in one of the articles as a person who attended an activity organized by the MDC in London*". However, what is relied upon in this respect (which I have summarised at my para 23 above, relates to the evidence concerning Zimvigil and which I have summarised at my para 48 and dealt with at my paras 49-55 above. I was not taken to any material showing that the appellant had been named in more than one MDC article as a person who attended an activity organised by the MDC in London.
57. Next, Ms Joshi relied upon the fact that the evidence showed that the appellant had attended MDC meetings in London. I was taken to pages D6-D10 of the respondent's bundle. As summarised at my para 23(v) above, these are minutes of two MDC meetings (held on 1 April 2017 and 3 June 2017 respectively) which show the appellant as one of those present. However, it is plain that the judge was fully aware of the appellant's evidence that she had attended meetings of the MDC in London and, importantly, that he was aware that there was documentary evidence submitted in support of that evidence. Again, in my view, the appellant is attempting to re-argue her case.

58. Finally, it is said that the judge erred, at para 44, in holding against the appellant that she could not name the person who founded the MDC or recite the core aims and values of the party. It is said that the judge failed to take into account that the background evidence shows that the person who founded both the MDC and the MDC-T are one and the same person, i.e. Morgan Tsangirai. This ignores the fact that the judge said that the appellant could not name the founder of the MDC or recite its core aims and values.
59. Given that no other error has been demonstrated in the judge's assessment of credibility, I am satisfied that the mistake he made when he said that the appellant had not produced the original of the proof of posting in relation to the MDC letter, was not material to his assessment of credibility. It was one of many reasons he gave for his adverse credibility assessment.
60. I have therefore concluded that the judge did not materially err in law in assessing the appellant's credibility and in assessing her evidence about her *sur place* activities.
61. Finally, I turn to the challenge to the judge's assessment of the future risk.
62. In my judgment, it is plain that the judge considered whether the appellant's *sur place* activities, as shown by the online material and her attendance at demonstrations and meetings, was such as to have come to the adverse attention of the Zimbabwean authorities. I have examined the Zimvigil Flickr photographs and concluded that the judge was entitled to conclude that the appellant could not be identified from it. The judge concluded that the appellant's profile, seen from the online material and from her attendance at Zimvigil demonstrations and MDC meetings in London, was not such as would expose to a real risk of persecution. In my judgment, he was entitled to reach that conclusion, having referred to CM in terms. The Tribunal in CM would have taken into account the judgments in YB and BA in formulating its guidance. It is inconceivable that, if it had not done so, this would not have been challenged to the Court of Appeal. There was therefore no need for the judge to refer to YB and BA specifically.
63. Accordingly, I have concluded that the judge did not err in law in assessing the risk on return.
64. I therefore dismiss this appeal to the Upper Tribunal.

Decision

Judge of the First-tier Tribunal Abebrese did not materially err in law. His decision to dismiss the appeal's appeal on asylum, humanitarian protection and human rights (Article 3) grounds stands.



Signed
Upper Tribunal Judge Gill

Date: 14 April 2018