

**Upper Tribunal
(Immigration and Asylum
Chamber)**
AA/11800/2014



Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 16 November 2015
Prepared 20 November 2015**

**Decision & Reasons
Promulgated
On 04 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS FAITH KUDZANAI NYAGANDE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Presenting Officer
For the Respondent: Mr C Emezio of Chipatiso Associates LLP

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is the Claimant.
2. The Claimant, a national of Zimbabwe, date of birth 18 November 1982, appealed against the Secretary of State's decision, dated 4 December 2014, to refuse a claim seeking asylum and on the same date a decision to make removal directions, a form IS.151A having been served on 29 January 2014.

3. The Claimant's appeal came before First-tier Tribunal Judge J Macdonald (the Judge), who, in a decision promulgated on 1 June 2015, allowed the appeal under the Refugee Convention on the basis that the Claimant faced a real risk of persecution reliant upon an imputed political opinion, namely support for the MDC, and as such the risk of persecution came from the ZANU-PF party, there was no effective state protection to which she could have recourse nor was internal relocation a reasonable option available to the Claimant on a return to Zimbabwe.
4. The decision [D] of the judge was challenged by the Secretary of State on 8 June 2015. On 18 June 2015 permission to appeal was granted by First-tier Tribunal Judge Garratt. I decided for reasons given in my decision, dated November 2015, that the Original Tribunal's decision could not stand and the matter would be remade in the Upper Tribunal.
5. The basis of the Claimant feared persecution on return sufficient to engage the Refugee Convention and proscribed ill-treatment contrary to Articles 2 and 3 of the ECHR on return to Zimbabwe as a single female being in a particular social group as well as a female to whom political opinions are inferred namely as a supporter of the MDC in opposition to the Zimbabwean authorities and ZANU-PF. I have also considered the risks on return as a failed asylum seeker.
6. There was no dispute by the Secretary of State that women in Zimbabwe do have a common immutable characteristic namely their gender. It was accepted that on a return to Zimbabwe the Appellant will become the member of a particular social group namely 'a lone woman'. The Claimant claimed a risk of being targeted because of her father's support for the MDC in Zimbabwe: It being inferred through her past activities helping him that she too supported the MDC. Further it was said that the Claimant was a refugee sur place because of her particular political activities supporting the MDC in the United Kingdom.

7. The basis of the fears on return are reasonably summarised in the Reasons for Refusal Letter (RFRL):

- “1. You are Faith Kudzanai Nyagande, born on 18 November 1982, a Zimbabwean national (SCR 1.1 - 1.6).
2. You lived with your mother and father and had one brother and two sisters (AIR Q25).
3. Your father was employed as a teacher and joined the MDC in 1999, he was a prominent member of the MDC and would campaign on their behalf, in Murehwa. You would attend MDC rallies with your father to support and encourage him. You would attend these rallies at weekends and hand out leaflets (AIR Q40 - Q49, Q60).
4. On 17 March 2001 you arrived in the UK as a visitor. You subsequently submitted applications for leave to remain in the UK (Home Office Records).
5. On 21 December 2001 your father was beaten and killed by members of the Zanu - PF, in front of your mother. These members followed your mother and brother to Mutawatawa Hospital and told the doctor to give the reason for his death as a disease to hide the fact that they were involved in his death (AIR Q62 - Q76).
6. In June 2003, you travelled to Zimbabwe to attend your mother’s funeral. You stayed with your siblings in Harare and the funeral was held in Mutare Kwase Village. 5 Zanu-PF members were at attendance at the funeral, they threatened you and your siblings that they were watching you and if you said anything you would be killed. Following the funeral you returned to Harare with your siblings (AIR Q77 - Q98).

7. During your time in Zimbabwe your brother told you that he was a prominent member of the MDC and you also found out that your sisters were involved too (WS, para 12, AIR Q105 – Q106) You spent two weeks in Zimbabwe then returned to the UK.
8. Your siblings received threatening phone calls from the Zanu-PF, they were told that their movements were being watched and if they told anybody they would be killed. You assumed they received these calls due to your father's past involvement with the MDC (AIR Q109 – Q111).
9. In July 2005, your sibling's home, in Harare, was destroyed as part of Operation Murambatsvina. Subsequently, your siblings fled to South Africa and you have had no further contact with them (WS para 13, AIR Q 26, Q27, Q109 – Q116). The family home in Murehwa was reclaimed by the Zanu-PF (AIR Q 14).
10. You are not involved with the MDC in the UK (AIR Q100)

Statement of future fear

11. You fear you will be killed by the Zanu-PF if you return to Zimbabwe (AIR Q112). You also claim that you will have no one to help you in Zimbabwe with your epilepsy (SCR 4.2).

Medical Issues

12. You were diagnosed with epilepsy in 2008 and have been prescribed Levetiracetam to control the condition. You also take paracetamol when required (AIR Q3, Q4)."
8. The Claimant entered the United Kingdom in March 2001 as a visitor and had six months' leave to enter the United Kingdom until September 2001.

There followed a series of applications for leave to remain as a student which were granted between then and 2009.

9. On 26 February 2014 the Claimant claimed asylum which was refused by the RFRL dated 4 December 2014. The Claimant had returned to Zimbabwe in 2003 where she had remained for a period of time before returning to the United Kingdom in June or July 2003. The Claimant in interview (AIR Q/A37) claimed Zanu-PF agents were responsible for the death of her father and mother.
10. The Claimant and her siblings attended her mother's funeral in June 2003 and the Claimant stayed with some of her siblings in Harare, it was said at the funeral she and others in her family were threatened by ZANU-PF members in particular asserting that they would be killed. The Claimant after the funeral returned to Harare with her siblings and it was said that the Claimant's brother was a prominent member of the MDC. There was no supporting evidence about her brother's significance in the MDC past or present. The Claimant spent some two weeks in Zimbabwe before returning to the United Kingdom in 2003.
11. Thereafter between 2003 and February 2014 the Claimant made no claim for protection or asylum in the United Kingdom. The Claimant in her undated statement (paragraph 14) (AB15-19) and a dated version 3/2/14 (paragraph 12) claimed that she only found out in June 2003 that..."my family was heavily involved in politics...As such, my family is always getting death threats... my mother, sisters and brother had moved to Harare in Mbare following our father's death because their lives were in danger".
12. In addition to the claim originally given to the Secretary of State set out above it was said that the Claimant has been active in attending demonstrations and the like and possibly distributing MDC literature in the United Kingdom. It is said that a combination of past and present activities gave rise to the real risk of ill-treatment from, in effect, agents of

the state through ZANU-PF supporters, and internal relocation was such that wherever she was to go she would be discovered and be at risk of those very same threats from ZANU-PF. Internal relocation was not a reasonable option and nor was there sufficient protection to which she could have recourse.

13. It was not disputed that the Claimant's siblings remained in Zimbabwe between 2003 and sometime in 2005, possibly after June when clearances of unlawful development and other clearances were conducted by the Zimbabwean authorities particularly in what was known as 'Operation Murambatsvina'. After the claimed events at the funeral I did not find any other ill-treatment of her family in Zimbabwe. In 2005 the Claimant's siblings moved to South Africa and the Claimant has only been able to maintain limited contact with them.
14. It is clear that, Zimbabwe is essentially a male dominated society, women are noted to be subject to discrimination both in the home, in employment and generally albeit there remained a great deal of employment of women in medical services, dental services and the like. The Claimant has trained as a dental nurse who has worked in the United Kingdom between 2005 and 2009. Whilst she may have to re-qualify in part her work skills are transferable to Zimbabwe. On the evidence provided I find no reason to assume that she will be left homeless or destitute or subject to abuse and exploitation as a single woman on her own. In this context the Claimant is a mature lady who speaks Shona and English, has the capacity to work, find accommodation and make a life for herself on return. I find her fears in relation to the town/area of Murehwa or elsewhere were very limited and even if subjectively held did not demonstrate that she would be of interest to the Zanu-PF or the government through her own activities or those of her family: There was no evidence of recent activities by the latter.
15. It was noticeable from the Claimant's statements, contained within the Claimant's bundle, pages 15 to 20 and from 20 to 31, that in the United

Kingdom the Claimant has qualified as a dental nurse albeit further studies have been frustrated by a lack of sponsorship. The Claimant during this period has it seemed, albeit there was a lack of particulars, had legal advice on her status in the United Kingdom and applications have been made to stay. However I find it a notable omission that, if the Claimant on return in 2003 was in fear of the Zanu-PF as a result of conduct claimed, she made no claim on arrival back in the UK knowing as she did that she had no permanent rights to remain in the United Kingdom. Similarly whilst the risks associated with ZANU-PF activities against the MDC materially changed over that period of time it seemed to me that the claimed lack of knowledge of the asylum process was not a credible explanation for the delayed application nor has the Claimant provided any good reasons for not doing so. I therefore regard the Claimant's failure promptly to claim protection with reference to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 has a substantial and adverse affect her credibility.

16. The fact was accepted by the Secretary of State that the death of the Claimant's father in 2001 occurred but there was nothing to indicate why either at her father's funeral or when she was there or later, when she had left and her siblings remained, why Zanu-PF should suddenly turn on them .I do not accept the explanation that one of the Claimant's siblings was a senior official or was a senior official in the MDC nor was there any supportive evidence. Although I am not requiring corroboration, from the Claimant or MDC or from her brother in South Africa concerning his status and the risks he posed to the Claimant on a return, but no sensible or any reason has been given for the absence of such evidence nor any suggestion it could not be obtained. Nor other than the Claimant's oral evidence was there evidence that her sister(s) were involved in the MDC as she claimed.
17. Similarly the information as to the Claimant's activities in the United Kingdom in support of the MDC appear to have particularly related to a branch which no longer exists. There was nothing to indicate that the

Claimant has featured on television or in photographs, the press or elsewhere in relation to UK demonstrations held about Zimbabwe. I do not accept her claim that she has any proper basis for fear on return based around her political activities in the United Kingdom. At its highest the Claimant has been a low level and occasional MDC supporter in the UK but having considered her evidence I find the likelihood was that such claimed occasional involvement was done to try and support a claim to remain. There was nothing to indicate that her identity was likely to be known or discovered and there were no published news articles, blogs, photographs posted on the internet or elsewhere which went to show some likelihood that she could have come to the attention of the ZANU-PF or the Zimbabwean authorities or the security forces. I did not find there was, in the Claimant's statements, comments on the RFRL, AIR, or oral evidence at the hearing any likelihood that the Claimant wished to pursue MDC politics in Zimbabwe but not do so for fear of persecution.

18. In considering this matter I do so against the background evidence which has been cited and in part selectively provided to me. I accept that such a claim of intimidation and threats is not inconsistent with widely known conduct by Zanu-PF or the Zimbabwean authorities over their many years in power.
19. I find that the Claimant has no sustainable fear, however subjective it may be, of risk of ill-treatment on return in Harare or in Bulawayo. As a Shona language speaker with work skills it seemed to me that there was no reason why she should come to the adverse or any attention of ZANU-PF students or members of ZANU-PF. Whilst it was said the Claimant was heavily involved through her family in MDC politics. I simply do not find there was the evidence to support that claim or from which any inferences can be drawn that other family members remain of interest to the Zimbabwean authorities and in turn by association her. I note the Claimant asserted she has lost contact with her siblings move to South Africa. I do not accept her assertion that they were able to safely telephone her before they left Zimbabwe but could not do so once in South Africa

(29/1/2014, AIR Q/A 114-117)for fear of discovery: There was no evidence that Zimbabwean security forces have access to or the ability to intercept calls in the South African telephone system. It was not said the Claimant had changed her telephone number or contact details in the UK at that time or later. Rather it seemed to me their 'flight' to South Africa was all part of her claim to be unable to return as an 'orphan' without family support.

20. I note the Claimant's complaints that others are responsible for the lateness of her claim for asylum but at its highest that relates to an Article 8 ECHR claim based on private life rights in 2009/2010 or more probably in 2013. However such matters did not reasonably explain why she did not claim protection on return in 2003 or as the political situation, economic down turn got worse and worse.
21. I have considered and applied the country guidance case of CM (EM country guidance, disclosure) Zimbabwe CG [2013] UKUT 00059 in assessing the risks on return. The case summary was 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. 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 UK after a significant absence to a rural area of Zimbabwe, 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.

- (5) A returnee to Harare will in general face no significant difficulties, if moving 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.”

22. Since that general guidance I take into account insofar as it has advanced the circumstances presently there. It seemed to me looking at the evidence in the round that the Claimant is not at risk of persecution or proscribed ill-treatment, can safely return to, enter Zimbabwe and relocate if she chose from Harare to Bulawayo. I find this was so for the Claimant, as a failed asylum seeker, on return to a metropolitan area of Zimbabwe. I reached these conclusions with reference to the country guidance because I do not accept the Claimant has no family there or no support from the UK, were she to need it. The Claimant has useful working skills which are also in demand. I find no reasons why the Claimant would fall into destitution or exploitation. The Claimant is in her early thirties and can have a working career. She has work experience and has no MDC political profile. There is no apparent need to work or live in an area of high density nor cause to be targeted.

23. I accept the Claimant would form part of a PSG on return, namely a single Zimbabwean woman, and I accept the historical position in 2001 of her helping her father, a supporter of the MDC, could then have drawn her to

the attention of Zanu-PF but I did not find anyone was likely to recall such help as she gave nor was anything done to her on her return in 2003. Nor, after 14 years in the United Kingdom were past actions likely to draw her to the attention of ZANU-PF or Zimbabwean security forces on return.

24. In those circumstances I did not find either the state or agents of the state or those condoned by the state will have any adverse interest in the Claimant on return to put her at risk of persecution or proscribed ill-treatment contrary to Article 2 or Article 3 of the ECHR. For like reasons I do not see that there is any basis for fear of that ill-treatment or need for internal relocation nor does the issue of sufficiency of protection arise. I did not find that the information contained in the statement of the Claimant and in her evidence tended to show that there was anything in her sur place activities which would become known or give rise to any real risk on return.
25. I have noted the Claimant's comments on the RFLR. I do not find they take this matter further save to repeat the Claimant's claims as to why she would be at risk of harm or serious harm on return. I do not accept the points she raised demonstrate there was that real likelihood of such. In these circumstances the need for Humanitarian Protection was not engaged for the Claimant will not be at a real risk of serious harm.
26. In relation to the Claimant's health assuming that was put on the basis of Articles 3 and 8 of the ECHR, the evidence was scant indeed to show that she could not maintain herself in Zimbabwe or obtain the necessary medication to manage her epilepsy.
27. There was nothing to indicate that hospital services or medical services were not available nor that the nature of the medication/treatment she required gave rise to the likelihood of a deterioration in her health or a lack of ability to meet and pay those costs of such medication. The evidence fell far short of showing in the context of *N v SSHD* [2005] UKHL31 that Article 3 rights, would be breached by removal back to

Zimbabwe either through the process of removal or once she had arrived there. The Claimant was not the kind of seriously ill claimant as to be found in *GS (India) [2011] UKAIT 35* and *D v UK (1997) 24 EHRR 423* and there is no evidence to truly gainsay the evidence submitted by the Secretary of State in the Reasons For Refusal Letter. I have taken into account the medical notes or attendances from the Princess Alexandra NHS Trust and the Claimant's evidence of her qualifications and work experience.

28. I did not find the medical evidence is sufficient to discharge the burden of proof to that low standard required in relation to Articles 3 and 8 ECHR or in relation to the protection claims as demonstrated by the cases of *Ravichandran (1996) Imm AR 97* or *Karanakaran [2000] EWCA Civ.11*.
29. In passing I should add that the Claimant at the hearing contended that prior to her visit to Zimbabwe in 2003 she had not been in contact with her relatives and nor had she thought to make enquiries about any safety or difficulties on return. It seemed to me that if the Claimant had had any genuine concerns that her return presented a threat to her safety she would have raised it in advance and discussed with her family members. I find she was highly unlikely to have attended the funeral if she thought that her past now put her life at risk. I did not find it credible that her siblings only thought to tell the Claimant once she had got to Zimbabwe on a return 2003 of risks posed to her by being there or that it was only when she got there she discovered how heavily her 'family' were involved with the MDC. Similarly, it was easily said that her siblings faced threats and difficulties before they left in 2005 but if they were of the prominence claimed in 2003 it did not seem to me consistent with the background evidence of the deterioration of circumstances in Zimbabwe that they would have remained for about another two years before leaving for the Republic of South Africa.
30. It seemed if there was serious risk of a material kind at that stage they would not have stayed in Zimbabwe but would have left and gone to South

Africa before then. Whatever may have been driving them to do so ultimately in 2005 may just as easily be associated with the economic situation in Zimbabwe which at the time can fairly be described as dire. Either way I did not find the evidence had even to that low standard showed there was a political basis for them to leave, they may have done so by choice. I have considered the statement of Mrs Saineti which is in the most general terms and really does not particularise why there are risks to the Claimant on a return to Zimbabwe.

31. Plainly the Claimant has been in the United Kingdom for a number of years and to that extent must be taken to have a private life here. The exercise of private life rights was admittedly in the context that she was claiming to be a student in the United Kingdom on a temporary basis with no legitimate expectation of being able to remain. There was nothing about her medical claim that showed she cannot remove or that the consequences of removal would be that medical treatment would be denied or that the Claimant would not be able to travel to obtain such treatment or that the cost of it would be so prohibitive as to prevent her receiving it.
32. The evidence, perhaps for obvious reasons did not address whether the Claimant's family would provide support for her as a start on return or enable her to set up a home, rent property or whatever she chose to do. It seemed to me the omission of all that evidence was largely directed at the fact she does not wish to return and would prefer to be in the United Kingdom.
33. In considering Article 8 ECHR in terms of the Claimant's private/family life I do so in the context that the Claimant has no application under the Rules or outside of the Rules to remain other than by the asylum claim. The other attempts that have been made over time which have failed as set out in the RFRL.

34. In these circumstances the Claimant's status has never had any certainty in the United Kingdom other than right to be here for various permitted purposes. I can find nothing to show that the Claimant's circumstances were exceptional or fell for consideration outside the provisions of the immigration rules. But if I was wrong in that view I agree with the reasons in the RFRL that the Claimant has not showed a proper basis under the rules to remain.
35. I also agree with the Secretary of State's view that the Claimant did not succeed under paragraph 276ADE(iii) to (vi) of the immigration rules then in force and no arguments were effectively raised to show that the Claimant did actually meet the requirements.
36. The Claimant's circumstances did not appear to me to be matters that fell outside of the immigration rules. In the circumstances, the provisions of Section 117B NIAA 2002 indicated strongly that this was not a case where Article 8 ECHR should actually be considered. However, if I was wrong on that, in the light of my findings above, I apply Razgar [2004] UKHL27 and Huang[2007] UKHL 11 in that the Claimant has had a private life in the United Kingdom and the effects of removal are a significant interference with it, self-evidently the Secretary of State's decision was lawful and served identifiable purposes in Article 8(2) of the ECHR. I can find nothing in the Claimant's case of her life in the United Kingdom or her personal circumstances that showed the decision to remove was unlawful nor that it was disproportionate. I find in light of the statutory provisions that significant weight must be given to the public interest which plainly lies in her removal. I have fully taken into account her relatives in the UK, her work record, ability to earn and speak English and earlier lawful reasons for being in the UK as a student
37. The original Tribunal's decision cannot stand. The following decision is substituted.
38. The appeal of the Claimant is dismissed.

39. The appeal on Refugee Convention and Articles 2, 3 and 8 ECHR grounds is dismissed.

40. The appeal on Article 8 ECHR grounds in relation to private/family life in the UK is dismissed.

Fee Award

41. The appeal has been lost therefore no fee award is appropriate.

Anonymity Order

42. No anonymity order was requested.

Signed

Date 13 December 2015

Deputy Upper Tribunal Judge Davey