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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/11868/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd May 2016	**On 17th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

H M M
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Muzenda, solicitor
For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Zimbabwe who appealed against the decision to refuse her asylum on 17 August 2015. Her appeal against that refusal was dismissed by Judge of the First-tier Tribunal Adio ("the FTTJ") on 29 January 2016.

2. Whilst no anonymity order was sought in these proceedings, I consider the appellant is entitled to anonymity given my references to her personal circumstances.

3. The appellant sought permission to appeal; that application was refused by First-tier Tribunal Judge Grant-Hutchison. The appellant applied to the Upper Tribunal for permission to appeal and I summarise the grounds as follows (numbering as in the grounds):

A. The Tribunal had erred in dismissing the appeal "on the perceived absence of a 'significant MDC profile' contrary to paragraph 2 [sic] of the guidance in **CM (Zimbabwe) CG [2013] UKUT 59 (IAC).**

B. It was arguably perverse to conclude that the appellant would be accorded respect by the authorities in Zimbabwe on account of her age. There was no factual basis for such a finding.

C. The FTTJ failed to engage adequately or at all with the points of criticism which had nothing to do with the weight accorded to the evidence.

D. Teachers and former teachers were at heightened risk and more careful examination was required. A retired teacher such as the appellant would not be accorded respect by Zanu-PF.

4. Permission to appeal was granted by Upper Tribunal Judge Plimmer in the following terms:

> "1. Although the First-tier Tribunal (FTT) has referred to **CM (Zimbabwe) CG [2013] UKUT 59 (IAC)** it is arguable that the FTT has not considered whether the appellant would be reasonably likely to engage in MDC activities likely to attract the adverse attention of ZANU-PF in Harare at all or but for a fear of persecution – see the CM guidance at headnote (5).
>
> 2. It is also arguable that when considering the individual risk factors the FTT's view that the appellant would be respected as an elderly person retired from the teaching profession is unsupported by any background evidence.
>
> 3. All grounds are arguable and permission is granted."

5. At the hearing before me, the parties' representatives agreed that there was no challenge by either party to the findings of the FTTJ on credibility. Nor had the appellant appealed against the FTTJ's findings with regard to the appellant's activities in the UK (paragraph 27) save insofar as the appellant submits that those activities, as found, amount to a "significant MDC profile".

6. Mr Muzenda, for the appellant, submitted that it had been accepted by the FTTJ that the appellant had been involved in MDC activities since 2009; there was, he said, no challenge to her assertion in her evidence that she would continue to resist the regime if returned to Zimbabwe. There was no finding as to whether she would carry on with her political activities and whether they would bring her to the attention of the authorities. He submitted that this was a significant error of law as noted at paragraph 5 of the **CM** headnote. He submitted that the FTTJ appeared to have fixed on the absence of a significant profile but the matter did not end there. Secondly, he submitted that it was an "unusual finding" that the appellant would be accorded respect due to her age; by inference she would be accorded such respect by Zanu PF (paragraph 29 of the decision).

7. Mr Whitwell, for the respondent, said that paragraph 26 was the key to the FTTJ's decision. The appellant was aged 70 and had retired from the teaching profession 14 years earlier. She had been involved at a low level with the MDC (paragraph 23). The FTTJ had not made discrete credibility findings but there were findings with regard to her political activities in the UK (paragraph 27) to the effect that these were "very scanty and seemed to have been geared

towards the claim she was making". He further submitted that she was a retired teacher without an enhanced profile. Whilst the appellant's evidence (paragraph 9) was that she would not relent from her activities, the FTTJ had not been impressed by those activities finding they had been solely for the purpose of supporting her claim; it was implicit that she would not continue them once her appeal was over; there was no need for a specific finding on the issue. The appellant would be returning to Harare and would not be at risk there (**CM,** paragraph 100).

8. In reply, Mr Muzenda submitted for the appellant that the FTTJ at paragraph 27 was not making a "sharp finding" as to the "bona fides of activities". The FTTJ had accepted at paragraph 23 the distance the appellant had to travel to engage in such activities. The FTTJ had also accepted the appellant had had some problems in Zimbabwe in the past. It appeared from paragraph 27 that the FTTJ was "unsure" about the appellant's motive for engaging in political activities in the UK. He submitted that the FTTJ had over-simplified the situation for a former teacher on return; this appellant was in an enhanced category and careful scrutiny of the evidence was required given her status as a former teacher. The FTTJ had failed to engage sufficiently with that status.

My Findings

9. I am unable to find there is a material error of law arising from the FTTJ's apparent failure to address the issue of whether or not the appellant would engage in political activities on return. Notwithstanding her evidence that "if she returns to Zimbabwe she will not relent from her activities" (paragraph 9), it is implicit from the FTTJ's findings at paragraph 27 that the FTTJ considered she would not do so. He specifically states that "her political activities are very scanty and seemed to have been geared towards the claim she was making". This finding is sustainable on the evidence and it is implicit the FTTJ found that, once her asylum proceedings are over, she would no longer undertake such activities. Thus, even if there is an error of law in failing to make a specific finding on the issue, it is not a material one because the only possible finding, consistent with the earlier findings, would be one that the appellant would cease such activities once her asylum proceedings had been concluded.

10. There is no specific challenge to the FTTJ's finding that the appellant was involved in "low level participation in the MDC albeit she does not have an MDC card". I am unable to find there is an error of law in the alleged failure to find the appellant a person with a significant MDC profile; the evidence does not support such a finding. The finding that she has participated at a low level is sustainable on the evidence and consistent with other findings, particularly that to the effect that her involvement with political activities has been "scanty".

11. I turn to the issue of whether there is an error of law as regards the FTTJ's findings on the risk on return arising from the appellant's status as a former teacher. The appellant was aged 70 at the date of hearing; she had worked in Zimbabwe between 1968 and 2002 (paragraph 21) when she came to the UK (paragraph 11). She was a primary school teacher in Zimbabwe. There is no challenge to the finding (paragraph 21) that the appellant was not at risk of persecution when she left Zimbabwe in 2002; she came to the UK to visit her niece. There is no challenge to the finding at paragraph 22 that the appellant "did not have any plausible case to make a successful asylum claim" during the seven years she overstayed her visit visa, prior to claiming asylum. Thus the FTTJ found that the appellant had finished her teaching career in Zimbabwe in 2002 (about thirteen years earlier) and that she would return as a 70 year old retired teacher who would not work in Zimbabwe again (paragraph 26). She would be returned to Harare where she had lived for more than twenty years (paragraph 29). She would

have financial and practical support from family members (paragraph 29). The FTTJ found (paragraph 26) that there was "no reasonable reason for the authorities to pay attention to the Appellant despite her background in the teaching profession as she stopped teaching over thirteen years ago". It has not been submitted to me that the FTTJ had overlooked any such reason. Rather, the submission that she is at risk on return is based solely on the fact that she is a former teacher. The FTTJ was entitled to take into account the appellant's age, career history and personal circumstances in considering the issue of risk.

12. At paragraph 29 the FTTJ concluded that the appellant had "not shown that she faces a real risk of persecution … on grounds that she has previously worked as a teacher". In making this finding he took into account "the appellant is of an age whereby she is most likely to be accorded the respect of an elder person who has retired from the profession" (paragraph 29 also). This is a finding which is not based on any evidence or background material. It is therefore a finding which is unsustainable in law. I ignore this finding, therefore, in considering whether the FTTJ's assessment of risk on return for a former teacher contains an error of law.

13. The headnote in **CM** is instructive:

> (10) As was the position in **RN**, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis;

14. Paragraph 261 of **CM** states as follows:

> "There is clear evidence also that teachers in Zimbabwe have, once again, become targets for persecution in Zimbabwe. This is confirmed by the evidence of Professor Ranger considered at paragraph 96 of this determination and reinforced by the news reports, examples of which are given at paragraphs 130 and 148. As many teachers have fled to avoid retribution, the fact of being a teacher or having been a teacher in the past again is capable of raising an enhanced risk, whether or not a person was a polling officer, because when encountered it will not be known what a particular teacher did or did not do in another area."

15. There is no challenge to the finding of the FTTJ that the appellant would not be the subject of adverse interest by the authorities as a result of her activities in the UK. This finding is sustainable on the evidence in any event. Thus the FTTJ found the appellant did not have a profile which would "cause the CIOs to be interested in her at the airport". This is consistent with the guidance in **HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094**. The fact the appellant would not have a profile with the CIO was rightly taken into account by the FTTJ in assessing the appellant's risk on return as a former teacher.

16. I am satisfied that the FTTJ's findings with regard to risk on return for the appellant as a former teacher are sustainable on the evidence, irrespective of the erroneous finding that she would be accorded respect due to her age. I find that the finding in respect of the latter, whilst an error of law being unsustainable on the evidence and background material, is not material. Mr Muzenda's submissions to the FTTJ (paragraphs 18 and 19) did not identify any specific characteristics or facts which heightened the risk for the appellant on return; he relied solely on her status as a former teacher. The FTTJ was entitled to take into account the appellant's age and circumstances in considering that risk and did so appropriately, taking into account

the lack of CIO interest arising from perceived or actual political activities, the appellant's age, her date of retirement from the profession, her familiarity with life in Harare and abilty to settle in that city, her stated lack of intention to return to teaching and the availability of financial and emotional support from family members. The FTTJ's decision on risk on return is reasoned and sustainable on the evidence. The appellant's pursuit of this appeal is no more than a disagreement with the findings of the FTTJ.

17. For these reasons, I am unable to find that the decision of the FTTJ contains an error of law.

Decision

18. The making of the decision of the First-tier Tribunal does not involve the making of an error on a point of law. The decision is not set aside.

A M Black
Deputy Upper Tribunal Judge Dated: 10 May 2016

Direction regarding anonymity – rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

The appellant is granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. 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.

A M Black
Deputy Upper Tribunal Judge Dated: 10 May 2016