IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005344

First-tier Tribunal No: HU/00170/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of March 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Wesley Nyamdlambanje
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms H Foot, instructed by Lei Dat & Baig Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard remotely at Field House on 7 March 2024

DECISION AND REASONS

1. To avoid confusion, the parties are referred to herein as they were before the First-tier Tribunal.

2. By the decision of the First-tier Tribunal (Judge Bulpitt) issued on 13.12.23, the respondent has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Cole) promulgated 2.11.23 allowing the appellant's appeal against the respondent's decision of 10.6.22 to revoke his refugee status on the grounds that he constituted a danger to the community, pursuant to s72 of the 2002 Act. On 3.8.22, the respondent refused the appellant's human rights claim.

3. Following the helpful submissions of both legal representatives, I reserved my decision to be provided in writing, which I now do.

4. The Upper Tribunal has received the appellant's late-served Rule 24 Response, dated 16.1.24 and received by the Tribunal on 18.1.24. For reasons unknown, the

same document has been served three times. At the hearing before me, Ms Foot referred to the appellant's bundle before the First-tier Tribunal, together with a skeleton argument. These had not been supplied to the Upper Tribunal but were provided on the day of hearing.

5. Ms Foot relied on on PS (cessation principles) Zimbabwe [2021] UKUT 00283 (IAC) in relation to the approach to cessation, and AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC) in relation to the First-tier Tribunal's allowance of the appeal on article 8 grounds and the omission of the respondent to specifically plead a challenge to the article 8 part of the First-tier Tribunal decision. I have addressed that issue separately below.

6. These various documents, case authorities, and oral submissions have all been taken into account before reaching any conclusion on this appeal.

7. The relevant background is that the appellant, a national of Zimbabwe who had been granted refugee status in line with his mother on his arrival in the UK in 2005, was made the subject of a deportation order following his conviction for robbery and aggravated vehicle theft, for which he was sentenced to 5 years and 3 months imprisonment in October 2018.

8. At [27] of the decision, the First-tier Tribunal Judge concluded that the appellant had rebutted the s72 presumption that he constitutes a danger to the community, so that he was not excluded from protection of the Refugee Convention.

9. In summary, the grounds assert that the First-tier Tribunal made a material misdirection in law and provided inadequate reasoning in determining the cessation of refugee protection issue. In particular, it is asserted that the judge erred in his approach to CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC), the respondent relying on SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940, as to the requirement to follow current country guidance authorities, having concluded that revoking the appellant's refugee status is in contravention of the refugee convention. SG provides that only very strong grounds supported by cogent evidence can justify such a course of action.

10. In granting permission, Judge Bulpitt considered it arguable that the decision of the First-tier Tribunal deviated from the guidance provided in CM. The grounds complain that, "Although the judge refers to country information that demonstrates there has been a contraction of the democratic space since 2018, it is arguable that the judge's consideration of CM does not identify the very strong grounds or cogent evidence required for deviating from that guidance."

11. The respondent effectively argues that CM was binding on the First-tier Tribunal, but that Judge Cole relied on UNHCR and other evidence to reach his findings whilst providing no adequate reasons or evidence to support the conclusion of a continuing risk on return for the son of a former low-level MDC activist who has not been politically active since 2002.

12. On the other hand, the appellant submits that a cessation consideration is markedly different to the role of Country Guidance when an individual is seeking to establish their refugee status. In that regard, it is submitted that the First-tier Tribunal applied the guidance of PS (cessation principles) Zimbabwe [2021] UKUT 00283 (IAC), and conducted a structured enquiry as to the country evidence and conditions at the time that the appellant's mother was granted refugee status, through to the most recent Country Guidance of CM, taking into account and giving appropriate weight to the evidence and submissions of the UNHCR, which are of "considerable importance." It was submitted on behalf of the appellant that

the First-tier Tribunal's analysis was thorough, detailed and in accordance with the law, and that the respondent simply disagrees with the conclusions. Finally, it is pointed out that CM is over 10 years old, and it is submitted that there were very strong grounds supported by cogent evidence to justify departing from that Country Guidance.

13. I accept Ms Foot's submission that there is a difference between the application of Country Guidance when considering entitlement to a grant of refugee status on the one hand and on the other the approach to be taken in determining a cessation issue. It is rather more nuanced than merely being required to follow Country Guidance unless there are very strong reasons supported by cogent evidence for departing from that guidance. However, as Ms Foot accepts in her Rule 24 Reply, Country Guidance is an important part of the cessation assessment.

14. In cessation, the burden is on the respondent to demonstrate a significant and non-temporary change in the country background evidence that prevailed at the time of granting asylum. Unarguably, the strongest evidence of that durable change is CM, the considered and detailed determination of the Upper Tribunal made only after considering considerable evidence of country circumstances. At [43] the judge considered CM, which held that as of 2011 there had been a reduction in politically motivated violence so that the return of a failed asylum-seeker with no significant MDC profile would not generally pose a real risk of having to demonstrate loyalty to ZANU-PF. However, the judge evidently disagreed.

15. At the beginning of [47], the judge accepts but appears to give no weight to CM, making the startling finding that there has not been significant and durable change regarding those at risk from ZANU-PF stating, "…it simply cannot be said from a comparison of the Country Guidance cases alone, that there has been significant and durable change regarding those at risk from the ZANU-PF state apparatus. It is uncontroversial that the Zimbabwean state and its agents continue to target its political opponents and some of those perceived to be in opposition to it."

16. The judge went on at [48] to acknowledge that there have been changes to the "general political and humanitarian landscape in Zimbabwe," but stated, "However, I do not find that there has been such an improvement to demonstrate that the circumstances which justified the grant of Refugee Status to the appellant have ceased to exist." From [49] to [53], the judge went through the evidence relied on for that conclusion before finding at [54] that the country conditions "cannot be said to have durably changed, in so far as they relate to this particular appellant, such that the risk has ceased to exist or been permanently eradicated." On that basis the judge found at [55] that the respondent had failed to demonstrate that the circumstances which justified the grant of refugee status to the appellant had ceased to exist.

17. PS held that "there is a requirement of symmetry between the grant and cessation of refugee status because the cessation decision is the mirror image of a decision determining refugee status i.e. the grounds for cessation do not go beyond verifying whether the grounds for recognition of refugee status continue to exist". In that light, I am satisfied that the judge's approach was a misdirection in law and at the very least, the conclusion of the First-tier Tribunal on this issue is not adequately reasoned. As Mr Avery submitted, it is far from clear from the decision of the First-tier Tribunal how the judge reached the conclusion that the grounds for recognition of refugee status could continue to exist in relation to the basis upon which this appellant was granted refugee status as a dependant of his

mother. I have addressed in more detail below the relevance of the appellant's personal circumstances to this assessment. However, whilst the burden was on the respondent to demonstrate that "the circumstances in connection with which [a person] has been recognised as a refugee" had ceased to exist, by a durable change in the risks for MDC supporters, CM is undoubtedly prima facie evidence that there had been such a durable change. Only if there were strong grounds supported by cogent evidence to demonstrate that the risk that existed for this appellant at the time he was granted refugee status continued now could the judge justify finding that the respondent had not discharge the burden of proof. Whilst the judge cites more recent country evidence, it appears that the judge concentrated on the general situation as to a risk from ZANU-PF but did not address how that evidence applied to this appellant. At [48] of the decision, the judge purported to address "the circumstances which justified the grant of Refugee Status to the appellant," but there is no adequate reasoning as to why those risks continue.

18. The second difficulty with the decision in relation to cessation is the apparent absence of application to the appellant's actual circumstances as required by PS, or cogent reasoning to justify that the appellant's circumstances were such as to place him at risk. Pointing out that the circumstances in connection with which a person has been recognised as a refugee are likely to be a combination of the general political conditions in that person's home country and some aspect of that person's personal characteristics, PS held that "a relevant change of circumstances might in a particular case also arise from a combination of changes in the general political conditions in the home country and in the individual's personal circumstances".

19. At [36] and again at [45], the judge observed that there was no evidence of either the appellant or his mother being politically active in the UK. The appellant's mother had been granted refugee status in 2002, on the basis of political opinion, being a former youth member activist with the Movement for Democratic Change (MDC) who had suffered persecution from ZANU-PF members. The appellant himself has never been politically active. It is important to point out that the mother was last involved with the MDC some 20 years ago when the appellant was only 2 years of age. She was granted asylum when he was 4 years of age, and he came to the UK himself at 7 years of age. Undoubtedly, even by the mere effluxion of time, the appellant's circumstances had changed. He has never had any political involvement and if he needed protection as a dependant of his mother, it is difficult to see how he needs that protection today.

20. Given the appellant's change of circumstances and the durable change in country circumstances reflected in the Country Guidance of CM, it is difficult to see how the appellant could succeed on the cessation point. Even if the judge is right in the assessment of country evidence post CM, PS required in the structured enquiry and broader assessment an assessment of the appellant's personal circumstances. However, nothing at all in the findings of the impugned decision even begins demonstrates that the appellant's circumstances could give rise to a risk on return.

21. In summary, I am satisfied that the findings of the First-tier Tribunal are divorced from the reality of the current situation both of the country background information and the appellant's circumstances, so that the judge's approach amounts to a material error of law.

22. I also raised with Mr Avery that the grounds do not specifically challenge the judge's conclusions on article 8 ECHR, finding that deportation would amount to an unjustified and disproportionate interference with the appellant's private and

family life rights. Mr Avery submitted that the article 8 findings must fall with the cessation point as at [75] the judge expressly relied on those findings when making the article 8 assessment. This aspect is also addressed in Ms Foot's Rule 24 Reply, with reliance on AZ, which set out the very limited conditions in which permission to appeal should be granted on a ground not advanced by an applicant for permission to appeal. Ms Foot argued both that the Upper Tribunal should not entertain any late application for permission and that the article 8 findings can stand independently.

23. In light of the way in which the First-tier Tribunal approached the article 8 assessment, as set out below, I do not consider it necessary to grant permission in relation to the article 8 findings before also setting aside that part of the decision.

24. At [75] of the decision the judge opined that "Realistically the key factor in this assessment is the fact that the appellant remains a refugee. The real risk of serious harm to the appellant if he were returned to Zimbabwe is clearly a very compelling circumstance". Given those statements, I am satisfied that any error in relation to the cessation assessment necessarily taints the proportionality balancing exercise. I am satisfied that the article 8 findings must fall with the errors in the cessation assessment and I reject as not tenable Ms Foot's submission that the article 8 findings and conclusion allowing the appeal on human rights grounds can stand independently of the cessation findings. I am satisfied that when stating at [76] that "all of the factors supportive of the appellant's family and private life in the UK when combined do amount to "very compelling circumstances, over and above those described in Exceptions 1 and 2," the judge must necessarily have included the finding that the appellant remains a refugee at real risk of harm on return to Zimbabwe. It follows as a matter of course, that the article 8 decision cannot stand and must also be set aside.

25. Mr Avery submitted that the appeal could be remade in the Upper Tribunal. However, Ms Foot pointed out that there would likely be considerable further evidence as to both the appellant's circumstances and the country background information on Zimbabwe. In the circumstances, I am satisfied that this is a matter which falls squarely within paragraph 7.2 of the Practice Direction and should be remitted to the First-tier Tribunal to be remade de novo.

Notice of Decision

The respondent's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.

The remaking of the decision in the appeal is remitted to the First-tier Tribunal.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal

Immigration and Asylum Chamber

7 March 2024