



First-tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08459/2018

THE IMMIGRATION ACTS

Heard at Laganside Belfast	Decision & Reasons Promulgated
On 26 March 2019	
08/04/2019.....

Before

THE PRESIDENT, MR M CLEMENTS

JUDGE OF THE FIRST-TIER TRIBUNAL GRIMES

Between

MS S M

S M

(ANONYMITY DIRECTION MADE)

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Dependant

Respondent

Representation:

For the Appellant: Ms E McIlween, instructed by Oracle solicitors

For the Respondent: no appearance

DECISION AND REASONS

Details of the Appellant and Issues under appeal

1. The appellant is a national of Zimbabwe whose date of birth is 11 March 1985. Her son, also a national of Zimbabwe, whose date of birth is 3 February 2011, is her dependant in

these proceedings. The appellant entered the UK on 19 January 2018 with her son and claimed asylum after being stopped by immigration officials at Belfast International Airport. The respondent refused the application on 21 June 2018. The appellant appeals against the respondent's decision under Section 82 (1) of the Nationality, Immigration and Asylum Act 2002.

The Proceedings

2. At the hearing of this matter the Tribunal had the following documents:
 - Notice of appeal;
 - Home Office bundle;
 - Home Office additional bundle;
 - Appellant's bundle.
3. The respondent wrote to the Tribunal in advance of the hearing to advise that no Presenting Officer was available for the hearing and indicated that the list could go ahead without a Presenting Officer. The panel was satisfied that it was in the interests of justice to proceed with the hearing in the absence of the respondent in accordance with rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.
4. In the absence of a Presenting Officer we asked Ms McIlween to put the issues raised by the Secretary of State in the Reasons for Refusal letter to the appellant in oral evidence and we gave her the time she requested to enable her to prepare to do so. We heard oral evidence from the appellant in English and then submissions from Ms McIlween. She indicated that the appellant was not pursuing any appeal under Article 8 of the European Convention on Human Rights. We reserved our decision.

The Law

5. The burden of proof in all these matters is upon the appellant. She must show that there is a real risk of:
 - (a) being persecuted for one of the five reasons set out in the 1951 Refugee Convention. A refugee is defined in Article 1A (2) of the Convention as any person who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear is unwilling to avail himself of the protection of that country;

- (b) suffering serious harm if returned to Zimbabwe under paragraph 339C of the Immigration Rules. A person will not be granted Humanitarian Protection where s/he qualifies as a refugee.
- 6. Article 2 of the ECHR protects the right to life and Article 3 prohibits torture, inhuman or degrading treatment or punishment.

The background

- 7. The appellant's case is set out in her screening interview, asylum interview, her witness statements and in oral evidence.
- 8. In summary she claims that was born in Zimbabwe and lived there until she came to the UK. She owned a transportation business there and her husband was the driver. Her husband joined the Mthwakazi Republic Party in 2015. He issued cards and t-shirts for the party and held meetings in the house once a month. He posted on social media about his involvement in the party. The appellant was not involved in these activities. The appellant's husband's brother is a member of Zanu-PF in a top position and warned him about posting on social media. In 2017 he received telephone threats and was beaten by members of Zanu-PF in Bulawayo. He was kidnapped from home on the evening of 8 January 2018 by 8-10 men in black suits. One of the men wore a card around his neck with a Zimbabwe flag on it. The men asked the appellant about her husband's political activities asking about his friends and who visits him. They were not happy with her answers and said that they would be back soon and that next time they needed serious answers. When they left she called the police but they refused to come to the house because they said that it sounded like the work of state secret agents and they could not investigate. Just after 9pm on the evening of 9 January 2018, four men burst into the appellant's home, they asked her a few questions and took her away in a white pickup. She was blindfolded and driven away. She was taken to a room and asked again about her husband's political activities. She was crying and the man questioning her became angry and threw her on a sofa and raped her. She passed out. Another man came to the room and he raped her too. When another man came to the room some hours later she was so frightened that she made up information to tell them giving them whatever names and addresses came to mind. She was released, they took her blindfolded and left her at the outskirts of the town. She went to a house nearby and a woman there helped to bath her, change clothes and calmed her down. The woman took her to a private doctor. She went to her friend's house nearby and contacted her uncle when she was there. The same men who had taken her came back to the house looking for her on 11 January and killed her dog. The appellant claims that her husband's social media accounts have been deleted. The appellant not seen or heard of her husband since he was taken on 8 January 2018.

9. The appellant stayed in her friend's house for a night then went to her uncle's. Her son was taken there and the next day (12 January 2019) they left for South Africa. They left South Africa on 18 January 2018 by plane and arrived in an unknown country then flew to another unknown country. It appears that this was probably the Republic of Ireland. She travelled to Belfast International Airport where she was to take another flight. However, she was encountered there by Immigration officials and claimed asylum.
10. In the Reasons for Refusal letter the respondent accepted that the appellant is from Zimbabwe. In light of the vagueness and implausibility of parts of the appellant's account together with credibility issues raised in the Reasons for Refusal letter the respondent rejected the appellant's claim to have been detained and then released by government officials. The respondent took account of the appellant's failure to claim asylum until after she had been arrested under an immigration provision; the fact that she initially claimed to be a South African national; and the fact that she was travelling using a fake ID as damaging her credibility under section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. The respondent considered that there is no reasonable degree of likelihood that the appellant would be persecuted on return to Zimbabwe and that she did not therefore qualify for asylum or Humanitarian Protection. The respondent also decided that removing the appellant from the UK would not be contrary to the UK's obligations under the ECHR.

Our findings

11. We take into account a number of matters as damaging the appellant's credibility under section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 including the fact that she did not claim asylum until after she had been encountered by Immigration Officers in Belfast International Airport. However, we accept her explanation that she was under the control of two agents who brought her to the airport. We also take account of the fact that the appellant did not claim asylum in the countries she passed through as damaging her credibility although we accept her explanation that she was under control of an agent during her journey. We also consider that the appellant's use of a false ID damages her credibility.
12. In the Reasons for Refusal letter the Secretary of State accepted that background information supports the existence of the Mthwakazi Republic Party (MRP) and that Zanu-PF mistreat people associated with opposition groups. However, the respondent raised a number of issues which were considered to cast doubt on the credibility or plausibility of the appellant's account.

13. The Secretary of State considered that the appellant's account of her husband's politics was vague. The appellant said in her asylum interview that she was not involved in her husband's political activities and that she did not want to be involved (Q83). She said that her husband was 'obsessed' with the party and 'talking too much' (Q88, 90); that she was not interested in politics because she was a Christian and that Christianity and politics do not work together (Q168); and that her family were not involved in politics because all of them are Christians (Q177). This is consistent with her oral evidence when she explained that she was not at home when her husband held political meetings, which took place on the last Sunday of each month in their home, as she was at choir practice. She reiterated that she was not interested in politics as she is a Christian, a member of the Seventh Day Adventist Church, and she did not like to discuss politics with her husband. She said that she was very angry about the political meetings being held in her house as she felt that it was putting their lives in danger and that this had a negative impact on their marriage. We find that the appellant's evidence on this issue has been consistent and credible and we accept that the appellant was not involved in politics or her husband's activities. Accordingly, her credibility is not undermined by any lack of detail in relation to her husband's activities.
14. In the Reasons for Refusal letter the respondent considered that it was unclear why the appellant's husband had not had any difficulties until 2017 despite being a member of the party since 2015. In oral evidence the appellant explained that it was in 2017 that he began holding meetings in their home. The appellant has been consistent in her account that her husband's problems began in 2017. In her asylum interview the appellant also said that she thought that her husband's brother was involved because he had previously warned her husband to stop posting on social media. In our view the appellant has been consistent in relation to this matter and we accept that her husband became involved with the party in 2015 and first encountered difficulties in 2017.
15. We take account of the letter from the MRP dated 24 January 2019 confirming that the appellant's husband was a member of the party and that he disappeared in January 2018 when abducted by men suspected of being members of the CIO police department and that his whereabouts are unknown. This letter is consistent with the appellant's account.
16. In the Reasons for Refusal letter the respondent said that it was not plausible that the appellant would remain in her home after her husband had been kidnapped when the men told her they would return. In oral evidence she said that she was hoping that they would bring her husband back. We are satisfied that this is a reasonable explanation for her remaining at home after her husband was taken.
17. The respondent also considered that it was not plausible that the appellant's cousin, who she said had been staying in their home, had not been questioned about her husband's activities. In oral evidence the appellant said that it was clear that the men knew who they were coming for and that at that stage her cousin had been living with

them for only four months. In our view it is speculative to conclude that the failure to arrest the appellant's cousin casts doubt on her account.

18. In the Reasons for Refusal letter the respondent considered that it was unclear why the men came back to question the appellant for a second time and why they could not gain any information they needed from her husband instead of from the appellant. In her oral evidence the appellant said that she thinks that they came back for her because her husband was not telling them what they wanted to know. She said that they were much rougher the second time they came. We also note that in her asylum interview and witness statement the appellant said that when the men came to arrest her husband they questioned her and said that they would be back and that next time they needed serious answers. In these circumstances we do not consider it implausible that the men came back a second time to question the appellant.
19. We also take account of the letter from the appellant's cousin dated 11 March 2019. In that letter the appellant's cousin confirms the appellant's account that her husband was taken on 8 January and she was taken away on 9 January 2018. Her cousin remained at her home with the appellant's son and niece. He said that when the men came back on 11 January he told them that he was not related to anyone in the house and that he was just renting a room and he was released. He said that the men killed one of the appellant's dogs. He said that he believed that it was no longer safe for him to stay there and he went to his father's home. We attach weight to this letter which is detailed and is consistent with the appellant's account.
20. We also attach weight to the letter dated 14 March 2019 from the woman who helped the appellant when she was released on the outskirts of the town. This letter is consistent with the appellant's account of what happened.
21. We take account of the letter from Milpo Central Hospital dated 6 June 2018 confirming that the appellant was sexually abused by unknown assailants and that she was treated for severe depression, soft tissue injury and that post prophylactic exposure for HIV was given and that she was referred to a Psychologist for counselling. This letter does not state when the appellant was seen by the author. However, it is accompanied by a handwritten note of an attendance with the same information which is dated 10 January 2018. In our view this corroborates the appellant's account of assault and rape.
22. The respondent considered it implausible that the appellant did not contact her family after her release until she arrived at her friend's house. In oral evidence the appellant said that her phone had been taken from her when she was taken from her home and that she did not have her cousin's number and that she could not contact her mother or her husband. She said that when she got to her friend's house her friend had her uncle's number and that she contacted him and that he went to fetch her son at home. We accept the appellant's explanation in relation to this matter.

23. The respondent considered it unclear who would have had access to the appellant's husband's social media account to be able to delete it. The appellant said in oral evidence that she could not find her husband's Facebook account and that he had his phone with him when he was arrested. We do not consider it reasonable to expect the appellant to know what happened to her husband's Facebook account. She has given consistent evidence that his social media has been deleted and we accept that evidence.
24. In the Reasons for Refusal letter the respondent said that it was considered that if the authorities were still looking for the appellant they would have visited the homes of her family members. At the time of her asylum interview on 4 June 2018 the appellant said that she did not know if the authorities were still looking for her. However, in her witness statement she said that five men came to her mother's home on 29 August 2018 looking for her. She said that two of them were armed and that they were asking why the appellant was involved with an opposition party when her father was a war veteran and her mother was also involved with the veterans since her father's death. In oral evidence she said that the authorities would have assumed that she and her family were supporters of Zanu-PF. She said that the assailants beat her mother and that she suffered bruising and she was treated in hospital on 30 August.
25. We take account of the War Veteran membership card and the Women's League membership card relating to the appellant's mother. We also take into account the medical notes relating to the assault on the appellant's mother and her attendance for medical care on 30 August 2018 which corroborates the appellant's account.
26. We have considered all of this evidence in the round. We are satisfied that the appellant's account of events in Zimbabwe is credible. We accept her account in its entirety. Accordingly, we accept that her husband has disappeared as a result of his anti-government political activities and that she was detained and raped in January 2018.
27. The Secretary of State accepted that the background evidence supports the appellant's claim that the ruling Zanu-PF party mistreat people associated with opposition groups (paragraph 43 Reasons for Refusal letter).
28. In all of the circumstances we find that the appellant has demonstrated that she has a well-founded fear of persecution in her home area of Bulawayo. As the appellant's fear is of state agents we are satisfied that there is no sufficiency of protection available to her. As the state operates throughout the country we do not consider that internal relocation is available to her.

Humanitarian Protection

29. In light of our conclusion in relation to asylum there is no need to make findings as to Humanitarian Protection.

Articles 2 & 3

30. In this appeal Articles 2 and 3 stand or fall with the asylum claim. In light of our findings above we are satisfied that if she returns to Zimbabwe the appellant may be subjected to torture, inhuman or degrading treatment or punishment or face death in breach of Articles 2 or 3 of the ECHR.

Notice of Decision

The appeal is **allowed** on protection and human rights grounds.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

As a child is a party to the proceedings we considered it appropriate to make an Anonymity Direction. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 8 April 2019

A Grimes

Judge Grimes
Judge of the First-tier Tribunal

To the Respondent
Fee Award

No fee is payable therefore there is no fee award.

Signed

Date: 8 April 2019

A Grimes

Judge Grimes
Judge of the First-tier Tribunal