Neutral Citation Number: [2009] EWCA Civ 1294

Case No: C5/2009/0429

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL
Immigration Judge A W Khan
Appeal Number AA/03984/2008

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2nd December 2009

Before :

LORD JUSTICE WALLER Vice President of the Court of Appeal, Civil Division
LORD JUSTICE CARNWATH
and
LORD JUSTICE PATTEN

- -

Between :

EM (ZIMBABWE)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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- -

Stephen Vokes (instructed by Coventry Law Centre) for the Appellant
Stephen Kovats (instructed by the Treasury Solicitor) for the Respondent

Hearing date : 16th November 2009

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Judgment

Lord Justice Patten :

1. The appellant is a citizen of Zimbabwe. She appeals with the permission of Dyson LJ against a decision of the Asylum and Immigration Tribunal (Immigration Judge Khan) dated 19th January 2009 dismissing on reconsideration her appeal against the Secretary of State's refusal of her claim to asylum.

2. The appellant was born in Zimbabwe in 1970. In May 2002 she was given leave to enter the UK as a visitor. She then applied for leave to remain as a student and was granted leave until 30th July 2003. She then overstayed.

3. In January 2008 she claimed asylum. She was given a screening interview (SI) in January 2008 and then had a substantive asylum interview on 1st April 2008 at which she produced a witness statement setting out the basis of her claim for asylum and humanitarian protection. Briefly stated, her case was that she is married and has four children. She joined the Movement for Democratic Change (MDC) in Zimbabwe in October 1999. She assisted her husband to inform women about meetings of the MDC and attended two rallies in 2000 and 2001. She also attended regular monthly meetings of the MDC. She experienced no problems at either of the rallies or the meetings but in December 2001 she claimed that two policemen came to her house looking for her husband in connection with his MDC activities. She said that he was not present at the time and that the policemen then beat and raped her.

4. As a result of this, she left Zimbabwe in April 2002 and came to the UK. In October 2006 she became involved with the MDC in the UK and later joined their Wolverhampton branch. That was in January 2007. Her activities included encouraging other women to attend meetings and attending fundraising events and vigils. Her photograph was taken whilst attending a vigil in London and this was put on the Zimbabwe vigil website. The pictures were viewed by Central Intelligence Organisation ("CIO") operatives including a Mr Marshall Chirayi who knew her family. She said that, as a result, Mr Chirayi visited her husband in Zimbabwe in December 2007 and told him that the CIO were aware of her political activities in the UK. Her husband and children were then beaten up but her husband was not arrested. He was told that the appellant would be "in trouble" if she returned to Zimbabwe.

5. Two weeks later the appellant's husband took their younger children to Botswana but then returned himself to Zimbabwe. She alleged that in January 2008 he was arrested during a protest and was either missing or in hiding. The appellant's eldest daughter remains in Zimbabwe living with the appellant's sister. The appellant said that she feared that if she was returned to Zimbabwe she would be at risk of persecution because of her political views and her MDC activities in the UK. She therefore sought asylum based on her activities sur place.

6. On 12th May 2008 the Secretary of State refused the claim to asylum or for humanitarian protection under paragraph 339c of the Immigration Rules. She also declined to grant the appellant limited leave to remain. In the decision letter the Home Office stated that the appellant had not established a well-founded fear of persecution in Zimbabwe in the sense of the sustained or systematic violation of human rights demonstrative of a failure of state protection. The Secretary of State rejected the appellant's evidence that the photographs taken at the vigil outside the Zimbabwean Embassy in London were seen by Mr Chirayi or other CIO operatives

and led to her family in Zimbabwe being beaten up. The decision letter points to various inconsistencies in her evidence about where the children were living. The Secretary of State also relied upon the fact that the appellant's husband had returned to Zimbabwe from Botswana as evidence that the alleged incident in December 2007 did not take place. The decision letter also refers to the appellant's conflicting accounts at her SI and in her witness statement about her husband's whereabouts. At her SI she said that he was in hiding from the ZANU-PF but in her witness statement that he had been arrested and was now missing.

7. The Secretary of State also rejected the appellant's case that the posting of the photographs on the website sufficiently increased her profile so as to place her at risk of persecution. The Home Office pointed to the fact that her political activities with the MDC were, on her case, known to the CIO before she left Zimbabwe but did not lead to any difficulties for her whilst she remained in the country.

8. It was not therefore accepted that the photograph of her at a vigil outside the Zimbabwean Embassy would change her profile to a sufficient extent for her now to be at risk of persecution from the authorities should she return to Zimbabwe. In this connection, reliance was placed on two extracts from country guidance cases on Zimbabwe. The first is *SM and Others (MDC -internal flight - risk categories) Zimbabwe CG* [2005] UKAIT 00100 at paragraph 58 where it is stated:

> "The fact that a photograph has been taken outside the Embassy does not provide a sufficient basis for a finding that she would be at risk on return. In light of the evidence about the number of photographs taken and the records kept by the authorities it is unlikely that she would be identified on return from the photographs and even less likely that the authorities would regard her as an active opponent of the regime. The risk is so small that it can reasonably be discounted."

9. The second is *HS (returning asylum seekers) Zimbabwe CG* [2007] UKAIT 00094 at paragraph 267 where it is stated that:

> "There is no evidence that ordinary passengers returning from the United Kingdom experience any difficulty in passing through the airport. In fact, the evidence is to the contrary. Nor is there a real risk that those returning to Zimbabwe after being refused leave to remain after the leave initially granted has expired are regarded with suspicion or treated otherwise than as ordinary travellers".

10. The allegation of rape was dealt with in this way:-

> "You left Zimbabwe in April 2002 following, you claim, being raped by police officers who were looking for your husband. In your asylum interview you claim you left Zimbabwe because of this (AIR Q89). In your SI you claim you left because of political problems (SI, 10.1). You have not reported any problems prior to this or experienced any problems from the authorities. Although you claim the police raped you by your

> own admission (WS para 11) this was a result of the police seeking out your husband and not you. It is therefore not accepted that you are of any significant interest to the authorities. Furthermore, you left Zimbabwe using your own passport (AIR Q192) and you experienced no problems at the airport (AIR Q195). If you were of genuine interest to the authorities, it would have been reasonable to expect that you would have encountered problems at the airport, especially as you claim a CIO agent was aware of your political profile."

11. The Secretary of State also placed some reliance on the appellant's immigration history in assessing the credibility of her asylum claim. The letter notes that she did not apply for asylum when she first entered the UK allegedly because she was afraid and did not know what the process involved. When her leave to remain expired in 2003 there was still no claim to asylum. She simply overstayed. On her own evidence, she had no involvement with the MDC in the UK until the end of 2006 which the Home Office said indicated that her involvement was not at a level which would lead to persecution were she to have to return to Zimbabwe.

12. Her claim to asylum and humanitarian protection was therefore rejected as was any reliance on Article 8 in relation to her residence within the UK.

13. She then appealed to the AIT. At the first hearing Immigration Judge Telford considered her witness statement and also heard oral evidence from the appellant. She relied both on her MDC activities in Zimbabwe prior to 2002 and on her subsequent involvement in the UK as the basis for her claim to asylum. The judge found much of her evidence to be incredible. He doubted her claim to have been raped by the police and rejected her allegation that her husband and children had been beaten up by the CIO in December 2007. He found that her failure until 2008 to claim asylum indicated that she did not have a well-founded fear of persecution on the basis of her political activities in Zimbabwe. But he made no specific findings about the effect (if any) of her MDC involvement in the UK from 2007 onwards beyond describing it as a weak case of "refugee sur place". In paragraph 25 of his determination he said this:-

> "She was ambivalent about her own case. On the one hand when first claiming, and understanding what she was stating, she claimed to be a refugee sur place purely because of her activities in the UK. She today claims that she fled Zimbabwe intending to seek refugee status in the UK. She cannot have it both ways. She either was at risk of persecution when she left Zimbabwe or she was not. She has I find tried to bolster a weak case of "refugee sur place" by her more recent claims to have been in fear all along from her own activities in the MDC in Zimbabwe."

14. On 4th August 2008 Senior Immigration Judge Storey ordered the asylum claim to be re-considered in respect of the sur place claims on the basis of the Immigration Judge's failure to give reasons why the sur place activities (even if opportunistic) were not such as to place the appellant at risk of persecution in Zimbabwe. Judge

Telford's rejection of the appellant's asylum case based on events in Zimbabwe prior to 2002 remains unchallenged.

15. That reconsideration was conducted by Immigration Judge Khan on 4th December 2008. He therefore confined his determination to the sur place claim. The appellant produced a further witness statement dated 27th November 2008 and some background correspondence and other material. Points were taken by the Secretary of State about the lack of documentary evidence as to when she joined the MDC in Wolverhampton and whether she attended an MDC meeting held on 14th June 2008. It was also pointed out that she had attended a rally in September 2008 after she received the refusal letter. But the principal submission was that the posting of the photographs of the vigil on the website was an insufficient basis for her facing a real risk of persecution in Zimbabwe based on her activities in the UK. Reference was made to the passage in the Tribunal decision in *SM* [2005] UKAIT 00100 which is quoted in the decision letter. The judge was also reminded of the guidance contained in the decision of the Court of Appeal in *SS (Iran) v Home Department* [2008] EWCA Civ 310 where Lord Neuberger says this at paragraph 24:

> "There must be a limit as to how far an applicant for asylum is entitled to rely upon publicity about his activities in the UK against the government of the country to which he is liable to be returned. It seems to me that it is not enough for such an applicant simply to establish, as here, that he was involved in activities which were relatively limited in duration and importance, without producing any evidence that the authorities would be concerned about them, or even that they were or would be aware of them. As Longmore LJ put it, when refusing permission to appeal on paper, "Is every person present at Komala Party activities in the UK to be entitled to asylum by providing a photograph of himself during those activities?""

16. Judge Khan was also referred to the Tribunal decision in *RN (Returnees) Zimbabwe CG* [2008] UKAIT 00083 which provides country guidance on a number of issues including the question of whether the risk of persecution to returnees is limited to those who are perceived to be members or supporters of the MDC or includes anyone unable to demonstrate support or loyalty to the regime. The Tribunal found that there was a risk of violence or persecution from militias and other ZANU-PF groups to returnees unable to demonstrate loyalty to the regime but that this had not resulted in a broader category of returnees being targeted on arrival at the airport. The reasons given are contained in paragraphs 239 to 241 and 246 to 247 of the decision as follows:-

> "239. There is good reason to explain why the violence has been directed at a wider category of persons in and around the country: to ensure that the less sophisticated groups tasked with doing so will catch up all those who are to be targeted. But that does not support the suggestion that therefore a broader category of persons would be targeted at the airport as well. Indeed, as the CIO has been instrumental in putting in place the mechanisms for ensuring that newcomers to an area will be subject to much more careful and rigorous scrutiny than before,

> there is no reason to suppose that any purpose has been seen in changing the arrangements at the airport.
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> 240. Drawing all this together we see no reason to depart from the conclusions reached in HS about risk on return while passing through the airport. The CIO would have adverse interest only in those deportees about whom something was known as to bring them within the risk categories identified in HS.
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> 241. But having passed through the airport without any real difficulty, as will be the case for very many deportees about whom there is nothing known to excite the interest of the CIO, we recognise that many returnees will experience very real difficulty upon return to the areas of residence or other relocation. That does not mean that a bare assertion of Zimbabwean nationality and the claimed inability to demonstrate ZANU-PF membership or loyalty to the regime will be sufficient to establish a right to be recognised as a refugee.
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> …..
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> 246 …. An appellant who has been found not to be a witness of truth in respect of the factual basis of his claim will not be assumed to be truthful about his inability to demonstrate loyalty to the regime simply because he asserts that. The burden remains on the appellant throughout to establish the facts upon which he seeks to rely.
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> 247. But care must be taken in respect of such an appellant who has chosen to put forward a wholly untruthful account in support of his claim. The standard of proof he must meet is not a demanding one. As was pointed out in GM & YT (Eritrea) v SSHD [2008] EWCA Civ 833, per Buxton LJ at paragraph 31:
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> > "In every case it is still necessary to consider, despite the failure of the applicant to help himself by giving a true or any account of his own experiences, whether there is a reasonable likelihood of persecution on return.""

17. The appellant's evidence before the judge was that, as a result of her UK activities and the posting of her photograph on the internet, it was likely that her profile had become known to ZANU-PF and that it would be very difficult to convince their supporters in her home area (who would know she had been away in the UK) that she was loyal to that party. The judge described her membership of the Wolverhampton branch of the MDC as self-serving. He took note of the way in which her credibility had been impugned at the earlier hearing and that she had not claimed asylum until 2008. In relation to the impact of her UK activities on the risk of persecution, he said this:-

> 15. I accept as a finding of fact that the Appellant has joined the MDC Wolverhampton Branch but I find it to be entirely self-serving. The Appellant's credibility was impugned by the Immigration Judge who found her evidence to be incredible in relation to her claimed activities for the MDC in Zimbabwe. The Appellant arrived in the UK in 2002 yet did not claim asylum until some six years later and her explanation for her failure to do so was roundly and soundly rejected. It may well be that the Appellant attended an MDC Wolverhampton Branch general meeting on 14th June 2008 but so did a number of other people. It may well be that she has been involved in fundraising activities and attended vigils outside the Zimbabwean Embassy in London but again so did many other people. The question I have to ask myself is, given that the Appellant has been participating in such activities as stated above, would she come to the attention of the authorities in Zimbabwe and would she therefore be exposed to a real risk of persecution upon return.
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> 16. I am not satisfied that the link can be made because, although it is an objective fact that President Mugabe has his spies in the UK who monitor MDC activities, is there any evidence before me that the Appellant would be known to them. Is there any evidence that the authorities in Zimbabwe would know that the Appellant was attending meetings of the MDC Wolverhampton Branch. There is nothing before me to say that this would be the case. Would the authorities know that the Appellant had attended and was identified as attending vigils outside the Zimbabwean Embassy. Again there is nothing to say that this would be the case although I have seen some photographs of the Appellant outside the embassy attending vigils but then she was also in the company of many other people who were doing the same thing.
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> 17. I take note of the fact that on the website, there are literally thousands of individual websites in relation to opposition activities against the Zimbabwe regime. Would the authorities really be able to identify and single out the Appellant as a particular individual. I am not satisfied that this would be the case. I find that the Appellant has exaggerated her claim in her witness statement that the authorities would certainly know about what she has been up to in the UK."

18. The judge then referred to the decision of the Court of Appeal in *YB (Eritrea) v SSHD* [2008] EWCA Civ 360; to the country guidance contained in *RN* which I have quoted; and to the Court of Appeal's decision in *SS (Iran*). At paragraph 21 of his determination he said this:

> "… In my view, this is precisely the weakness in the Appellant's case. What evidence has she adduced, the burden being upon her, to show that the authorities would identify her as having taken part in meetings for the MDC and attended vigils outside the embassy. I am not satisfied that a link has been made other than the appellant making a bare assertion that simply because she was engaging in such activities, the authorities are bound to know about this because they have their spies here."

19. He then took into account the effect of Article 4(3)(d) of the Qualification Directive 2004/83/EC which deals with opportunistic sur place activity designed to establish a case for asylum and which was considered by the Court of Appeal in *YB (Eritrea).* At paragraph 15 of his judgment in that case Sedley LJ said this:-

> "What then is the purpose of art. 4(3)(d)? The answer is given in the text itself: it is "to assess whether these activities will expose the applicant to persecution or serious harm if returned". This would seem not to be the purpose identified in *Danian*. It suggests that what will initially be for inquiry is whether the authorities in the country of origin are likely to observe and record the claimant's activity, and it appears to countenance a possible finding that the authorities will realise, or be able to be persuaded, that the activity was opportunistic and insincere. In that event – which can only in practice affect opportunistic claimants - the fear of consequent ill-treatment may be ill-founded."

20. Judge Khan considered this point in paragraph 22 of his determination:-

> "… I do in fact find that the Appellant's activities in the UK were solely to bolster her asylum claim. Even a disingenuous claim for asylum based upon sur place activities could give rise to a real risk on return because it is the authorities' perception of what a person has been doing in the UK that is important. Assuming that the Appellant has been behaving disingenuously, I am still not satisfied that she would face a real risk on return because the critical factor of establishing the link between those activities and such coming to the knowledge of the authorities has not been established, bearing in mind the thousands of photographs appearing on numerous websites."

21. He then set out his conclusions in paragraph 23:-

> "The Appellant was found not to be credible in connection with her asylum claim in relation to her activities in the MDC within Zimbabwe, the Immigration Judge finding it implausible that she had been raped and had rejected the account that she gave about her husband. The Appellant would be returned to Harare Airport as a failed asylum seeker. I am not satisfied that she would be at any real risk at the airport. She may be questioned

> initially as to why she was returning to Zimbabwe but I do not accept that she would be taken for further detailed questioning. On the point of whether the Appellant is able to demonstrate loyalty to the regime, it is important to note that the Tribunal said in RN that a bare assertion of membership or support for the MDC will not suffice, especially in the case of an Appellant who has been found not credible in respect of his account of experiences in Zimbabwe. That is precisely the position the Appellant finds herself in and therefore I do not accept that she would in fact be at risk on return on the evidence before me."

22. He therefore rejected both the asylum claim and the claim for humanitarian protection. Senior Immigration Judge Nicholls and Sir Richard Buxton refused applications for permission to appeal on the basis that the proposed appeal was no more than a challenge to the judge's findings on the evidence that there was no real risk of persecution given the very limited nature of the appellant's MDC activities in the UK. Dyson LJ gave permission to appeal on the ground that it was arguable that the judge had given inadequate reasons for his conclusion that the appellant would not be known to the CIO through her UK activities. He considered that it was implicit in the judge's reasoning that had that link been made then there might be good grounds for supposing that the level of activity involved could expose the appellant to a real risk of persecution on her return to Zimbabwe.

23. In support of the appeal, Mr Vokes makes two criticisms of the judge's reasoning. The first is his failure properly to take into account the extent of surveillance carried out by the Mugabe regime of the activities of its political opponents in the UK. The second is the judge's failure to explain why (in the light of the surveillance carried out) the appellant was not at any serious risk of persecution should she be returned to Zimbabwe.

24. The first line of argument is based on the country guidance contained in *HS*. The Tribunal refers (in paragraph 104 of that decision) to the considerable resources invested by the regime in seeking to infiltrate opposition groups in the UK:-

> "We consider it significant that the regime has invested considerable resources in seeking to infiltrate groups in the United Kingdom to identify those who support the opposition or who are "activists in the country". This does indicate that it distinguishes those people from Zimbabweans present in the United Kingdom generally. It is noteworthy that it has not been suggested that those carrying out that function in the United Kingdom are collecting information about those who have made an asylum claim, but that they are concerned to identify those considered to be activists."

25. In paragraphs 264 to 266 the Tribunal also deals with the position at the airport:-

> "264. The CIO has taken over responsibility for the operation of immigration control at Harare airport and immigration officers are being replaced by CIO officers. We accept also that one of the purposes of the CIO in monitoring

> arrivals at the airport is to identify those who are thought to be, for whatever reason, enemies of the regime. The aim is to detect those of interest because of an adverse military or criminal profile. The main focus of the operation to identify those who may be of adverse interest remains those who are perceived to be politically active in support of the opposition. But anyone perceived to be a threat to or a critic of the regime will attract interest also.
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> 265. The fact that the CIO has taken over responsibility for monitoring all returning passengers at Harare airport is not something that effects the level of risk. The evidence before AA(2) was that all deportees were handed over to the CIO for questioning in any event. Then, as now, those deportees will have been identified in advance from the passenger manifest and the CIO will have formed a preliminary view as to which, if any, are of further interest.
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> 266. Large numbers of passengers pass through the airport. The CIO continues to recognise that it cannot question everyone; and so there is a screening process to identify those who might merit closer examination. We see no reason to suppose that the heightened role of the CIO would change this. There are now additional demands upon the CIO as it is responsible for monitoring all passengers passing through the airport, both on arrival and departure. We have set out the evidence that indicates in whom the CIO has an interest. This will be those in respect of whom there is any reason to suspect an adverse political, criminal or military profile of the type identified in AA(2). In addition, those perceived to be associated with what have come to be identified as civil society organisations may attract adverse interest as critics of the regime."

26. Its conclusions on whether returnees who are failed asylum seekers are ipso facto at risk of persecution are contained in paragraph 279:

> "We do not accept either that all those seen as having claimed asylum in the United Kingdom will be thought to be supporters of the MDC on that account alone. As noted earlier, the suggestion that the Zimbabwean authorities proceed on the basis that anyone with a connection with Britain must be considered a supporter of the MDC is impossible to reconcile with the significant effort put into obtaining intelligence concerning those in the United Kingdom who *do* support the opposition. After all, there would be little point in sending CIO operatives to infiltrate groups in the United Kingdom if everyone retuned was, in any event, to be presumed to be a

> supporter of the MDC and an enemy of the state qualifying for detention and interrogation."

27. Although these passages are not expressly referred to by Immigration Judge Khan, I agree with Dyson LJ that he certainly seems to have had in mind the level of surveillance carried out when he refers in paragraph 16 of the determination to President Mugabe's spies in the UK who monitor MDC activities here. The real issue therefore on the first part of the appeal is whether the appellant's activities were such as to have come to the attention of the CIO in this way. Mr Vokes submitted that although the appellant was unable to produce positive evidence that her activities were known to the regime – she had not, for example, been contacted or threatened in any way whilst she was here – the judge did have specific guidance in *HS* about the high level of monitoring carried out and this should have resolved any doubts on this issue in favour of the appellant. Accordingly more justification for the dismissal of the sur place activity was necessary.

28. The guidance in *HS* requires the Tribunal to take into account that there is active scrutiny by the CIO of MDC activities in the UK. But it goes too far to say that that creates a presumption that the system of monitoring is somehow foolproof. In most cases (and this, I think, is one of them) the issue of disclosure will be a matter of inference and degree. There will rarely, if ever, be case-specific evidence as to whether the appellant's activities are known to the CIO and it will therefore normally be unrealistic to attempt to divorce the issue of whether those activities have become known to the regime from the question of whether they would be of any real concern to it. The more significant the political activity, the more likely that it will become apparent and therefore be of interest to those monitoring it.

29. This assessment is one for the Tribunal to carry out, having regard to all the relevant material. An appeal against its decision lies to this court only if it discloses an error of law. The Court of Appeal cannot and will not interfere with the decision arrived at unless it can be shown either that the Tribunal failed to take relevant material into account; or that conversely it took account of material that was immaterial to the inquiry it was embarked upon; or that its decision was perverse or irrational in the *Wednesbury* sense. If no challenge can be mounted on those grounds then the decision will stand unless the Tribunal has failed to give proper reasons for it. A challenge on the grounds of a failure to give reasons has to be distinguished from a challenge to the conclusions which have been reached. If the decision-making process was not irrational or perverse in the *Wednesbury* sense described above it is not sufficient for an appellant to say that he or she does not agree with and wishes to challenge the factual decision which has been reached. That is not an appeal based on an error of law.

30. A failure to give reasons as a ground of appeal has been considered by this court in *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605 where Lord Phillips MR said this at paragraph 19:

> "[I]f the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the Judge reached his decision. This does not mean that every factor which weighed with the Judge in his appraisal of the evidence has to be identified and explained. But the issues the

> resolution of which were vital to the Judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the Judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, in may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

In *R (Iran)* [2005] EWCA Civ 982 Brooke LJ commented on that analysis as follows:-

> "15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he/she was making material findings."

31. Although the judge's reasons for rejecting the possibility that the appellant's activities may have come to the attention of the CIO are shortly stated, they clearly involved his balancing the information derived from the decision in *HS* about the monitoring activities of President Mugabe's agents against the level of the appellant's involvement with the MDC here in the UK. He obviously did consider the appellant's account of what she has done here in the UK that was set out in her witness statement and has summarised these matters in his judgment. Against this, he has taken into account the monitoring activities of the CIO. The weight to be given to these factors in assessing risk is, of course, a matter for the Tribunal.

32. It seems to me impossible to regard this decision as either perverse or so lacking in reasons as to be unintelligible. Although the appellant does not accept the judge's conclusions, that is not sufficient to enable this court to intervene. No error of law is disclosed. The judge has come to a permissible conclusion on the evidence as to the likelihood of the appellant's activities having become known to the Mugabe regime and, in the light of his conclusions on this issue, has explained why he is not satisfied that the appellant faces a real or serious risk of persecution should she return to Zimbabwe either in relation to those activities or in relation to the wider issue of whether or not she would credibly be able (if required) to demonstrate loyalty to the regime. The risk of persecution on return to Zimbabwe is not therefore made out.

33. Although I appreciate that the appellant may wish to argue about the Tribunal's findings of fact, that is something which is not open to her to do on this appeal. Only too often the Court of Appeal is being asked to entertain appeals against the decisions of the AIT which involve little more than a challenge to findings of fact presented as a failure to give reasons. Those practising in this field need to remind themselves of the relatively narrow grounds upon which a lack of reasons appeal can properly be maintained as set out by Brooke LJ in *R (Iran).*

34. For these reasons, I would dismiss this appeal.

Lord Justice Carnwath :

35. I agree.

Lord Justice Waller :

36. I also agree.