



Case No: C5/2008/1665

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AA/03744/2006]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday, 24th October 2008

Before:

LORD JUSTICE SEDLEY

Between:

DN (ZIMBABWE)

Appellant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

(DAR Transcript of
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Ms A Pickup (instructed by Messrs Chinyoka & Co) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

Judgment

(As Approved by the Court)

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Lord Justice Sedley:

1. This is a renewed application for permission to appeal, made skilfully by Ms Pickup on behalf of the applicant, who is a Zimbabwean teacher, following refusal on the papers by Mummery LJ. Immigration Judge Lane disbelieved the applicant's entire account of having been threatened and ill-treated by the Zimbabwean security service, the CIO, and by the police on account of his expressed pro-MDC views.
2. One ground, which is the ground that Ms Pickup puts first today, is that the immigration judge wrongly recorded the applicant's counsel as having conceded that on his return his status as a teacher would not by itself expose him to risk. This is, as I understand it, what one can call the airport argument. Whether or not it was formally conceded, it must be the case that there are a good many teachers in Zimbabwe who are either politically neutral or are pro ZANU-PF, and in none of these would the authorities be expected to have an adverse interest. It is on the applicant's own account only his anti-government views and actions which caused him to be targeted.
3. I have been shown correspondence about the supposed concession which was recorded in this way by the immigration judge at paragraph 33:

“ ... However Ms Smith conceded that the appellant's status as a teacher alone would not expose him to the real risk of persecution or ill-treatment upon his return to Zimbabwe.”

The solicitor's letter reads:

“Counsel confirms that to the best of her recollection she made no formal concession. Counsel's recollection is that in the context of arguing that the previous immigration judge's finding that the appellant is a teacher should be preserved, she acknowledged that a finding that the appellant is a teacher would not necessarily be determinative for his appeal.”

4. The reason why the appeal failed before Immigration Judge Lane was that the immigration judge did not believe the substance of the applicant's entire account. Having found that it was all exaggerated or fabricated, he concluded:

“...I find that this Zimbabwean teacher who otherwise has no aggravating features in his case, does not face the real risk of persecution or ill-treatment either at the point of his return to Harare [or] whilst living subsequently in his home area of Zimbabwe.”

5. The issue is therefore whether the immigration judge had arguably erred in his appraisal of the facts relied on as showing a well-founded fear of political persecution. The applicant had recounted a history started in 1998 or 1999 when he was beaten up by the police on a political demonstration. There is nothing to suggest that this was because of who he was; it was the usual state violence deployed against anti-government demonstrators and it was not repeated. But in the period 2000 to 2005 he was warned first by local police and then on three occasions by the CIO not to persist in introducing into his lectures matter hostile to the Mugabe regime. It is not suggested that a hand was laid on him or his employment interfered with in the course of any of those warnings. In July 2005, however, the applicant was again involved in activity, this time organising a strike. The strike was called off when the plan became known to the authorities but he and two others were arrested and he was beaten at the police station. On release he was ordered to report every two weeks, which he did on two occasions but then, fearing that he would be beaten if he reported again, he fled.

6. The immigration judge had tenable grounds for viewing the applicant's case with scepticism because he had entered on a visitor's visa and joined his brother here and had waited a long time before claiming asylum. He was also entitled to note the applicant's inability, as a professed MDC activist from the party's earliest days, to answer some of the interview questions about the MDC. But the immigration judge went on to deconstruct the individual elements of the applicant's case by finding them individually improbable or incredible on grounds which I accept look in many instances strained and unconvincing. This is on any view unfortunate and might in many cases justify the grant of permission to appeal. I will not go through them because I accept Ms Pickup's submission about this aspect of the case that if it were critical it would justify permission to appeal. The much larger difficulty that the applicant faces and that I put to Ms Pickup is that the history he gave simply does not amount to persecution or to a sequence of events calling for humanitarian protection against their repetition. Indeed, repeated warnings with no follow up action are on the mild side for repressive and arbitrary regimes such as Zimbabwe's. I note too that while the appeal was based on MDC activism on the first hearing, on reconsideration the MDC had faded into the background and the basis was now activity as a teacher. On my putting to Ms Pickup today that the history, even if it had not been dismissed by the second immigration judge, did not amount to persecution, she fell back on a third aspect of the case, the airport issue. In that regard she relies upon the country guidance decision of the Immigration Appeal Tribunal in SM and Others [2005] UKIAT 00100, which at paragraph 42 expresses the view that:

“...returnees are regarded with contempt and suspicion on return and do face a very hostile atmosphere. This by itself does not indicate that all returnees are at real risk of persecution but that returnees are liable to have their background and circumstances carefully scrutinised by the authorities. We are satisfied that those who are

suspected of being politically active with the MDC would be at real risk.”

Then at paragraph 45:

“The Tribunal accept that there is a heightened risk at present for teachers because of their profession and the perception that they have supported and encouraged support for the MDC. The risk had fallen away in 2003 and early 2004 but has recently increased because of greater Zanu-PF presence in schools throughout the new union.”

7. I do not underestimate the gravity of the treatment of the applicant on the two occasions on which he fell into the hands of the police, but they were some seven years apart and they were not related to one another nor to the intervening history. I do not underestimate the seriousness, either, of the intervening history of police and security services attempts to stop him expressing political views in his lectures, although there might have been an academic issue about that. But for the reasons I have given the history is not in my judgment a history of persecution; and I do not accept Ms Pickup’s submission that if that is so there is nevertheless sufficient reason in the evidence to fear that persecution will follow if he is returned because he has broken a condition of reporting to the police.
8. This leaves the question of risk at the airport. While I have been prepared to accept that there is arguably a flaw in the blanket disbelief directed at the applicant’s case, one fact that I do think the immigration judge was entitled to doubt was the alleged MDC adherence of the applicant. That doubt means that the applicant has not brought himself within the risk area which is indicated by the passages I have read from SM, because, conceded or not, the bare fact of being a teacher will not, even at the difficult point of return at Harare airport, result, on what is known, in being sent on to the unpleasant second stage of interrogation. It will only do so if there is some MDC association in the history and I think the immigration judge was entitled to doubt whether there was in this case. That being so, I am not prepared to accept that there is an appealable case even on return to the airport.
9. The concession that counsel then appearing accepts that she made was an entirely rational and proper one and I do not think that the record of it made by the immigration judge in any way falsifies it. Ms Pickup has sought to make more of the use made by the immigration judge of the concession than the decision as expressed will bear. The upshot was that this was not regarded as a credible claim; but even if the reasons for doing so were objectionable, the fact is that it was not a claim that amounted to a history of persecution, and that seems to me to be a difficulty which could not be overcome whatever the result of an appeal on the issues raised.
10. For those reasons I am not prepared to grant permission to appeal and the application, I am afraid, is refused.

Order: Application refused