

UK - The Secretary of State for the Home Department v MM (Zimbabwe), 22 June 2017

Country of Decision:

United Kingdom

Country of Applicant:

Zimbabwe

Date of Decision:

20-06-2017

Citation:

The Secretary of State for the Home Department v MM (Zimbabwe) [2017], EWCA Civ 797

Court Name:

Court of Appeal

Keywords:

Circumstances ceased to exist

Inhuman or degrading treatment or punishment

Revocation of protection status

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > Art 1CInternational Law > [1951 Refugee Convention](#) [1] > [Art 1C \(5\)](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [3]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [4] > [Article 3](#) [5]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [4] > [Article 8](#) [6]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 14](#) [8]

Headnote:

The Secretary of State had appealed the decision of the FTT (supported by the Upper tribunal) on several grounds of error in law. The Court upheld the tribunal on the issue of whether they had considered the gravity of the respondent's offences (section 72 of the 2002 Act); but found that the tribunals had indeed erred when considering the application of Article 1C(5) of

the Refugee Convention, and on the applicability of Article 8 ECHR. They consequently remitted the case of MM's deportation to the Upper Tribunal for re-examination in its entirety, based on these errors in the previous decisions. The statement of the referral left open for the respondent the possibility of an appeal on the basis of Article 3 ECHR.

Facts:

MM is a citizen of Zimbabwe who was granted indefinite leave to remain as a political refugee in 2002. He suffers from severe schizophrenia, which is controlled by drugs (clozapine). In 2004 he was convicted of attempted rape of his niece and placed on the sexual offenders register. In June 2014 the Secretary of State indicated to him that political conditions had changed in Zimbabwe so that he was not at risk; and that she intended to deport him since as a serious criminal he represented a danger to the community. MM appealed to the First Tier Tribunal; his appeal was allowed and upheld by the Upper Tribunal on the basis of a) the continuing danger he would face in Zimbabwe, b) the absence of adequate medical treatment there for his schizophrenia, and the consequent breach of his rights under ECHR Articles 3 and 8 if he were deported.

Decision & Reasoning:

The Court accepted contra the Secretary of State's contention that the FTT had in mind the gravity of MM's offences in relation to section 72 of the 2002 Act (para 15). Second the Court found that the First Tier Tribunal had erred when assessing MM's continuing refugee status given the changed circumstances in Zimbabwe, with respect to the Secretary of State's submission under the provisions of Refugee Convention Article 1C(5). In the opinion of the Court, the Tribunal's statement at para [27] that there was 'insufficient evidence' to make findings about the probable effect of MM's MDC profile and whether there would be parts of Zimbabwe where he could be safe was an inappropriate abdication of responsibility, without examining the evidence (para 28). The Tribunal should have addressed the Secretary of State's case for applying article 1C(5). (The Court itself, while discussing evidence of recent cases on the risks which face the deported former opposition members on arrival at Harare since their detention in Zimbabwe (para 45), did not assess their applicability in this case, leaving the question for the Tribunal to decide) (see e.g. Right to Remain toolkit and the commentary by Alice Muzira in <https://ukimmigrationjusticewatch.com/> [9], June 29 2017, who cites Paposmir v. Belgium (no. 41738/10) (30)). In addition, the deciding argument for the FTT, that deportation risked a breach of Article 8 of ECHR was rejected by the court, citing MM (Zimbabwe) v Secretary of State for the Home Department [2012] EWCA Civ 279 which sets very stringent conditions for the application of the article in particular if an appeal on the basis of Article 3 cannot be sustained (para 4). Because of these failings, the case was remitted to the Upper Tribunal in its entirety (para 16). However, in doing so, (loc. cit.) the court added a discussion of the applicability of Article 3 ECHR, given the deterioration in MM's mental health if he is returned to Zimbabwe: 'to return to a country where they are likely to suffer a profound mental collapse, possibly infringe the right under Article 3 to protection against torture and inhuman treatment?'. That protection was accordingly held to be not necessarily as restrictive as the FTT thought it was. The suggestion (para 43) that the respondent's case under Article 3 ECHR, which 'operates as an absolute bar to' deportation? (para 38) should be reassessed. In that re-determination the Upper Tribunal should examine afresh whether MM does have a good claim to resist deportation under Article 3 on the grounds of the likely effect upon him of being deprived of medical treatment for his severe schizophrenia.

Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1c>
- [3] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>

[4] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[5] https://www.asylumlawdatabase.eu/node/195#toc_12

[6] https://www.asylumlawdatabase.eu/node/195#toc_46

[7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2014%20QD>

[9] <https://ukimmigrationjusticewatch.com/>

[10]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/MM%20Zimbabwae%2022%20June%202021>

[11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7523>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/immigration-and-asylum-act-2002-section-72-criminal-offences>