Upper Tribunal
(Immigration and Asylum Chamber)

PS (cessation principles) Zimbabwe [2021] UKUT 00283 (IAC)

THE IMMIGRATION ACTS

Heard as a hybrid hearing at Field House	**Decision & Reasons Promulgated**
On 6, 7 May and submissions on 14 July 2021	

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Before

THE HON. MR JUSTICE LANE, PRESIDENT

UPPER TRIBUNAL JUDGE PLIMMER

Between

PS

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Ms V Laughton and Ms H Short, Counsel, instructed by Duncan Lewis & Co (Sackville House, London)

For the Respondent: Mr C Thomann, Counsel, instructed by the Government Legal Department

1. The correct approach to cessation in Article 1(C) of the Refugee Convention, Article 11 of the Qualification Directive 2004/83 and paragraph 339A of the Immigration Rules can be summarised as follows:

(i) 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 – see Abdulla v Bundesrepublik Deutschland (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08) [2011] QB 46 at [89] and SSHD v MA (Somalia) [2019] EWCA Civ 994, [2018] Imm AR 1273 at [2] and [46].

(ii) "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. Accordingly, a relevant change in 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 characteristics, or even from a change just in the individual's personal characteristics, if that change means that she now falls outside a group likely to be persecuted by the authorities of the home state. The relevant change must in each case be durable in nature and the burden is upon the respondent to prove it – see Abdulla at [76] and SSHD v MM (Zimbabwe) [2017] EWCA Civ 797, [2017] 4 WLR 132 at [24] and [36].

(iii) The reference in the Qualification Directive (as replicated in paragraph 339A) to a "change in circumstances of such a significant and non-temporary nature" will have occurred when the factors which formed the basis of the refugee's fear of persecution have been "permanently eradicated" – see Abdulla at [73] wherein it was pointed out that not only must the relevant circumstances have ceased to exist but that the individual has no other reason to fear being persecuted.

(iv) The relevant test is not change in circumstances, but whether circumstances in which status was granted have "ceased to exist" and this involves a wider examination - see SSHD v KN (DRC) [2019] EWCA Civ 1655 at [33].

(v) The views of the UNHCR are of considerable importance – HK (Iraq) v SSHD [2017] EWCA Civ 1871 at [41], but can be departed from.

2. It is therefore for the SSHD to demonstrate that the circumstances which justified the grant of refugee status have ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention. The focus of the assessment must be on: (i) the personal circumstances and relevant country background evidence including the country guidance ('CG') case-law appertaining at the time that refugee status was granted and; (ii) the current personal circumstances together with the current country background evidence including the applicable CG.

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant.

Introduction

1. We now re-make the decision concerning the appellant's appeal against the respondent's decision dated 10 September 2018, in which she revoked the appellant's refugee status and refused her human rights claim.

2. This decision follows an earlier Upper Tribunal ('UT') decision (UTJs Coker and Plimmer) dated 16 December 2019, which concluded that the First-tier Tribunal ('FTT') erred in law in dismissing the appellant's appeal: see Appendix 1.

3. It is undisputed that the appellant is vulnerable and we have treated her as such throughout these proceedings in accordance with the relevant Practice Direction and Presidential Guidance Note No 2 of 2010, as set out and explained in AM (Afghanistan) v SSHD [2017] EWCA Civ 1123; [2017] Imm AR 1508.

4. We have made an anonymity order because this is an international protection case, wherein the importance of facilitating the discharge of the United Kingdom's ('UK') obligations under the Refugee Convention and the ECHR outweighs the principle of open justice.

Background

5. The appellant is a citizen of Zimbabwe born in 1978. She was born in a village in Masvingo province and lived there with her family until 1998, when she moved to Harare. She became involved in Zimbabwe's opposition party, Movement for Democratic Change ('MDC') in 1999 and was detained for reasons relating to this in September 2002. Shortly after being released, she entered the UK on 11 September 2002 as a visitor and extended her leave to remain as a student to October 2007. She overstayed her leave but on 24 January 2008 the appellant claimed asylum and was granted refugee status on 13 February 2008. In 2013, she was granted indefinite leave to remain.

6. In around 2009 the appellant met and married a Zimbabwean citizen. They had four children together. On 9 November 2015 the appellant and her husband were each convicted of manslaughter by gross negligence of their then youngest child who was under a year old ('A'). They pleaded guilty on the first day of the trial. The next day the appellant was sentenced to eight years and her husband was sentenced to nine and a half years. In his sentencing comments, the sentencing judge noted that A's condition had been deteriorating in visible ways over a period of months, and that malnutrition had reached a crucial level two to three months before her death. A's condition would have been obvious to both parents in the weeks before she died. The judge made allowance for the appellant's isolation and vulnerability but concluded that her responsibility remained high. The remainder of the appellant's children were ultimately taken into care and she has no contact with them.

7. In a decision dated 22 March 2018, the respondent considered representations made by the UNHCR in support of its recommendation that it was inappropriate to cease the appellant's refugee status, but concluded that there was a significant and enduring change in Zimbabwe in relation to the appellant's particular circumstances, and her refugee status was revoked. In a further decision dated 10 September 2018 the respondent explained that the appellant was the subject of a deportation order, her refugee status having been revoked. The respondent also set out why she was satisfied that the appellant had been convicted of a particularly serious crime and was a danger to the community of the UK pursuant to s.72(2) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') and Article 33(2) of the Refugee Convention. In addition, the respondent rejected the appellant's claim that it would be a breach of her human rights to be deported to Zimbabwe.

8. The appellant was released on licence to an address in Birmingham on 12 September 2018, from which point she claims to have recommenced MDC activities and to have attended Zimbabwe Human Rights Organisation ('ZHRO') meetings. She attended appointments with Dr Chisholm, a clinical psychologist instructed on her behalf in January 2019, March 2020 and October 2020. She was hospitalised on 3 May 2020 under s. 2 of the Mental Health Act 1983 after presenting as psychotic at her home. She quickly settled and was discharged on 13 May 2020 under a supported living arrangement to alternative accommodation.

Procedural history

9. The appellant appealed against the 10 September 2018 decision to refuse her human rights and protection claim and revoke her protection status pursuant to s. 82(1) of the 2002 Act, on the grounds available to her under s. 84.

10. The matter came before a panel of the FTT on 20 June and 31 July 2019. The appellant did not give any meaningful oral evidence because she became distressed and the hearing proceeded on the basis of submissions only. In a decision dated 2 August 2019, the FTT concluded that: for the purposes of s.72 of the 2002 Act, the appellant constituted a danger to the community (it was not in dispute that she had been convicted of a particularly serious crime); the cessation provisions applied to her because there had been a durable and significant change in the circumstances relevant to her asylum

claim; for the same reason, her deportation would not breach Articles 2 and 3, ECHR; her deportation would not breach Article 8, ECHR.

11. At the error of law hearing before the UT it was conceded on behalf of the respondent that the FTT made a material error of law and the FTT's decision should be set aside, albeit the s. 72 findings should be preserved. The only issue in dispute at the error of law hearing therefore related to whether the FTT's finding that the appellant continued to be a danger to the community was adequately reasoned. The UT found that the FTT was entitled to make the findings it did in this respect. The UT therefore accepted the respondent's concession and made it clear that the decision will be re-made in relation to the two outstanding overarching issues – cessation and Article 3.

12. At a case management hearing on 16 December 2020, the parties agreed that the following issues required resolution by the UT:

(1) Has the respondent displaced the burden of establishing that there has been a relevant change in circumstances, such that the appellant's refugee status should cease in the light of the country background evidence?

(2) What is the correct legal approach following the resolution of issue (1) where, as here, the s. 72 presumption has been found to apply, in the light of Essa (Revocation of protection status appeals) [2018] UKUT 244 (IAC), and any other relevant authorities?

(3) In any event would the appellant's removal to Zimbabwe breach Article 3 of the ECHR given her particular circumstances, including her health and social support in Zimbabwe?

Hearing

Issues in dispute

13. Both parties filed and served helpful skeleton arguments (and an appellant's reply to the respondent's skeleton argument) prior to the hearing. We were also provided with detailed written and oral closing submissions. We are very grateful to the representatives for the careful attention to detail in this case. The issues in dispute became more clearly synthetised with time but at the beginning of the hearing before us, the parties agreed that there were two overarching issues to be determined:

(1) Has the respondent displaced the burden upon her in establishing that the appellant's refugee status should cease?

(2) In any event, would the appellant's deportation to Zimbabwe breach Article 3, ECHR?

14. Ms Laughton clarified on behalf of the appellant that she did not wish to submit that Essa (supra) was wrongly decided. She therefore accepted that as the s. 72 certificate had been upheld and in the light of s. 72(10), if the UT resolved the first issue in the appellant's favour, it should dismiss the appeal under s. 84(3)(a) of the 2002 Act but determine that the appellant has succeeded in establishing that the decision to revoke her protection status is contrary to the Refugee Convention, and as such she remains a Convention Refugee, albeit one who can be refouled subject to the assessment of the second issue. Article 3 is of course drafted in absolute terms. It follows that if we resolve the second issue in the appellant's favour the appeal falls to be allowed on human rights grounds.

Evidence

15. We were provided with a consolidated (1191-page) bundle of evidence and a supplementary (62-page) bundle of evidence. This included extensive medical evidence including medical notes and letters, four written reports (26 April 2019, 6 April 2020, 20 November 2020, 16 December 2020) from Dr Brock Chisholm, a clinical psychologist, on behalf of the appellant and a report dated 23 February 2021 from Dr Soham Das, a consultant forensic psychiatrist, on behalf of the respondent. Both experts gave oral evidence and were subject to cross-examination. The key aspects of their written and oral evidence were helpfully included in a Joint Agreed Schedule of Essential Passages and Oral Evidence from Medical Experts dated 18 June 2021 ('MSch').

16. We also heard evidence from two country experts on Zimbabwe. Dr Hazel Cameron was instructed by the appellant and relied upon three reports dated 2 May 2019, 23 March 2020 and 29 January 2021. Dr Knox Chitiyo was instructed by the respondent and relied upon a report dated 9 March 2021. They were both subject to cross-examination. The key aspects of their written and oral evidence, together with the relevant country background evidence (including the respondent's Country of Origin Information requests ('COIR') and Country Policy and Information Notes ('CPIN')), were also helpfully set out in a Joint Agreed Schedule of Essential Passages and Oral Evidence from Country Experts and Country Evidence dated 18 June 2021 ('CSch').

17. We also heard evidence from the appellant's sister living in the UK, Ms P. She relied upon three witness statements dated 31 May 2019, 29 January 2021 and 30 April 2021 and was cross-examined.

18. Although the appellant did not give evidence, we have carefully considered her witness statements dated 5 June 2019 and 29 January 2021, together with all the evidence before us.

Submissions

19. We heard very detailed submissions from both representatives. The respective written submissions were comprehensive and expanded upon during the course of lengthy oral submissions (lasting an entire day). At this stage, we merely outline the parties' respective positions, and refer to the submissions in more detail when making our findings.

20. Mr Thomann invited us to make adverse findings of fact regarding the appellant's claimed family circumstances and sur place political activities. He also submitted that the appellant's mental health presentation and diagnosis as asserted by her and her sister, and as assessed by Dr Chisholm, was unreliable. He submitted that we should prefer the evidence provided by Dr Das. As to the issues in dispute, Mr Thomann submitted that: (1) both the country position and the appellant's own circumstances had substantially and durably changed, such that the respondent was able to displace the burden of showing that the circumstances in connection with which she had been recognised as a refugee had ceased to exist, and; (2) the relevant factual matrix and correct approach to the medical evidence did not support the appellant's claim that she would be subject to treatment in breach of Article 3 upon return to Zimbabwe.

21. Ms Laughton encouraged us to accept the evidence provided by the appellant and Ms P, as supported by Dr Chisholm. She submitted that: (1) the respondent was unable to displace the burden upon her of establishing that the circumstances in connection with which the appellant had been recognised as a refugee had ceased to exist, and; (2) the appellant was able to establish that her mental health would deteriorate upon return to Zimbabwe to such an extent that she faced a real risk of treatment in breach of Article 3.

22. After hearing submissions from both parties, we reserved our decision, which we now provide with our reasons.

Legal framework

Cessation

23. Article 1A(2) of the Refugee Convention provides the well-known definition of a refugee as a person who "owing to a well-founded fear of being persecuted for reasons of, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country". By Article 1(C), this ceases to apply if:

"(5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of his country of nationality…"

24. Central to the rights provided under the Refugee Convention is the right not to be refouled, but a refugee may lose this protection where, inter alia, having been convicted by a final judgment of a particularly serious crime, she constitutes a danger to the community of the country in which she is – Article 33(2) of the Refugee Convention. This, by way of contrast with Article 1(C), only permits the expulsion of the refugee; it does not result in cessation or revocation of refugee status. The Refugee Convention has effectively been incorporated into the statutory appeals regime by the 2002 Act. It is unnecessary to refer to s. 72 of the 2002 Act in any further detail as the appellant's certification under that provision and its effect is no longer in dispute.

25. Article 1(C) of the Refugee Convention is mirrored in Articles 11, 13 and 14 of the Qualification Directive 2004/83 ('the QD'). Article 11(e) incorporates the provision for cessation of refugee. The applicable Immigration Rules are paragraphs 338A to 339AC. The exact terms on cessation are contained domestically at 339A, which provides:

"(v) … can no longer, because the circumstances in connection with which they have been recognised as a refugee have ceased to exist, continue to refuse to avail themselves of the protection of the country of nationality."

…

In considering (v)…the Secretary of State shall have regard to whether the change of circumstances is of such a significance and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well founded."

26. The interpretation of these provisions was not the subject of any dispute between the parties. We consider that the relevant principles can be articulated as follows:

(i) 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 – see Abdulla v Bundesrepublik Deutschland (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08) [2011] QB 46 at [89] and SSHD v MA (Somalia) [2019] EWCA Civ 994, [2018] Imm AR 1273 at [2] and [46].

(ii) "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. Accordingly, a relevant change in 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 characteristics, or even from a change just in the individual's personal characteristics, if that change means that she now falls outside a group likely to be persecuted by the authorities of the home state. The relevant change must in each case be durable in nature and the burden is upon the respondent to prove it – see Abdulla at [76] and SSHD v MM (Zimbabwe) [2017] EWCA Civ 797, [2017] 4 WLR 132 at [24] and [36].

(iii) The reference in the QD (as replicated in rule 339A) to a "change in circumstances of such a significant and non-temporary nature" will have occurred when the factors which formed the basis of the refugee's fear of persecution have been "permanently eradicated" – see Abdulla at [73] wherein it was pointed out that not only must the relevant circumstances have ceased to exist but that the individual has no other reason to fear being persecuted.

(iv) The relevant test is not change in circumstances, but whether circumstances in which status was granted have "ceased to exist" and this involves a wider examination - see [33] of SSHD v KN (DRC) [2019] EWCA Civ 1655.

(v) The views of the UNHCR are of considerable importance – HK (Iraq) v SSHD [2017] EWCA Civ 1871 at [41] but can be departed from.

27. It is therefore for the respondent to demonstrate that the circumstances which justified the grant of refugee status have ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention. The focus of the assessment must be on: (i) the personal circumstances and relevant country background evidence including the country guidance ('CG') case-law appertaining at the time that refugee status was granted and; (ii) the current personal circumstances together with the current country background evidence including the applicable CG. In this case it is therefore for the respondent to show that the circumstances which in 2008 justified the grant of refugee status to the appellant have now ceased to exist and that there are no other circumstances which would now give rise to a well-founded fear of persecution for reasons covered by the Refugee Convention. The focus of the assessment must therefore be on both the 2008 and current circumstances of the appellant and Zimbabwe. There has been extensive CG on Zimbabwe during the relevant period and it is appropriate at this stage to review the country conditions in Zimbabwe through the lens of the CG.

Zimbabwe CG

28. We begin with the general political conditions in Zimbabwe when the appellant was granted asylum in February 2008. At that time, SM and others (MDC – Internal Flight – risk categories) Zimbabwe CG [2005] UKIAT 0010, as adopted, affirmed and supplemented in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 ('AA2'), was the applicable CG. This was made clear in HS (returning asylum seekers) Zimbabwe CG [2007] UKIAT 00094, which adopted and reaffirmed the CG in SM and AA2. The focus of HS was upon the risk to failed asylum seekers with no prior political involvement. SM concluded that those who are or are perceived to be politically active in opposition were at real risk of persecution. Although at [51] SM identified specific categories at obvious risk, it emphasised that each case must be looked at on its own individual facts. Some categories were said to be more likely to be at risk than others, such as MDC activists and campaigners, but supporters or those with very limited political involvement might in exceptional cases be at real risk. Returnees,

particularly those who claimed asylum in the UK, were said to be regarded with suspicion upon return albeit that was insufficient alone to justify asylum.

29. The upsurge of violence from the March 2008 elections underpinned the conclusions in RN (Returnees) Zimbabwe CG [2008] UKAIT 00083, which held that the risk of persecution was no longer restricted to those with actual links to the MDC, but included anyone unable to demonstrate loyalty to the ZANU-PF regime. It is important to note at this stage that as highlighted on her behalf by Ms Laughton and accepted by Mr Thomann, the appellant was not granted asylum on the basis of RN, but due to her risk as a result of being an MDC activist, applying the CG in SM.

30. After RN the political situation in Zimbabwe improved, resulting in EM and others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC), later modified by CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC), promulgated on 31 January 2013. CM concluded inter alia that as at the end of January 2011 there was significantly less politically motivated violence and the return of a failed asylum seeker from the UK, having no significant MD profile, would not result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF, albeit the position was otherwise for those returning to some rural areas. Even during this period of reduced violence, the Tribunal emphasised that the situation is different in the case of a person without ZANU-PF connections returning to a rural area other than Matabeleland North or South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control.

31. Whilst the Tribunal in CM was giving updated CG as at the end of January 2011, it made a number of comments, which it emphasised were not CG, regarding the situation as of October 2012. This included the assessment that the picture presented by the fresh evidence as to the general position of politically motivated violence in Zimbabwe as of October 2012 did not differ in any material respect from the CG in EM.

Article 3

32. If the respondent displaces the onus upon her to demonstrate cessation of refugee status, then it is for the appellant to demonstrate that all the circumstances are such that she faces a real risk of ill-treatment contrary to Article 3, ECHR upon return to Zimbabwe.

33. Article 3 contains the prohibition: “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The ill-treatment or punishment must attain a minimum level of severity if it is to fall within the scope of Article 3. The threshold is a clearly high one. Treatment is ‘degrading’ when it “humiliates or debases an individual, showing lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance” – see Pretty v UK (2002) 35 EHRR 1 at [52]. As far as health is concerned, the Court in Pretty added:

“The suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible.”

34. The assessment of the requisite level of severity is “relative, depending on all the circumstances of the case” – see Sufi and Elmi v UK (2012) 54 EHRR 9 at [213], which may include the duration of the treatment, its physical or mental effects, and the age, sex, vulnerability and state of health of the victim.

35. In Article 3 medical cases concerning non-deliberate harm, the approach is now governed by AM (Zimbabwe) v SSHD [2020] UKSC 17, [2020] Imm AR 1167 in which the Supreme Court interpreted and applied the principles in Paposhvili v Belgium (41738/10 GC) [2016] ECHR 1113, [2017] Imm AR 867. The parties also referred us to Savran v Denmark (57467/15) [2019] ECHR 651 and R (Carlos) v SSHD [2021] EWHC 986. The respondent accepted that the appellant succeeded if she adduced evidence capable of demonstrating that there are substantial grounds for believing that, if removed, she would be exposed to a real risk of a serious, rapid and irreversible decline in health resulting in intense suffering.

Evidence

36. Both parties acknowledged that much of the background was undisputed but three key areas of factual dispute remained. First, the nature and extent of the appellant's claimed sur place political activities beyond the matters that underpinned her asylum claim. Second, the accuracy of the appellant's family and other social circumstances in Zimbabwe. Third, the nature and extent of the appellant's health concerns. We resolve those disputed issues by making our findings of fact after a holistic assessment of all the relevant evidence.

37. Although we have not heard from the appellant in person we have carefully considered her witness statements. On any view of the medical evidence she is a vulnerable witness. We bear in mind the difficulties she faced when trying to give evidence before the FTT and Dr Chisholm's observations about this. We also note that her solicitor explained in a witness statement that taking instructions from her was very challenging and it took eight carefully structured and adjusted appointments to obtain her January 2021 statement. In addition, for reasons beyond anyone's control it has not been possible to obtain a further statement from the appellant, to meet the concerns that the respondent has more recently raised, in particular relating to family members in Zimbabwe. It is for this reason that Ms P prepared an additional statement dated 30 April 2021, shortly before the hearing. In these circumstances where there is doubt, we have sought to give the appellant the benefit of that doubt in the light of her vulnerability.

38. We bear in mind the various challenges Ms P has had and continues to deal with as particularised in her most recent statement. These include severe financial difficulties, being evicted from her home, the death of her niece, the appellant going to prison, looking after the appellant's children before they were placed permanently elsewhere and the appellant's current needs. She admitted to struggling and feeling overwhelmed. Ms P found it difficult to give clear answers to straightforward questions. Although we have taken into account the difficulties she described, we did not find some aspects of her evidence reliable.

Country expert evidence

39. We found some of Dr Cameron's evidence to contain unsourced opinions drafted in wide and undifferentiated terms. There was a tendency to entirely disregard the CG cases and to adhere to her own entrenched views, even where those views were inconsistent with the carefully considered CG and in circumstances wherein there was no updated cogent evidence to call those conclusions into question. We therefore considered Dr Cameron's evidence to be unhelpful in some respects, particularly her generalised views regarding risk at the airport and her claim that the situation in Zimbabwe had reverted to RN levels of targeting. Where her evidence was broadly consistent with human rights reports or the evidence of Dr Chitiyo, we found her evidence more helpful. By contrast, we found Dr Chitiyo to provide more measured evidence. We have therefore found it more helpful in the main to refer to his evidence when making our findings.

Medical expert evidence

40. Both medical experts are clearly well-qualified within their respective fields. Dr Chisholm is particularly well qualified to undertake a psychological assessment of this appellant. He has specific expertise in the diagnosis and complex presentation of trauma including delivering training to mental health staff, including psychiatrists. He provides expert evidence to the police in respect of matters relating to control and abuse, and works with survivors of religious cults. He has extensive expertise in the field of traumatic bereavement and is the lead psychologist in a charity for murdered family members. He provides training in recognising signs of malingering. Aside from his qualifications and experience he has spent 10 hours with this appellant over the course of 18 months.

41. Dr Das is an experienced consultant forensic psychiatrist. He currently works as a psychiatrist in the court service but explained that he has worked in mental health hospitals and has been involved in hundreds of assessments. He accepted that his assessment of this appellant was limited and in the main, an assessment of the medical notes. This is because the appellant claimed she felt unable to cope with an assessment and engaged poorly.

42. Dr Das accepted that in general an assessment in person is more reliable than an assessment based on medical notes, but did not consider that Dr Chisholm sufficiently considered the notes. We do not accept that criticism to be well- founded as Dr Chisholm clearly took the medical notes into account when compiling his three 2020 reports. In his final 2021 report he directly addressed the medical notes for the avoidance of any doubt. Dr Das did not appreciate that the appellant had been released from hospital in May 2020 to supported accommodation and had been assigned a support worker, which he accepted was indicative of a higher level of concern than he had previously understood. He also accepted that he did not formally assess her for malingering, whereas Dr Chisholm did. These matters together with the appellant's poor engagement with him, cause us to pause before accepting Dr Das's conclusions.

43. Having carefully considered all the evidence in the round, we do not accept the submission on behalf of the appellant that she was more reliably assessed by Dr Chisholm or the submission on behalf of the respondent that she was more reliably assessed by Dr Das. We have found both assessments to be helpful in different ways, particularly bearing in mind their different areas of expertise. We accept the evidence they have agreed upon. Where they disagree, we give reasons for our findings. We have reached our findings after undertaking a holistic analysis of all the evidence. We have found this comprehensive analysis of all the evidence over time i.e. witness evidence, medical notes and assessments, prison reports, sur place activities, particularly important in this case wherein the medical experts agreed that the appellant's diagnosis is a complicated matter and her symptoms fluctuate. We note Dr Das's candid evidence that he struggled to explain the unusual aspects of the appellant's presentation at times and Dr Chisholm's reminder that "people do not always fit neatly into diagnostic categories".

Findings of fact

Mental health

44. We consider it important to begin our assessment by addressing the evidence concerning the nature and extent of the appellant's mental health. This is because these findings together with her related vulnerability inevitably impact upon the correct approach to a proper assessment of the appellant's evidence, as well as the evidence adduced on her behalf.

45. As Ms Laughton submitted, there is significant agreement between the two medical experts and it is convenient to summarise this. We have included paragraph references to the MSch but have not considered it necessary to quote these references extensively. Both experts accept the following, as do we:

(i) The appellant suffers from mental illness: Persistent Complex Bereavement Disorder ('bereavement disorder') (MSch at 80-1, 84-6) and depressive disorder.

(ii) Her diagnosis is a complicated matter and her symptoms fluctuate. Her mental state is fluctuating and unpredictable. This could suddenly change in the future, and is likely to do so in the context of any major distressing events or social issues including deportation to Zimbabwe (MSch at 50, 57, 64, 115, 132, 254). Her symptoms include hallucinating images and the voices of her children (MSch 76-79).

(iii) She is probably predisposed to developing a psychotic episode (MSch 60-61, 96) and the prescription of Olanzapine after a telephone assessment on 16 February 2021 suggests that the specialty doctor assessed her as being psychotic or bordering on it (MSch 57-63, 92-93), albeit Dr Das raised concerns about this assessment.

(iv) She has a history of traumatic events and her prognosis is generally poor even within the UK notwithstanding the support she has here (MSch 114, 118-119, 122 and [77] of Dr Das's report).

(v) The appellant has been assessed as requiring anti-depressants and olanzapine (MSch 94, 129), therapy, (MSch 95, 99, 107) and social or family support to cope with day-to-day activities (MSch 103-105, 123, 126-127).

(vi) Her mental health will deteriorate on return to Zimbabwe, the extent of the deterioration depending on the level of support there (MSch 123, 135- 136).

(vii) There is a risk of suicide albeit the level of risk is in dispute, but whatever the level of risk, it remains complex, mixed, variable, unclear and could change suddenly in the future, if for example she is deported to Zimbabwe (MSch 132, 142).

46. We must resolve the matters the experts disagree upon and do so by reference to three overarching themes: overall mental health presentation; hospitalisation in May 2020; the level of the risk of suicide if deported to Zimbabwe.

47. Mr Thomann submitted that there was a clear and obvious disconnect between Dr Chisholm's description of the appellant's very poor mental health and low- level day to day functioning, when contrasted with other evidence. Dr Chisholm first assessed the appellant on 31 January 2019 for several hours. He observed her to be very tearful with an extremely low mood. She reported that she avoided going out in order to avert reminders of her children. He diagnosed her as meeting the criteria for severe major depressive disorder and post-traumatic stress disorder ('PTSD') but that her difficulties were best described as bereavement disorder. After carrying out tests in order to assess whether the appellant was malingering, Dr Chisholm concluded that she was a "reliable historian in terms of the psychological impact and psychiatric symptoms…". Mr Thomann submitted that Dr Chisholm's assessment contradicted other evidence around that time, which we now turn to.

48. We note that the appellant was clearly well enough to complete a wide range of courses and therapy during her imprisonment. In a letter dated 17 July 2018 the appellant's wellbeing support worker at MIND described her progress during therapy in a recovery programme completed in prison

in January 2018, in relatively glowing terms. MIND described a shift having taken place at the beginning of 2018 that led to a new positive outlook and an ability to cope upon release. Dr Chisholm observed that this letter suggested greater improvement than there probably was but there is no reason to doubt the assessment of the appellant's improved presentation and ability to interact at the time it was made in the first half of 2018, when she was still in prison and more hopeful about the possibility of seeing her children again. It is important to note that the appellant was released from prison on licence in September 2018. Her circumstances in January 2019 as a person living in the community were therefore different to her circumstances in January 2018, when she remained in prison. In our view Dr Chisholm cogently explained during his oral evidence that there were probably two main reasons for the resilience the appellant demonstrated whilst in prison in early 2018, in contrast to the deterioration in her presentation in early 2019. First, in prison she thought she might see her children again when she was released, and when that hope ended she massively declined. Second, prison can be for some with mental health concerns and was for this appellant a stabilising and 'containing' experience.

49. We do not consider that the appellant's attendance at a few ZHRO meetings (the last record being in 2019) is inconsistent with her assertion to Dr Chisholm in January 2019 that she found it difficult to leave her home, when she was being encouraged to do so to assist her mental health. At Dr Chisholm's second meeting with the appellant in March 2020, the appellant was describing more serious anxieties and symptoms. This included being frightened to leave her home because of voices telling her to end her life. Dr Chisholm also noted that her condition had worsened because she lost hope of seeing her children. By the time of the appellant's third meeting with Dr Chisholm in October 2020, she was said to be unable to leave her supported living arrangements home unaccompanied. We note there is no documentary evidence to confirm the appellant's attendance at meetings after September 2019.

50. The appellant was also assessed by a psychiatric nurse on 28 March 2019. Although the appellant was very tearful, talked about suicide and her mood was said to be distressed when talking about her difficulties, there were said to be "no observable features of anxiety, or mental illness. No unusual thoughts or perceptions assessed…appeared to be more of a grief and adjustment reaction to loss". Whilst the nurse assessor reached a different conclusion to Dr Chisholm, the appellant's poor presentation remained broadly similar at the time. In any event, given the appellant's fluctuating symptoms and overall mental health, it is unsurprising that there may be entries in the medical notes which do not raise serious concerns regarding the appellant's presentation.

51. Mr Thomann drew our attention to the appellant's apparent ability to represent herself in family proceedings concerning her children, as evidenced in her January 2021 statement. This is the only relatively recent evidence said to demonstrate a disconnect between the level of functioning assessed by Dr Chisholm and described by her sister on the one hand, and her actual day to day functioning. In relation to the appellant's participation in court proceedings, we note that she was being assisted by her siblings and that this participation was said to make her mental health worse. In any event, there is more recent objective evidence of the appellant's day to day functioning, which we accept. She was assessed as requiring supported living arrangements upon discharge from hospital in May 2020 and this remains. She is regularly visited by a support worker who accompanies her food shopping. She has regular appointments with her GP and a psychiatrist. After a telephone assessment on 18 February 2021, she was prescribed a medium dose of Olanzapine. We sympathise with the respondent's submission that this was a limited assessment based upon the appellant's account of her symptoms over the telephone. We do not however accept that this assessment is unreliable and takes

the matter no further. Many assessments have taken place in this manner during the pandemic. There is no reason to believe that the professionals involved have not taken the appropriate degree of care in the conduct of such telephone assessments or that this specialty doctor did not do so. Although Dr Das considered this assessment to be incomplete, he nevertheless agreed that the appellant “is bordering on psychosis” and “being prescribed 10mg olanzapine does suggest that the speciality doctor did assess her as being psychotic or bordering on it” (MSch 57-59). Dr Das also stated that the appellant “might be predisposed to developing a psychotic episode in the future” (MSch 61).

52. The medical notes from September 2018 suggest an uneven presentation that fluctuates. However, they clearly also evidence over a prolonged period instances of depressed mood, insomnia, feelings of worthlessness or excessive or inappropriate guilt, diminished concentration and recurrent thoughts of suicide. We agree with Dr Das that the appellant has been unable to evidence over the same two-week period, the necessary criteria for severe depressive disorder and we accept his diagnosis that she suffers from a mild to moderately depressive disorder, albeit it seems to us that this is much more toward the moderate end of the spectrum. This is because of its lengthy duration, resistance to medication and therapy, and impact upon her daily life as corroborated by the fact she has been assessed as requiring supported accommodation. We also accept the evidence that there have at times been clear concerns regarding not eating and poor self-care and Dr Das’s evidence regarding this (MSch 69), albeit these were not observed when she was hospitalised.

53. We do not have the benefit of a contemporaneous full assessment of the May 2020 episode. We have carefully considered the evidence we do have, including the medical notes during the appellant’s time as an in-patient, and note the following, in particular:

- she was admitted at 1.46am on 3 May after neighbours alerted the police that she had been up for many nights singing and wailing loudly, and she called 111 saying she had killed her children;

- when police broke the door down in the early hours of 3 May she could be heard chanting, lighting candles in a ritualistic manner in a room with smeared faeces and blood on the walls and door; she was thought-disordered and appeared clearly psychotic; there was “clear evidence of self-neglect. Smearing faeces and blood around the room. Gone off food in fridge. Room bare.”

- shortly after her admission at 4.50am a medical trainee noted that: she reported that for three years she had been hearing the voices of her children but more recently (three days ago) she started to hear a voice instructing her to smear bodily fluids on the walls, which she could not ignore; she asked for help with probation in order to live with her family; there was a stark difference in her current presentation (which was not psychotic) and how she presented when assessed by street triage;

- On 4 May Dr Pilnar, a consultant, noted no evidence of psychotic behaviour (which continued for the entirety of her hospitalisation) and raised the possibility of “potential secondary gain? As per CMHT assessment she appeared keen to be given a diagnosis of psychosis”;

- On 5 May Dr Pilnar described her diagnosis as “unclear – likely grief reaction in the context of personal history/potential PTSD/Malingering?” and also described her presentation since admission as significantly different to that provided by the police;

- On 6 May it is noted that the appellant wrote a note to staff requesting help to call different agencies regarding her children and the courts;

- On 11 May Dr Pilnar noted that the appellant said she felt okay and thinks that she became overwhelmed by the Covid-19 lockdown and isolation.

54. We have carefully considered these medical notes in context and by reference to the other medical notes including the views of previous mental health assessments (including the March 2019 assessment referred to by Mr Thomann and a subsequent assessment in January 2020 which discharged the appellant back to her GP) and the evidence of Dr Chisholm and Dr Das. We consider it important that although malingering and 'secondary gain' were flagged as possibilities at an early stage in her hospital admission, there was no diagnosis of malingering by those who treated her at the time or at any other time. The 'secondary gain' requests were relatively isolated over the course of a 10-day stay. We do not accept that the appellant was malingering then or since. Her deterioration is broadly consistent with the overall chronology of her presentation as set out in the medical notes, when combined with the lockdown as a result of the pandemic. Although the appellant was discharged back to her GP in early February 2020 after being assessed as not requiring secondary mental health services, she was still continuing to complain that the anti- depressant medication was not working, her mood continued to be low, she continued to see and hear her children, and she felt everything was difficult and beyond her control. This is demonstrated by way of example within the medical notes for 22 January 2020 at pages 475-6 of the bundle. This assessment describes the appellant as not being psychotic but does not question the genuineness of her self-symptoms and presentation, which are said to be related to trauma.

55. In addition, after she was admitted, on several occasions the appellant stated that she "was not mentally ill" and that "she was back to her normal self". This sits uncomfortably with the respondent's submission that the appellant was 'putting on a performance'. In addition, the appellant's discharge into supported accommodation with a support worker indicates continuing concern. The appellant has also been assessed as needing additional support over and above her probation officer. She has been provided with a key worker at her accommodation as well as a support worker from a woman's centre. They provide her with weekly visits and practical support.

56. For the avoidance of doubt, we have considered the possibility of malingering, having undertaken a holistic assessment of all the evidence. This includes Dr Das's observation of a disconnect between the appellant's self-symptoms and presentation which he said appeared to be driven by deliberate behaviour, at least to a degree and her refusal to turn her camera on or engage fully when she was assessed by him in February 2021. We note that the appellant presented to Dr Das in a confused manner and crying profusely (MSch 18-20 and Dr Das's report at [50] and [56]). Although Dr Das considered that "some of her behaviour appeared to be a deliberate attempt to avoid questions on topics (such as her diagnosis, and her time in prison" (Dr Das's report at [57]), he did not diagnose malingering or label her confused presentation and crying as having been manufactured. Dr Das said in oral evidence that on balance the appellant was "more likely malingering". However, that statement is difficult to resolve with the absence of such a conclusion in his report, his clear evidence that the May 2020 incident seemed "far too extreme and intense to be fake"(MSch 208-216), his description of the appellant as "fairly unstable" at the time of the assessment and his agreement with Dr Chisholm that she is bordering on psychosis (MSch 57-69). By contrast, Dr Chisholm expressly considered malingering and gave cogent reasons for his conclusion that this appellant was not malingering (MSch 221-232).

57. Dr Das was adamant that the May 2020 incident that led to the appellant being sectioned in hospital could not be a brief psychotic episode because it subsided so suddenly upon admission, and without any clinical intervention. We note the possibility that the episode may have been ongoing for three days (as apparently reported by the neighbours) and was nearing the end when she was admitted. We also bear in mind that the appellant may have exaggerated at times. On balance, we

defer to Dr Das's expertise on and experience of brief psychotic disorders (MSch 17 and 73). We are not prepared to find that the appellant suffered one in May 2020, given how quickly it resolved itself within a matter of hours in hospital. We note that following extensive observation by those treating her in hospital she was found not to be presenting with any significant mental illness.

58. Mr Thomann submitted that the most simple and straightforward explanation for the appellant's behaviour was that she sought to paint a misleading picture of the severity of her symptoms to assist in her attempts to avoid deportation. We note that she requested a letter from the hospital upon discharge. Even when that is viewed together with her other requests, we do not accept that the appellant 'faked' the behaviour that led to her admission on 3 May 2020. There is no reason to doubt the independent account of those who witnessed the circumstances that led to her admission into hospital or the reports of neighbours. She was clearly presenting with very concerning behaviour weeks prior to her hospital admission – see her presentation to Dr Chisholm on 11 March 2020 (prior to the start of lockdown on 23 March). She was also assessed as needing a package of support upon discharge. In addition, Dr Das accepted that her symptoms fluctuated. The absence of symptoms of an acute mental illness such as psychosis in hospital does not mean that she was not suffering at other times or that her suffering could not be attributed to causes other than psychosis such as trauma and/or bereavement disorder and/or adjustment disorder and/or depression.

59. Having carefully conducted the sea of evidence before us, we are satisfied that the appellant's symptoms associated with her bereavement disorder and depression worsened significantly during lockdown, at a time when she had already been finding life after prison increasingly difficult to cope with. The support provided by her siblings inevitably decreased during this period of lockdown (23 March to May 2020) and the appellant became almost entirely isolated with her own disordered thoughts and low mood for company. We note that both medical experts accepted that the degree of support available from family and the community directly impacted the appellant's overall mental health (MSch 123-126). The absence of support contributed to her confused and disordered behaviour and this led to her hospital admission. On the evidence available, we accept Dr Das's opinion that this does not meet the definition of a brief psychotic episode. Nevertheless, the symptoms associated with her severe bereavement disorder and moderate depression worsened during lockdown when she became isolated and unsupported. She became very agitated and this manifested itself in confused and confusing behaviour in the days preceding her hospital admission. Dr Das explained that this behaviour would not have stopped so suddenly if psychotic in nature but nevertheless accepted that her symptoms fluctuated and the degree of support available directly impacted her mental health. We are satisfied that the sudden improvement in her presentation can be explained by the drastic change in her circumstances – she was removed from a blood and faeces-stained room with no support or company and little evidence of food to a contained hospital environment, where she was offered support, sleep, food and water.

60. We accept Dr Chisholm's diagnosis of bereavement disorder, which Dr Das also accepted (MSch 80-86). As Dr Chisholm explained, this overlaps in some respects with a PTSD diagnosis. Dr Das disregarded PTSD on the basis that the appellant did not experience flashbacks or avoidant behaviour, as this is not reflected within the medical notes for significant periods. Notwithstanding this, it is clear that shortly after her release from prison the appellant reported hallucinations involving the images and voices of her children. These were clearly communicated to Dr Chisholm over the course of three assessments between January 2019 and October 2020 and to the mental health community team assessors from 2019. Whether these are categorised as flashbacks or pseudo hallucinations, we accept that the appellant has consistently reported these images over a significant period and they

have had a negative impact upon her. We also accept that the appellant has demonstrated some avoidant behaviour and this worsened to the extent that she has been assessed to require assistance even when shopping. On balance, we accept the appellant has suffered and continues to suffer from a severe bereavement disorder. She has exhibited some symptoms of PTSD but her current mental health concerns predominantly relate to her severe bereavement disorder when combined with her moderate depressive disorder.

61. We accept that Dr Chisholm is well-placed to provide an overall description of the appellant's recent psychological presentation given the time that he has spent with her over an extended period and his particular fields of expertise. We were struck by his candid observation that "she is hanging by a thread now. At grave risk. It is unusual to be so concerned about a witness's well-being…" (MSch 131). However, we do not accept there is sufficient evidence in support of Dr Chisholm's assessment that the appellant is at high risk of suicide. We agree with Dr Das that the protective factors in her case are strong. These include religion, a wish to see her children in the future and past evidence of resilience in the face of suicidal ideation. We note that Dr Das has assessed suicide risk as low to medium but with the caveat that this is a complex exercise that must bear in mind the fluctuating and unpredictable nature of the appellant's symptoms and circumstances. Having considered all the evidence in the round, we are satisfied that the appellant's current suicide risk is moderate. Upon deportation, with the inevitable stressors and uncertainties associated with that, particularly in the light of the appellant's detention and ill-treatment in the past in Zimbabwe, that risk is likely to increase. We note that Dr Das highlighted that the appellant's mental state could suddenly change for the worse in the context of a major distressing event, such as deportation to Zimbabwe (MSch 132).

Sur place political activities

62. The respondent initially invited us to find that even on her own account the political role described by the appellant entailed a limited profile in 2002 because those interrogating her believed her when she stated that she was "not even a member of the MDC or an activist" and released her – see Q 44 of the asylum interview ('AI'). Mr Thomann also pointed out that the appellant's account to Dr Chisholm described protests involving women's employment rights rather than a political role. During the course of his closing oral submissions, Mr Thomann clarified that the respondent was not inviting us to 'unpick' the reasons for the grant of refugee status to the appellant and was content for our assessment of her account of political activities in Zimbabwe to be taken at their highest.

63. We accept the appellant was a MDC activist when she left Zimbabwe in 2002. When her responses at the AI are read together with her 2008 statement, it is clear that the appellant claimed that she had a significant MDC profile and for reasons relating to this she was seriously harmed and threatened whilst detained in Zimbabwe. Given the CG at the time, mere supporters or those with very limited political involvement were generally said to be at risk in exceptional cases. It follows that at the time, she was properly regarded as a political activist and treated as such by the respondent. This is consistent with Dr Chitiyo's evidence as to how a person engaged in activities on behalf of the MDC would be regarded.

64. It follows that the circumstances in Zimbabwe and the appellant's own claimed circumstances as at the time she was granted refugee status in 2008 are clear. She was a MDC activist who had been subject to ill-treatment in detention in Harare for reasons relating to her political opinion. We note that there was not then (and is not now) any suggestion that other S family members encountered any difficulty by reason of their political sympathies or activities. However, the absence of subsequent

family difficulties does not obviate the reasonable likelihood that by virtue of her known activities, she was regarded as an MDC activist.

65. We now turn to the appellant's political activities since she entered the UK in 2002. Having considered all the evidence holistically, including the letters in support of the appellant from the MDC and ZHRO, and despite having given the appellant the benefit of the doubt in the light of her vulnerability and inability to give oral evidence before us, we find that the evidence of her continued commitment to the MDC has been exaggerated. There was a lengthy period of political disinterest when she became a mother and during her imprisonment. Upon her release, we accept that she attended four ZHRO meetings, as evidenced by the minutes. We entirely reject the vague and generalised assertions in the letters of January 2019, written on behalf of the MDC-T, that within a few months of her release from prison on licence, the appellant could be described as a "dedicated activist" who attended meetings, demonstrations and fundraising events. These make no reference to the appellant's vulnerable mental health. Our findings on the appellant's mental health at this time simply mean that she was unable to play any meaningful political role or undertake political activities in the manner asserted. The appellant's claims to have participated in 'WhatsApp' group chats / video calls and to have received email updates from these organisations are unsupported by any supporting evidence, which would have been easy to screenshot and add to the bundle, if genuine.

66. We find that the appellant continues to support the MDC and ZHRO but no more than that. We do not accept that she has been an active or leading member of any political or civil organisation since being in the UK.

Family and social circumstances

67. We accept that the appellant has been dependent upon her brother (Mr S) and sister (Ms P) in the UK since leaving prison. We note that this has been consistently noted by Dr Chisholm (see by way of example MSch 103-105, 131) as well as within the medical notes over time. Just by way of example, it is her siblings who have helped her to collect her medication and travel to medical appointments. We note that during her telephone consultation on 16 February 2021 Ms P arrived to visit. She explained to the doctor that she visited once or twice a week, shops and makes meals / cleans for the appellant. The notes also refer to Ms P collecting the prescription of Olanzapine for her sister. We accept that the appellant's two siblings supplement the social care that she receives and she has become very dependent upon their support for her day-to-day functioning. This has been the consistent evidence provided to other healthcare professionals. Although the evidence provided by the appellant and Ms P has been troubling in other respects, we are prepared to accept this aspect of their evidence as it is amply corroborated by the medical evidence.

68. By contrast, the evidence as to the appellant's family remaining in Zimbabwe has been inconsistent and incredible. The appellant claimed that both her parents were dead when she made her asylum claim in 2008 but it is not asserted on behalf of the appellant that her mother died more recently. In her recent statement Ms P stated that their mother died in Zimbabwe in 2018. When Ms P was asked questions about her parents' occupation and circumstances including their respective deaths, she provided very vague responses.

69. The current position advanced on behalf of the appellant is to be contrasted with the following reference within the OASYS report (compiled by the appellant's probation officer) dated 10 May 2019: "her parents are still in Zimbabwe but she remains in monthly phone contact with them". The evidence is clearly discrepant. The discrepancy was pointed out for the first time by the respondent in a skeleton argument dated 19 April 2021, served shortly before the hearing before us. We have given

the appellant the benefit of the doubt because as explained by her solicitor in a statement dated 29 April 2021, she has been unable to give a further statement to explain this discrepancy.

70. We have considered all the evidence in the round and are satisfied that there are surprising elements to Ms P's claim that their mother died in 2018. There is no reference to the mother's death in Ms P's May 2019 or January 2021 statements. Although we accept this was not an issue that was highlighted by the respondent until shortly before the hearing before us, we nevertheless find it surprising that there is no hint of it until Ms P's April 2021 statement. The appellant did not refer to it when she saw Dr Chisholm over the course of a number of hours in January 2019, a time when her mother's death would have been relatively recent (albeit as Dr Chisholm indicated the appellant was fixated upon her children). She similarly made no reference to it in her June 2019 statement, even though she made reference to having no family in Zimbabwe and her family having moved to South Africa in January 2019. The appellant made no reference to it in her January 2021 statement, simply asserting that both parents had died. We bear in mind the appellant's vulnerability and her fixation upon her children. However, the death of a parent, even in another country and after a lengthy separation, is a significant matter. Yet, the mother's relatively recent death in 2018 has been entirely omitted in statements prepared by both Ms P (until very recently) and the appellant. Even then, Ms P omitted any description of the circumstances of the mother's death.

71. It follows that the evidence as to the current circumstances of the appellant's mother is inconsistent and unreliable. We do not accept that she died in 2018. We are also satisfied that the appellant has provided inconsistent accounts regarding her siblings in Zimbabwe. This makes the task of assessing the precise nature of the appellant's likely family circumstances in Zimbabwe difficult. This is particularly so in the context of Zimbabwe wherein it is well- known that many have left the country because of the political and economic challenges that have plagued the country for a lengthy period.

72. We have considered all the relevant evidence, including the country background evidence, and find that although we have been provided with unreliable evidence relating to the parents' and other siblings' in Zimbabwe, even if present there, they are unlikely to be in a position to provide any meaningful support to the appellant. On our findings the appellant's mental health, in particular her severe bereavement disorder, moderate depressive disorder and moderate suicide risk, are such that she requires comprehensive and dedicated support. She is unlikely to obtain this from family members in Zimbabwe for a variety of reasons considered cumulatively: she left Zimbabwe as far back as 2002 and her relationship with family members must have inevitably become more distant; in the context of Zimbabwe, she is likely to be considered a source of shame for reasons relating to the nature of her criminal conviction and mental health presentation (CSch 344, 346-348); the average Zimbabwean finds daily life extremely challenging even without the burden of caring for a family member (for e.g. CSch 249, 267).

73. Having made relevant findings of fact concerning the disputed factual issues, we now turn to the two overarching issues in dispute.

Issue 1 – cessation

74. We begin our assessment by reminding ourselves that in 2008 the respondent accepted the appellant's claim. As outlined above, the respondent is content for us to base our assessment of the appellant's political role in Zimbabwe prior to her departure in 2002, on her own account at the time of her asylum claim in 2008, taken at its highest. The appellant was a MDC activist who originated from a rural area and was subject to ill-treatment in detention in Harare for reasons relating to her

political opinion. She was granted refugee status in accordance with the extant CG as of February 2008. It follows that the circumstances in Zimbabwe and the appellant's own claimed circumstances as at the time she was granted refugee status are clear-cut. We can therefore swiftly move to the current circumstances in order to determine whether the circumstances in connection with which she was recognised as a refugee in 2008, have ceased to exist.

75. There have clearly been changes in the political situation and general country conditions in Zimbabwe since the appellant was granted refugee status in 2008. This has been traced by the subsequent CG cases, the most recent of which, CM, gave CG for the position as of January 2011 with the caveat that the position seemed unchanged as of October 2012. Unsurprisingly, the position in Zimbabwe has developed and changed since that time, particularly from 2018, after the overthrow of Robert Mugabe in November 2017. Those changes are set out in more detail in the CSch. We do not consider it helpful to add to the length of this decision by quoting references within the CSch but refer to the main changes in more detail below.

76. There have also been changes in the appellant's personal circumstances. Although she was a MDC political activist in Zimbabwe up until her departure in 2002, we have found that she has not engaged in any meaningful political activities for many years since then, beyond the attendance of ZHRO meetings in 2018-9, and can be described as no more than a low-level MDC supporter with a past history of MDC activism.

77. Mr Thomann submitted that both the current conditions in Zimbabwe as well as the appellant's current personal circumstances, have changed in substance and durably. We were taken to detailed country background and country expert evidence by both Mr Thomann and Ms Laughton. Mr Thomann sought to demonstrate the improvements in the country conditions whilst Ms Laughton highlighted evidence of deterioration. It is important to recall that this case has not been designated CG. We are therefore not determining risk categories by reference to the updated country background information on Zimbabwe. Whilst we bear in mind the various changes to the Zimbabwean political climate and general country conditions between 2008 and the present, we focus our enquiry on whether the political conditions together with the appellant's individual circumstances, which justified the grant of refugee status, have ceased to exist.

78. Paragraph 12.2 of the Practice Direction of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal of the Senior President of Tribunals dated 10 February 2010, provides that a CG case:

"shall be treated as an authoritative finding on the country guidance issue identified in the determination based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:-

(a) relates to the country guidance issue in question; and

(b) depends upon the same or similar evidence."

79. There must be "strong grounds supported by cogent evidence" to depart from extant CG – see SG (Iraq) v SSHD [2012] EWCA Civ 940, [2012] Imm AR 953 at [47]. If such grounds are not demonstrated the CG remains authoritative – see [67] of SG (Iraq). Mr Thomann made it clear that although the respondent considered the conditions in Zimbabwe had improved, he was not inviting us

to depart from the extant CG. Whilst he relied upon evidence to support his submission that there had been an overall improvement in conditions between 2008 and now, he accepted that CM and EM remained the applicable CG to apply on the issue of those at risk from the ZANU-PF state apparatus in Zimbabwe. It follows that the extant CG cases on Zimbabwe are, in accordance with the relevant Practice Direction, to be treated as authoritative findings on the respective CG issues identified therein. We therefore begin our analysis of the changes between 2008 and now by reference to the extant CG cases.

80. As pointed out above, CM re-stated the EM CG as follows:

“(1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.

(2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).

(3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.

(4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU- PF chief, or the like.

(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU- PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU- PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.

…

(7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well- founded fear of persecution in a major urban centre such as Harare will have a viable internal

relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.

(8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.

…

(11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU- PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN and remains valid."

81. Whilst we accept that the above CG was different from the CG that applied when the appellant was granted refugee status in material respects, it simply cannot be said from a comparison of the CG cases alone, that there has been significant and durable change regarding those at risk from the ZANU-PF state apparatus. Although the Tribunal in CM said at [211] that "it was in general not the case that significant problems would be faced by those without a significant MDC profile…", this was couched in 'general' terms – see headnote (1) above: "as a general matter". The remainder of the headnote described other risk categories targeted by ZANU-PF, who did not have a significant MDC profile. It is uncontroversial that the Zimbabwean state and its agents continued to target its political opponents and some of those perceived to be in opposition to it.

82. Mr Thomann therefore drew particular attention to the change in the appellant's personal circums tances to support his submission that circumstances had significantly changed. The difficulty with this submission is that whilst the appellant's political profile has substantially decreased, other key personal characteristics (given the context of the extant CG) have not changed: (a) her home area in Zimbabwe is in a rural area covered by headnote 2 of CM (set out in full above), and; (b) as a past MDC activist and low-level supporter she would be unable to demonstrate ZANU PF loyalty, if required to do so.

83. During his oral closing submissions Mr Thomann invited us to find that the appellant's home area in Zimbabwe should be regarded as Masvingo. He acknowledged that her home area had been treated as Harare in the respondent's decision dated 10 September 2018. He pointed out that this erroneously referred to the appellant as having been born in Harare when she only lived there for a limited period for educational purposes. We apply the CG in CM to the effect that the issue of the appellant's home in the context of Zimbabwe is to be decided as a matter of fact and not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. Masvingo is far more than this appellant's rural homeland. As Mr Thomann submitted, although the appellant lived in Harare for a few years prior to coming to the UK in 2002, she was born and brought up in Masvingo and spent the entirety of her formative years there. In addition, on our findings she probably retains some family and community links in Masvingo. We therefore accept the submission on behalf of the respondent that the appellant's home area in Zimbabwe is Masvingo. This is a rural area in the Eastern provinces . We invited Mr Thomann to explain how it could be said that the appellant would not be at real risk in Masvingo as a person without ZANU- PF connections (and who, as a past MDC activist and current low level MDC supporter, would be unable to demonstrate loyalty to ZANU-PF if asked), returning from the UK after a significant absence, to a rural area of

Zimbabwe, other than Matabeleland North or Matabeleland South. Mr Thomann submitted that CM only states that such an individual may be at risk but this appellant would not be at risk because she would have family support. We have no hesitation in rejecting that submission.

84. First, it is clear that the CG found that a person with the appellant's undisputed attributes would be at real risk in certain rural areas, including Masvingo. Whilst we note that the respondent's closing written submissions (at [66]) drew attention to the statistical increase of violence in Harare in contrast to Masvingo, Mr Thomann did not invite us to depart from the extant CG at headnote (2) of C M.

85. Second, we were given no cogent reasons why this particular appellant would fall outside of the relevant risk category. For example, we were not taken to any evidence demonstrating that in her home village, ZANU-PF power structures or other means of coercion are weak or absent – see headnote (3) of CM. Although there is an absence of any evidence that the appellant's family members encountered adverse attention in Masvingo, they would be in a different position because they would not have returned after a significant absence.

86. Third, it is difficult to see how supportive family members could obviate the real risk of ill-treatment, particularly in this case where the appellant's behaviour is unpredictable. In this respect we also have had regard to SSHD (Minimum standards for granting refugee status or subsidiary protection status - Criteria for assessment - Judgment) [2021] EUECJ C-255/19 (20 January 2021) in which it was concluded that social and financial support provided by family members, falls short of what is required under the relevant provisions to constitute effective protection against persecution.

87. In the light of the clear evidence that the appellant's personal attributes are such that she continues to be at real risk when the extant CG is applied, we conclude that the respondent has not displaced the burden upon her to establish a durable change of circumstances, such that the Appellant's risk of persecution has been permanently eradicated or has ceased to exist. In addition, for the reasons we have explained above we do not consider that the appellant's family members in Masvingo would be able or willing to support her in the manner that she needs. However, we would have reached the same conclusion even if there are family members in a position to assist the appellant for the reasons we have already provided above.

88. We have already acknowledged there have been changes to the general political and humanitarian landscape in Zimbabwe, as well as for those at risk for reasons relating to their political or lack of political involvement or perceived associations. Mr Thomann placed considerable emphasis on these changes to support his contention that there had been an overall improvement. However, notwithstanding the evidence of improvements in certain respects and deterioration in others, there is no reason to depart from the extant CG, as Mr Thomann acknowledged. Having applied the CG we are satisfied that the country conditions and the appellant's limited personal circumstances are such that it cannot be said that the relevant circumstances that gave rise to her refugee status have ceased to exist. However for completeness and in the light of the detailed arguments we heard on the matter, we set out our findings on the nature and extent of the changes below.

89. First, although the overall situation improved slightly after CM, the level and intensity of human rights violations have increased in more recent years. The respondent's own expert, Dr Chitiyo, agreed with this analysis (CSch 27-28). That position is consistent with the wealth of evidence contained within the country reports (CSch 73 (Human Rights Watch), 79 (Voice of America News), 80 (Zimbabwe Human Rights NGO Forum), 103-104 (Australia DFAT)).

90. We have noted the trend of reducing human rights violations in the statistics from ACLED and the Zimbabwean Peace Project ('ZPP') Monitoring Reports. These statistics must be viewed with a degree of caution and provide only a partial picture. For example, Masvingo recorded not a single MDC-associated arrest for the period 2010-2020, yet there is also evidence that the vast majority declined to provide their political affiliation. As Ms Laughton pointed out in her closing submissions, the omissions in the data and the nuances that lie beyond the numbers are such that limited weight can be attached to the statistics, particularly given the consistent view of respected sources (referred to above) that conditions have deteriorated in recent years. We accept the summary of the fuller picture, as described by both country experts: there has been a contraction of the democratic space following the 2018 elections including the deliberate targeting of journalists, human rights defenders, civil activists as well as opposition party activists.

91. Second, we accept there has been a recent increased emphasis on the part of the Zimbabwean state on quelling protests / protestors and enforcing lockdown. That does not mean that the MDC-T and MDC-A (the MDC has divided into two separate parties) are not viewed adversely and activists are not targeted. Dr Chitiyo agreed that MDC activists remain under threat (CSch 12, 20, 23) and this is likely to worsen in the run up to the elections (CSch 13, 141-142, 145, 148- 150, 172). Indeed, Mr Thomann accepted that a key theme is that activists are arrested during and after protests and the government has linked the protestors to the opposition. In addition, the government manipulated food aid along partisan party lines (CSch 173, 179-181). We note Dr Chitiyo's assessment that the violence is both targeted and random (CSch 150) and the actions of the state apparatus remain arbitrary, unpredictable and fluid (CSch 25-26, 222-224), such that there remains a risk to civil society activists as well as opposition activists (particularly women and the younger generation).

92. Third, reports of informal militias featuring in the 2005-2008 period, are not reflected in the evidence for 2021, which instead focuses upon violations on the part of the army and police. This does not signal any overall improvement – human rights violations have merely shifted from being mostly state- sanctioned to being mostly perpetrated by the state itself.

93. Finally, we note from [51] of SM that UK returnees were likely to be regarded with contempt and the atmosphere of hostility required any uncertainty to be resolved in the asylum seeker's favour. We accept there may be a decrease in the intensity of the anti-British sentiment, but such past concerns were in any event insufficient on their own to give rise to a real risk for failed asylum seekers. We do not accept Dr Cameron's evidence that failed asylum seekers are at real risk upon arrival. The sources to which she referred date back to 2002 and there was no meaningful attempt beyond conjecture to engage with the intervening CG. We attach little weight to her evidence that she was aware anecdotally of people who had been interrogated and beaten at the airport but had not yet published this material, just as we attach little weight to Dr Chitiyo's evidence to the opposite effect – he knew of individuals who were not arrested at the airport. Although MS (Zimbabwe) v SSHD [2021] EWCA Civ 941 turns on its own facts and we heard extensive oral evidence from both country experts, we share the concerns identified by the Court of Appeal regarding Dr Cameron's evidence.

94. For completeness we have taken the additional step of cross-checking whether any of the changes in the country conditions cause us to review the conclusion we have reached on cessation after applying the extant CG. Having done so, we are satisfied that we would have reached the same conclusion. There has been a deterioration in certain key areas and a shift in the actors of persecution and those targeted. There remains a climate of overarching suspicion against those who oppose the government and its policies. A new election cycle is imminent and the impact of the Covid-19 pandemic remains uncertain. We do not accept the submission on behalf of the respondent that both

Harare and Masvingo have changed significantly and durably since the appellant's departure. The undisputed evidence suggests that there has been a deterioration in Harare and the extant CG indicates that even without a significant opposition profile, some remain at real risk in Masvingo. It therefore follows that at this juncture, the proper application of the extant CG and the current country conditions to the appellant's current circumstances, as we have found them to be, leads inexorably to the conclusion that the situation in Zimbabwe concerning those at risk from ZANU PF cannot be said to have durably changed, in so far as they relate to this particular appellant, such that risk has ceased to exist or been permanently eradicated.

95. We again emphasise that this is not a CG case, and the respondent did not invite us to depart from the extant CG. Ms Laughton suggested as an alternative submission that we could depart from the CG cases if we were against her on her primary argument that the changes are not durable for this particular appellant and she remains at risk. As we have accepted Ms Laughton's primary submission, we need not deal with her alternative submission.

96. Both parties acknowledged that if the cessation clause does not apply to the appellant, as we have found, Article 33(2) of the Refugee Convention applies in any event. This means that the appellant does not benefit from the non- refoulement provision, and can be deported. It therefore remains necessary to comprehensively assess the appellant's claim that she should not be deported because to do so would subject her to treatment contrary to Article 3 of the ECHR, to which we now turn.

Issue 2 – Article 3

97. Ms Laughton made alternative submissions as to why we should find that there are substantial grounds for believing that the appellant would face treatment in breach of Article 3 upon return. We deal with each in turn, together with Mr Thomann's submissions by way of response.

Risk at airport

98. We begin by considering prospective risk at Harare airport. The CG on this issue has been helpfully summarised by the Court of Appeal in MM (Zimbabwe) (supra) at [30-31]. In short, CM considered up to date evidence on the issue but confirmed the CG in HS, which in turn had adopted and re- affirmed findings made in the earlier cases of SM and Others (MDC – Internal flight – risk categories) Zimbabwe CG [2005] UKAIT 100 and AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 61. At [43] of SM the Tribunal rejected a submission that every former member of the MDC faces a real risk of ill-treatment on return, saying instead that "each case must depend upon its own circumstances" in order to see whether the background and profile of an individual makes it reasonably likely that she would be of interest to the authorities. We note that this fact-sensitive approach is broadly consistent with Dr Chitiyo's evidence. Mr Thomann did not invite us to depart from the extant CG in relation to the risk at Harare airport. Rather, he submitted that given the passage of time since the appellant's departure from Zimbabwe and her current political disinterest, the appellant would face no risk of further interrogation by the Zimbabwean CIO at the airport. Ms Laughton invited us to find that the application of the CG should result in a finding that this appellant is at real risk at the airport. It was only if we were against her on this issue, that she relied upon Dr Cameron's evidence to depart from the CG.

99. On questioning at the airport, the appellant would have to disclose that she had been granted refugee status on the basis of her MDC involvement (i.e. that she was a genuine political refugee and not merely an economic migrant or failed asylum seeker) and that she was deported because she was

convicted of a serious criminal offence. That history would immediately distinguish her from those who are merely failed asylum seekers.

100. Dr Chitiyo's evidence on the appellant's risk at the airport was more nuanced than that of Dr Cameron, and in our view more considered. He explained that the appellant would probably not be a priority because the Zimbabwean intelligence services focussed on those they considered to be 'active threats'. We accept Dr Chitiyo's evidence that an absence of continued MDC activism means that "the risk would not be as high as if she had continued to be an activist for the last 20 years" (CSch 38). However, Dr Chitiyo could not say there would be no risk and went on to describe possible risks given the fluidity and unpredictability of the actions of the CIO. We accept his evidence that the level of risk would be higher if there was any publicity or if the appellant exhibited any unusual behaviour due to mental stress (CSch 40, 217-218). Dr Chitiyo's final conclusion on whether the appellant would be at risk on return was candid and reflected the uncertainty in the appellant's presentation upon arrival in Zimbabwe and the unpredictable working of the Zimbabwean state apparatus. He said this: "…there may be a risk, but not a certain risk – somewhere in between the two. Maybe a certain risk that she would be harassed. I don't know. I don't know…it is a fluid situation, impossible to know for sure. She could arrive and sail through or could be taken aside and interrogated"(CSch 222-223).

101. We have found that the appellant suffers from a severe bereavement disorder, moderate depression and is at moderate risk of suicide. This has caused and continues to cause unpredictable behaviour in the UK. This led to her being sectioned in May 2020 and then an assessment that she requires (ongoing) social care support for day-to-day living. Her symptoms have not improved and have been assessed as having deteriorated, hence she was prescribed Olanzapine in February 2021. The stressors involved in the removal process and the absence of her support structure during that process are likely to exacerbate her symptoms. There is therefore an unusual dimension to this case: the appellant's unpredictable mental illness as we have found it to be will inevitably be exacerbated by the undisputed stress of removal from the UK (where her children reside even though she has no contact with them) and arrival in Zimbabwe (where she fled because of ill-treatment during detention). The deterioration of the appellant's mental health and in combination with her undisputed history are reasonably likely to be viewed with suspicion by the CIO. There are substantial grounds for believing that this may result in her acting unpredictably and in a manner likely to draw further adverse attention. This taken together with her accepted history is such that there is a real risk that she will be taken for further interrogation and subjected to ill-treatment contrary to Article 3.

Risk in home area

102. Even if we are wrong about the level of risk for this appellant at Harare airport, we have been offered no cogent reason why headnote (2) of CM does not currently apply to this appellant when she returns to her home area in Masvingo, in rural Zimbabwe.

103. It is therefore unnecessary to address the appellant's risk in Harare but we do so for completeness.

Risk in deterioration in mental health in Harare

104. It is undisputed that there has been a significant increase in violence in the high- density areas of Harare and Dr Chitiyo drew particular attention to this (CSch 28, 31-2, 119). The appellant will be unable to live in anything other than a high- density area as she would be unable to afford to do so. We note that when the appellant lived in Harare before her departure for the UK, she lived in a high-density area. In addition, there is extensive evidence that most Zimbabweans, particularly those in

high-density areas, face pressing and significant economic and food security challenges, albeit according to Dr Chitiyo there may be some cause for optimism given that farmers have reported a good season. However, there remains cogent evidence of widespread hardship and price inflation in Harare. As Dr Chitiyo also acknowledged (CSch 21 and [86] of his report), the appellant is likely to be a 'soft target' for criminal violence for a combination of reasons. These matters provide relevant background and context but taken on their own are insufficient to meet the high threshold required by Article 3.

105. When assessing whether there are substantial grounds for believing that the appellant faces a real risk of treatment contrary to Article 3 in Harare, it is important to consider all of the appellant's characteristics and circumstances cumulatively. This is not a case in which political profile, likely mental health deterioration in Zimbabwe and the general prevailing circumstances in Zimbabwe can be compartmentalised.

106. We entirely accept the respondent's submission that the appellant's political profile as a past MDC activist and current low level MDC supporter is such that she is not at real risk in Harare for this reason alone. That is clear from the extant CG – this appellant no longer has a significant MDC profile. Her activism dates back to over 19 years ago and has been followed by a lengthy period of relative political disinterest with more recent but limited support for ZHRO and the MDC. However, once in Zimbabwe, her past mistreatment for reasons relating to her political opinion and long-standing opposition sympathies are likely to significantly add to the anxiety, low mood and paranoia she already experiences in the UK.

107. We are satisfied that the appellant will also find it very difficult to adjust to Zimbabwe after a 19-year absence and without a family or social support system to assist her in Harare. She finds it very difficult to leave her house in the UK notwithstanding the family, social care and mental health support systems in place. She would therefore only have remote support from her family members, which in her particular circumstances would be entirely inadequate to enable her to access day to day and basic support. Since her release from prison, the appellant has been consistently supported by family and statutory agencies. This support is a pivotal aspect of the 'treatment' she has been receiving in the UK. Even if she is given the funds to access social care or medical treatment in Zimbabwe it is unrealistic that she would be able to access this in practice, without support. Dr Das explained that a key factor when assessing the risk of deterioration would be the support from family and the community.

108. The appellant is likely to find it extremely difficult to leave her accommodation in Harare. Accessing basic amenities such as food and water is challenging for those without mental illness and who have lived in Harare for lengthy periods. Employment in Zimbabwe is entirely implausible for this appellant, given her mental health. She will have access to some remittances from her brother and sister in the UK but these are likely to be limited given their own family commitments. She is most unlikely to be able to access any social care or mental health treatment, given the very poor state of those facilities. This is explained in more detail in Dr Chitiyo's report at [19] to [27].

109. It is against this background that we conclude there is a real risk of a serious, rapid and irreversible decline in her health resulting in intense suffering. In our view the appellant will experience a sudden change in her daily life that she is entirely unable to deal with alone. It is likely that the symptoms associated with her depression and bereavement disorder will worsen and intensify within a short period of her arrival in Harare to the extent that it will break her mental and physical resolve. Her low mood, anxiety and paranoia are likely to significantly worsen given her past ill-

treatment in Harare and the absence of any meaningful support. Her irrational thoughts / pseudo hallucinations regarding her children are likely to increase in intensity. Her suicide ideation is likely to significantly increase and her current moderate suicide risk is likely to become more severe. She will not have any support to assist her to manage this significant worsening of her mental health.

110. Remittances might be able to fund basic accommodation and food but she will be entirely unable to negotiate the daily challenges of accessing day to day basic amenities without support, such that within a short space of time she is likely to deteriorate to such an extent that she will experience intense suffering and degrading treatment in breach of the high threshold required by Article 3. We highlight that the immediate deterioration in the appellant's mental health is unlikely to be because of a withdrawal of medication. We anticipate that the appellant will be provided with at least a three-month supply of her medication. However, her medical notes demonstrate that medication has not been able to assist her when faced with significant changes and challenges.

111. We are therefore satisfied that the appellant has displaced the burden of establishing that the high threshold required for there to be a breach of Article 3 has been met at the point of return at Harare airport, alternatively in her home area of Masvingo and further in the alternative in Harare.

Decision

112. We dismiss the appeal under s.84(3)(a) of the 2002 Act but determine that the appellant has succeeded in establishing that the decision to revoke her protection status is contrary to the Refugee Convention. As such she remains a Convention Refugee.

113. We allow the appeal under s. 84(2) of the 2002 Act because the appellant's deportation would constitute a breach of Article 3, ECHR.

Signed: UTJ Melanie Plimmer

Upper Tribunal Judge Plimmer

Dated: 8 September 2021

APPENDIX 1

Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: RP/00142/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 12 December 2019	
	.....

Before

UPPER TRIBUNAL JUDGE COKER

UPPER TRIBUNAL JUDGE PLIMMER

Between

PS

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Ms Short, Counsel

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant.

Introduction

1. In a decision sent on 15 August 2019, the First-tier Tribunal ('FTT') (Judges Martin and McClure) dismissed the Appellant's appeal on asylum and human rights grounds.

2. This decision refers to the circumstances of the Appellant's minor children, and for this reason, we have made an anonymity direction. We also note that the FTT proceeded on the basis that the Appellant is a vulnerable witness and we also do so.

Background

3. The Appellant is a citizen of Zimbabwe. She entered the United Kingdom ('UK') in 2002 as a visitor and extended her leave as a student to October 2007. In January 2008 she claimed asylum and was recognised as a refugee and granted indefinite leave to remain on 13 February 2008. She married a Zimbabwean citizen and they had four children together.

4. On 9 November 2015 the Appellant and her husband were convicted of manslaughter by gross negligence of their then youngest child who was under a year old ('A'). They pleaded guilty on the first day of the trial. The next day the Appellant was sentenced to eight years imprisonment and her husband was sentenced to nine and a half years. In his sentencing comments, the judge noted that A's condition had been deteriorating in visible ways over a period of months, and that malnutrition had reached a crucial level two to three months before her death. A's condition would have been obvious

to both parents in the weeks before she died. The cause of death was recorded as severe malnourishment and bronchopneumonia attributable to a failure to thrive and not to any natural condition. The judge noted that the Appellant and her husband were influenced by their church not to obtain medical assistance and the Appellant was vulnerable to the influence of her husband, a pastor in the church. The judge made allowance for the Appellant's isolation and vulnerability but concluded that her responsibility remained high.

5. On 10 September 2018 the Respondent issued a decision refusing the Appellant's protection and human rights claim, having earlier revoked her refugee status on 22 March 2018, having concluded that there was a significant and enduring change in Zimbabwe in relation to the Appellant's particular circumstances. The Respondent made a deportation order and set out in his letter dated 10 September 2018 why he was satisfied that the Appellant had been convicted of a particularly serious crime and was a danger to the community of the UK pursuant to s.72(2) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act") and Article 33(2) of the Refugee Convention. The Respondent also rejected the Appellant's claim that it would be a breach of her human rights to be deported to Zimbabwe.

FTT proceedings

6. The Appellant did not give any meaningful oral evidence before the FTT because she became distressed and the hearing proceeded on the basis of submissions only. The FTT concluded that:

(i) for the purposes of s.72 of the 2002 Act, the Appellant "constitutes a danger to the community" (it was not in dispute that the Appellant had been convicted of a "particularly serious crime");

(ii) the cessation provisions applied to her because there had been a durable and significant change in the circumstances relevant to her asylum claim;

(iii) for the same reason, her deportation would not breach Articles 2 and 3, ECHR;

(iv) her deportation would not breach Article 8, ECHR.

7. In succinct grounds of appeal drafted by Counsel other than Ms Short, the Appellant sought permission to appeal to the Upper Tribunal. These grounds are fourfold:

(1) The FTT gave inadequate reasons for its conclusion that the Appellant posed a danger to the community for the purposes of s.72.

(2) The application of s.72 is unlawful because it is inconsistent with Article 33 of the Refugee Convention.

(3) In concluding that the appellant's situation had undergone durable and significant change, the FTT ignored or gave no reasons for rejecting the country expert evidence contained in a report prepared by Dr Cameron.

(4) The FTT failed to have regard to Dr Cameron's evidence in relation to the conditions for the Appellant in Zimbabwe in the light of her mental health.

8. Permission to appeal was granted by Judge Phillips in a decision dated 1 October 2019, who observed, inter alia, that the FTT did not adequately engage with the country expert evidence.

Hearing

9. At the beginning of the hearing Mr Jarvis indicated that he had not received Ms Short's detailed skeleton argument until the morning of the hearing. We gave him time to consider this. Having done so, Mr Jarvis clarified the Respondent's position as follows: the FTT made a material error of law as articulated in ground 3 and the FTT's decision should be set aside. Mr Jarvis made it clear that the SSHD maintained that the findings on s.72 were open to the FTT, and ground 1 was not made out. Mr Jarvis therefore submitted that the decision should be remade by the Upper Tribunal ('UT') but the issues in dispute should be limited to cessation and Article 3.

10. Ms Short indicated an intention to pursue ground 1 but fully accepted that if this was not made out, the only outstanding issues would be those identified by Mr Jarvis: cessation and Article 3. Ms Short clarified that she did not wish to pursue ground 2, any argument based upon Article 8 or an application contained in her skeleton argument to rely upon an additional ground not previously pleaded – ground 5. Both representatives therefore agreed that the decision would be remade in relation to cessation and Article 3 and the only outstanding ground of appeal in dispute is ground 1.

11. We then heard from Ms Short on ground 1 but did not need to trouble Mr Jarvis. We indicated that ground 1 was not made out and our reasons for this would follow in a written decision, which we now provide. The representatives agreed directions and the matters to be determined at the resumed hearing, which we set out later in this decision.

Error of law discussion

S.72

12. Having heard from Ms Short and considered her comprehensive skeleton argument, we are satisfied that the FTT's conclusion that this Appellant continues to be a danger to the community is adequately reasoned. The FTT cited the high risk to children assessment in the OASYS, as pointing clearly in this direction, and this formed the foundation of its conclusion. The FTT was plainly entitled to adopt this approach. The detailed skeleton argument fails to clearly acknowledge that the Appellant's wide- ranging and onerous licence conditions lend significant support to the risk of recurrence of a very serious offence against a child. There is no need to repeat these licence conditions here because Ms Short entirely accepted that they are very onerous and controlling of the Appellant's movements and relationships. Ms Short sought to emphasise two points: (i) the Appellant was complying with these conditions and this substantially reduced her dangerousness; (ii) the FTT was obliged to consider other factors said to reduce dangerousness.

13. In EN (Serbia) v SSHD [2009] EWCA Civ 630, Stanley Burnton LJ (with whom Laws LJ and Hooper LJ agreed) emphasised at [46] that no gloss should be attached to the clear wording "danger to the community". He said:

"So far as "danger to the community" is concerned, the danger must be real, but if a person is convicted of a particularly serious crime, and there is a real risk of its repetition, he is likely to constitute a danger to the community."

14. Stanley Burnton LJ then said at [46]: " I would accept that normally the danger is demonstrated by proof of the particularly serious offence and the risk of its recurrence, or of the recurrence of a similar offence. "

15. The detailed submissions and references to lengthy extracts from the evidence before the FTT in the skeleton argument do not properly identify an error of law in the FTT's conclusion that the appellant remains a danger to the community, but rather seek to re-argue this point. It is significant

that the FTT firmly based its conclusion on this issue on the risk assessment and the nature and extent of the licence conditions – see [31] of the FTT's decision. The FTT clearly considered the danger posed by the Appellant to be "real". Although the FTT did not refer to EN (Serbia) it applied the guidance contained within it: this Appellant was convicted of a particularly serious crime; and according to probation there is a real risk of its repetition; as such she is likely and in this case is (as recognised by the licence conditions) to constitute a danger to the community. The FTT was entitled to conclude that the Appellant remained a danger to the community, notwithstanding her positive relationship with probation, otherwise the licence conditions would not be in place. The Appellant's compliance with her licence conditions did not obviate the assessment that she presents a high risk to children and is dangerous to the community. The Appellant's compliance means that this risk is being managed in the community, it does not without more mean that the assessed level of risk has reduced.

16. Ms Short also sought to argue that the Appellant is not a danger to the community because any risk was assessed not to be imminent. There is no requirement for risk to be imminent in order for the individual to be dangerous. In any event, the probation's assessment that risk if not imminent is predicated upon the strict licence conditions in place.

17. Although the Appellant's risk has been managed in the community, the probation service clearly regard the Appellant as continuing to be dangerous. This is directly addressed within the OASYS at 10.3: the Appellant is said to still be vulnerable to manipulation by her husband and negatives influences within the church; she continues to demonstrate poor problem recognition skills and has significantly minimised the abuse her children suffered; there is a real possibility she will seek to have another child. The suggestion in the skeleton argument that the FTT ignored much of the 51-page OASYS report is not justified. Indeed, the matters cited in the skeleton argument relevant to the OASYS report are consistent with the FTT's observation that the probation service continued to hold serious concerns, should the Appellant have another child – see in particular 10.3 of the OASYS and [28] of the FTT's decision.

18. The FTT then went on to find at [32] that it was " fortified " in the finding that the Appellant constitutes a danger to the community, because " although she appears to acknowledge some responsibility for her daughter's death she does not appear to accept that she was at fault throughout the young child's life and appears to shift the blame to others… ". It is in this context that the FTT regarded the Appellant's remorse to be limited. The FTT recognised that the evidence was nuanced and did not all point in one way, but was entitled to evaluate all the evidence, before concluding that whilst the Appellant demonstrated some remorse and responsibility, it remained limited. This is consistent with the assessment in the OASYS report. The Appellant's 'blame shifting' was not, as submitted in the skeleton argument, 'fatal' to the Appellant's position. It merely fortified the FTT's assessment of dangerousness, amongst other matters. The FTT was entitled to note that the Appellant did not seek medical attention for her child for the three months that her husband was away. The skeleton argument cites the Appellant's absence of any meaningful contact with anyone outside the church group, but that entirely fails to explain why the Appellant did not make a telephone call to seek medical assistance, when the situation for the child became so desperately serious. Ms Short sought to explain in oral submissions that she was punished by the church for involving statutory agencies, when she complained to the police about domestic abuse, but that does not excuse or properly explain why, as the FTT found, the Appellant did nothing when her baby was so severely malnourished.

19. It cannot be said that the FTT left out of account relevant material and we are satisfied that all material was considered (even if not referred to specifically) in the round when the FTT made its

findings on the issues of ‘blame shifting’, remorse and coercive control, and ultimately the Appellant’s danger to the community. Whilst it would have been more helpful for the FTT to have referred to Dr Chisholm’s report at an earlier stage of its decision i.e., when addressing whether the Appellant is a danger to the community, the FTT clearly carefully considered this report later on in the decision at [48] to [54], when addressing Article 8. We do not accept that the panel did not have the report fully in mind when making its findings on whether the Appellant remains dangerous. In addition, contrary to the submission in the skeleton argument, the FTT was well aware that a guilty plea was entered on the day of the trial – see [11] of the FTT’s decision.

20. We are therefore satisfied that ground 1 has not been made out. This means that Article 33(2) applies and the Appellant does not benefit from the non-refoulement provision, and can therefore be deported. Both representatives agreed that the Refugee Convention cessation issue nonetheless remained a live one to be assessed at a resumed hearing.

Cessation

21. In our view Mr Jarvis was entirely correct to concede that the FTT failed to give adequate reasons for their conclusion at [42] “ that for this appellant the situation has undergone a durable and significant change ” [42]. The FTT noted at [40] that Dr Cameron’s report made it clear that the situation in Zimbabwe had not undergone significant and durable change and in fact had deteriorated since the most recent country guidance decision on Zimbabwe – CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC). It was incumbent upon the FTT to address these conclusions, particular since there was said to be some support for them in the SSHD’s own CPIN and on the part of the UNHCR. The FTT did not confront Dr Cameron’s evidence or the UNHCR’s views but said this at [42]:

“Whilst not wishing in any way to criticise the expertise of the expert in this case, we nevertheless find that for this particular appellant the situation has undergone a durable and significant change. She is not and has never been a person with a significant profile in the MDC. She left many years ago and has not carried out any activities for the MDC since that time. She would therefore simply be a person returning to Zimbabwe after spending a considerable amount of time in the UK. There is no reason to find, even bearing in mind the low standard, that she would be at risk of ill-treatment on account of low- grade political activities last undertaken 16 years ago.”

22. The FTT appears to accept Dr Cameron’s expertise but does not address or engage with the current circumstances in Zimbabwe. The FTT has instead focused upon the lack of a significant MDC profile and an absence of political activities in the UK for the last 16 years. This fails to address Dr Cameron’s point at [87] of the report that the Appellant is at risk of persecution if she is identified as merely an individual who was granted asylum in the UK based on her past MDC activities. The FTT’s conclusion that there is “ no reason to find ” that the Appellant is at current risk of persecution fails to take into account reasons cited by Dr Cameron and the UNHCR in support of the Appellant’s claim. We also note that the FTT’s observation that the Appellant has not carried out political activities for a lengthy period fails to take into account the Appellant’s witness statement dated 5 June 2019, which asserts that she continued to attend MDC meetings before her imprisonment (albeit this is difficult to reconcile with the Appellant’s claim that she had so little contact with anyone outside the church) and has resumed active support for the MDC after her release.

23. We are satisfied that the error of law identified in ground 3 is sufficient to set the FTT’s decision aside and there is no need to decide ground 4, which in any event is rather vaguely worded.

Disposal

24. We have had regard to para 7.2 of the relevant Senior President's Practice Statement and the nature and extent of the factual findings required in remaking the decision, and have decided, with the agreement of the parties, that this is an appropriate case to adjourn in order for the decision to be re-made in the UT. Limited oral evidence will be provided given the Appellant's identified vulnerability.

Issues to be determined at the resumed hearing

25. The decision will be remade in relation to two key issues – cessation and Article 3. In relation to these, it would be helpful if the representatives could seek to agree the relevant legal framework. We do not understand it to be disputed that the burden remains on the SSHD but the word "circumstances" in Article 1C(5) requires a wide and embraces circumstances which include (a) the general political conditions in the individual's home country and (b) relevant aspect of his personal characteristics – see SSHD v JS (Uganda) [2019] EWCA Civ 1670 at [155-164] and SSHD v KN (DRC) [2019] EWCA Civ 1665 at [36]. It is also to be noted that the interplay between cessation and Article 3 was considered by Sales LJ in SSHD v MM (Zimbabwe) [2017] EWCA Civ 797 at [34-38].

26. The representatives should also clearly identify the exact decision under appeal by reference to the framework for appeals in the 2002 Act with a view to addressing the correct approach where, as here the s.72 presumption has been found to apply, in the light of Essa (Revocation of protection status appeals) [2018] UKUT 244 (IAC), and any other relevant authorities.

Decision

27. The decision of the FTT contains an error of law and is set aside.

28. The decision shall be remade by a panel of the UT.

Directions

(1) The appellant shall file and serve a consolidated indexed and paginated bundle before Tuesday 28 January 2020, with a skeleton argument cross-referencing to pages in the bundle before Tuesday 4 February 2020.

(2) The respondent shall file and serve a skeleton argument and any further evidence in response before 25 February 2020.

(3) The hearing shall be listed on the first available date after 1 March 2020. TE. 3hrs.

Signed: UTJ Plimmer

Ms M. Plimmer

Judge of the Upper Tribunal

Date: **16 December 2019**