

ATG-v- The Secretary of State for the Home Department

Case Ref No : P566/20

Date of Hearing: 11 January 2022

Division: Extra

Agents for the petitioner: Katani & Co

Agents for the respondent: Office of the Advocate General

Case Description

The petitioner seeks Judicial Review of a decision by the Upper Tribunal (Immigration and Asylum Chamber) to refuse to grant him permission to appeal. By interlocutor dated 19 February 2021, the Lord Ordinary, following an oral hearing, refused permission for the petition to proceed. The petitioner reclaims.

The Petitioner is a citizen of Zimbabwe. He arrived in the UK on a visa valid for 2 years. He claimed asylum in January 2009 on the basis that he had a material tribal affiliation with the Ndebele tribe; that he would have a political opinion imputed to him and such affiliation would result in him facing persecution. His application was refused and his appeal was refused in 2011. He made further submissions in October 2018. His claim was, however, refused on the basis that he had not established that there was a real risk that he would be persecuted in Zimbabwe. He applied for leave to appeal, first to the First-tier Tribunal and then to the Upper Tribunal. It is the latter decision which forms the subject of the petition. Prior to the oral hearing, the Lord Ordinary indicated, by interlocutor dated 9 February 2021, that he was minded to refuse permission on the following bases:

- The Upper Tribunal was entitled to approach the matter as it did. It did not disclose any error in fact or law. Similarly, the First-tier Tribunal applied the correct tests, took properly into account all material and relevant considerations and provided adequate, cogent and comprehensive reasons. The conclusions which it reached were ones which were reasonably open to it.
- It followed that the assertions that the decision was flawed by error of law were unfounded; the petition had no real prospects of success and it disclosed no important point of principle or practice, or some other compelling reason for the exercise of the court's supervisory jurisdiction.

Having subsequently considered oral arguments, the Lord Ordinary was not persuaded that the relevant test in terms of 27B of the Court of Session Act 1988 was met, and refused permission to proceed.

The petitioner challenges the decision on the following grounds:

1. The Lord Ordinary erred in holding that there was not a real prospect of success and further, that the second appeals test was not met.
2. The Petitioner faces a risk of persecution if the First tier Tribunal decision is wrong

and that, in combination with the errors in law before the Upper Tribunal, mean that there is a compelling reason for the case to be permitted to proceed.

3. The Grounds of Appeal submitted to the UT sufficiently identified arguable errors in law in the decision of the First tier Tribunal as narrated in the Petition for the failure to grant Permission to itself amount to an error in law and further, the reasons provided by the Upper Tribunal were inadequate.