

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76090

REFUGEE APPEAL NO 76091

REFUGEE APPEAL NO 76092

AT AUCKLAND

Before: J Baddeley (Chairperson)
S L Murphy (Member)

Counsel for the Appellant: E Griffin

Appearing for the Department of Labour: No Appearance

Date of Hearing: 18 & 19 September 2007

Date of Decision: 28 November 2007

DECISION

[1] These are appeals against decisions of the Refugee Status Branch of the Department of Labour declining the grant of refugee status to two women, *Refugee Appeal No 76090* and *Refugee Appeal No 76092* and one child *Refugee Appeal No 76091*, who claim to be nationals of Zimbabwe.

INTRODUCTION

[2] The three appellants are two sisters, aged 34 and 29 years and the 7 year old child of the younger sister. By consent the evidence of each of the appellants has been considered in relation to the others' appeals. The mother of the child appellant acted as her daughter's responsible adult pursuant to section 114 of the Immigration Act 1987 ("the Act") and gave evidence on her behalf.

[3] The appellants will be referred to in this decision as appellant "AA" (the mother of the child) and appellant "BB" (her older sister) and "the child appellant".

[4] The appellants arrived together in New Zealand on 2 March 2007 and claimed refugee status on arrival. They were interviewed by refugee status officers on 17 and 18 April 2007 and decline decisions were published on 28 June 2007. It is against these decline decisions that they appeal to this Authority.

[5] The Authority was provided with both South African and Zimbabwean identity documents (including passports and birth certificates) for all three appellants. They claim that they have nationality in one country only; Zimbabwe. Their identities and nationalities are a central issue in this appeal as is the credibility of their accounts.

THE APPELLANTS' CASE

[6] The following is a summary of the evidence presented by the appellants to the Authority. It is assessed later. Both appellants, AA and BB, were born in a rural town, X, in Zimbabwe, to middle class parents. The appellants' family, still living in the family home in X, consists of their mother, father, younger brother, BB's two daughters and her grand-daughter.

[7] Their early lives were unexceptional. They both attended primary and high school. Appellant AA completed her O Levels but BB did not.

[8] BB's first daughter was born in October 1990 and two years later her second daughter was born. Their father has never married BB. After briefly working at a supermarket, BB began her own business selling fruit and vegetables at a shop which she rented near the bus terminal. This was her livelihood for the rest of her working life in Zimbabwe. Her father helped support her children.

[9] From 1994 to 1998, after leaving school, AA worked as a nurse aid. Then from 1998 to 1999 she was a pre-school teacher. She stopped work in 1999 when she became pregnant. Her daughter, the appellant child, was born in 2000.

[10] In 1999, both appellants joined the Movement for Democratic Change ("MDC"). Their father and sister, CC, were already office-holders in the MDC. Their father was ward chairman for the local district and CC, a youth activist.

[11] The appellants supported the MDC because it advocated a change in the education, health and infrastructure systems in Zimbabwe and they believed that the MDC would attract foreign investment needed in Zimbabwe.

[12] In January 2000, the three sisters attended an MDC rally in a town about 100 kilometres from their home. CC was at the front of the crowd away from her sisters when the Green Bombers (militant youth members of the Zimbabwe African National Union – Patriotic Front (“ZANU-PF”)) forced their way into the rally and began attacking the crowd. AA and BB ran off and then made their way home. CC did not accompany them. The next day CC still had not appeared so her disappearance was reported to the police station. The police did not locate her and no one has seen CC since the rally in January 2000 or had any news of her whereabouts. The family fear she has been captured by the Green Bombers.

[13] Approximately one week later some Green Bombers came to the family home asking questions as to CC’s whereabouts. The family told them nothing. They then took AA and BB to the local police station. AA was held there overnight. She was pregnant so she was not physically mistreated and was released the next day whereas BB was beaten and held for a week. The Green Bombers had mistaken AA for her sister CC, whom she resembled.

[14] About a month later the Green Bombers came again to the family home and took both appellants and kept them overnight in the police station.

[15] On 17 March 2000 AA’s daughter, the child appellant, was born in X town. She is hydrocephalic and needed an operation for the implantation of a shunt in her head. This operation was available only in South Africa. AA’s aunt took the appellant child to South Africa for the operation. To qualify for the treatment, the appellant child had to show that she was born in South Africa. The appellant followed her child to South Africa in July 2000 and managed to procure a false South African birth certificate from the South African Department of Home Affairs. The operation was successful and AA returned home with her child.

[16] AA was arrested on the street in August 2000 and August 2001 for not having her Zimbabwean identity documents with her. On each occasion she was held overnight at the police station. As a result of this harassment she decided to leave Zimbabwe. She already had a false South African passport issued in June 1996 and she used this to travel to the United Kingdom with the child appellant in December 2001.

[17] AA applied for refugee status in 2002 in the United Kingdom. She appealed against various decline decisions and eventually returned to Zimbabwe from the United Kingdom with the child appellant in December 2006 having been refused refugee status there. She returned to the family home.

[18] In January 2007, AA went shopping in the nearby city and on her return home found that the Green Bombers had come to the family home and had taken BB. The following day she found BB in the hospital where she had been taken to be treated for injuries inflicted by the Green Bombers.

[19] BB had been detained and harassed on various occasions. She was detained for one week in June 2000 (at about the same time as AA had been) and then again in 2002 she was kept for a week at the police station and questioned about her sisters, AA and CC. She always told the police that she had no information as to their whereabouts. Her family "lived in fear" because in X everyone knew they were MDC supporters. However, her father, the MDC ward chairman of the local district was never detained or mistreated like his daughters had been but was, on occasion, verbally harassed in 'the pub'.

[20] In April 2004, BB had injured her back and was unable to walk. She had sent her children to sell vegetables at her stall. She was successfully operated on in May 2005. In 2005 when selling her produce she had been picked on by the police and harassed on suspicion of using foreign currency. BB had been illegally using a relative's hawker's licence to sell her produce. When the police discovered this in 2006 she was arrested and detained for a week on suspicion of trading in foreign currency.

[21] In October 2005, BB was diagnosed with HIV. She experienced difficulties in obtaining the necessary antiviral treatment because of insufficient and irregular supply of the medication. She also had to pay bribes to obtain the medication on occasion and was told that she needed a ZANU-PF membership card to be eligible for the medicine.

[22] In November 2006 their father was not re-elected as MDC ward chairman. In January 2007 the Green Bombers came to their home. They were looking for AA and when they failed to discover her, they took BB out into the street and assaulted her leaving her unconscious and with broken teeth. Neighbours took her to the hospital. She returned home the next day.

[23] The family decided that AA and BB and the child appellant should all leave Zimbabwe. With her father's help they were given some financial support from the MDC and two MDC members helped them organise their travel from Zimbabwe via South Africa to New Zealand. The MDC helpers accompanied them across the border to Johannesburg. The two helpers obtained false South African passports for them from the South African Home Affairs Office. They destroyed these documents en route to New Zealand.

[24] The appellants fear returning to Zimbabwe because they will be suspected by the Zimbabwean authorities of disseminating prejudicial information about Zimbabwe to people abroad and as MDC members they will be subjected to further serious harm. AA was also diagnosed with HIV in May 2007 after arriving in New Zealand. They do not believe that AA and BB can access the appropriate treatment for this condition or for the appellant child's hydrocephalus in Zimbabwe because of their political backgrounds and the shortage of medical supplies and treatment.

Documents received

[25] Counsel for the appellants filed a memorandum and submissions dated 15 September 2007 together with attached country information and supplementary statements from AA dated 13 and 15 September 2007 and from BB dated 13 September 2007. Counsel filed a further memorandum of submissions dated 10 October 2007 and accompanying documents. The appellants provided various identification documents and medical reports which are referred to in this decision. All this information has been taken into account in reaching this decision.

THE ISSUES

[26] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[27] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the

principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANTS' CASE

[28] The evidence of both appellants was unreliable and inconsistent, particularly in respect of their claimed involvement with the MDC in Zimbabwe and the circumstances in which they have obtained a variety of South African and Zimbabwean identification documents.

Medical evidence

[29] In both her opening and her closing submissions counsel for the appellants urged the Authority to "give full consideration to their compromised health" when assessing their evidence and credibility.

[30] In respect of BB a medical report dated 27 March 2007 notes that BB has three broken teeth and a scar under her chin. The doctor's opinion was that these were consistent with the account of having been hit in the lower face by a stick on 3 January 2007 and striking her chin on the roadway when she fell to the ground.

[31] A medical report dated 13 April 2007 describes her as appearing well while having AIDS-related meningitis, currently controlled by medication. The infectious diseases physician hoped that she would be able to come off that medication and remain well.

[32] In respect of AA a medical report dated 27 March 2007 noted that AA had a scar beneath her left eyebrow which is consistent with AA's account to the doctor that she had been hit with a bottle on 4 January 2007. AA reports that she has been diagnosed with HIV AIDS in April 2007. She suffers from depression and has been prescribed anti-depressants.

[33] A medical report dated 14 September 2007 reported that AA is under the care of the Infectious Diseases Clinic in Auckland, has a weakened immune

status, is infected with the TB organism and is currently on preventative medication.

[34] A medical report dated 10 July 2007 confirms the appellant child's hydrocephalus, otherwise she is described as a "well" child not currently requiring medical intervention. None of the evidence from these medical practitioners suggests that the appellants' "compromised health" has impacted on their ability to recall events or to present their evidence at a hearing or in any other context. Neither appellant appeared to have difficulty recalling events and understanding or answering the Authority's or counsel's questions. They were both advised that if they required an adjournment during the hearing for medical reasons their requests would be accommodated. When considering evidence about past events, the Authority has made allowance for fading recall due to the effluxion of time and any other personal difficulties the appellants may have experienced.

The appellant AA

[35] On their arrival in New Zealand on 3 March 2007 AA and BB completed a Confirmation of Claim to Refugee Status form. In response to questions regarding their previous travel or claims to refugee status both appellants answered that neither of them had previously travelled outside Zimbabwe or claimed refugee status. They also gave the same replies to Immigration New Zealand Border Operations officials at a later interview on the same day.

[36] On 21 March 2007, in response to a request from a refugee status officer, both appellants provided written privacy waivers consenting to the refugee status officer making enquiries of the South African and United Kingdom authorities. On 12 April 2007 AA signed a statement prepared with the help of her lawyer in support of her refugee claim. In that statement she admitted that she had been living in the United Kingdom from 2001 until December 2006 and had applied for asylum there.

[37] Enquiries of the United Kingdom Home Office revealed that both AA and the child appellant had travelled to the United Kingdom in 2001 and she had lodged her first claim to asylum there on 23 December 2002. Her first claim was declined on 18 February 2003 and she appealed against that decision. The appeal was refused on 27 July 2006. She appealed against that refusal. That appeal was dismissed on 6 November 2006. She then made an application for

review of that decision which application was declined on 30 November 2006. All her appeal rights were exhausted on 18 December 2006 according to the information received from the United Kingdom Home Office. The appellant maintains, contrary to this advice, that she still had appeal rights available to her when she left the United Kingdom.

[38] The Judge, in dismissing her appeal on 6 November 2006, found that he:

“... was satisfied on the balance of probabilities that the appellant is a citizen of South Africa who has a duly issued passport at the time she entered the UK. It is possible that she lived in Zimbabwe for some years but I find that if she did so, it was as a citizen of South Africa. There is no cogent evidence to indicate that the appellant is a national of Zimbabwe.”

[39] When asked why she had omitted to disclose her travel to the United Kingdom and her claim for asylum there, she told the Authority that she did so because to have told the truth would not have helped her case because her asylum claim had previously been rejected by the United Kingdom authorities. To the refugee status officer she had given a different reason; that she had not disclosed her asylum claim because she did not think it was important and that she did not “trust or believe that anyone can understand what I have been through in my life”. It is clear that, had her asylum claim not been disclosed to the refugee status officer by the United Kingdom authorities, she herself would not have been forthcoming about this to Immigration New Zealand and that she knew it was highly likely that information prejudicial to her claim could be revealed when details of her asylum claim in the United Kingdom came to light.

[40] These initial omissions to Immigration New Zealand officials began what unfolded as a well-rehearsed fictitious account of AA’s and BB’s earlier experiences in Zimbabwe.

The South African documentation

[41] Enquiries made by the refugee status officer of the South African Department of Home Affairs revealed that according to their records the South African passports of AA and the appellant child “appeared to be genuine”. Subsequent to the Refugee Status Branch decline decision further information was received from the South African Department of Home Affairs as a result of investigations by officers of the Fraud Branch of Immigration New Zealand. An official of the South African Department of Home Affairs provided the Immigration New Zealand officials with: South African birth certificates issued for all three

appellants; a statutory declaration signed by AA confirming her date of birth in South Africa and a maternity certificate confirming that the appellant child had been born in a hospital in Johannesburg. Copies of these documents were supplied to the appellants by the Authority. The South African official also advised that from the identity numbers of AA and BB, he could conclude that they were South African by birth and that these numbers had been issued during the apartheid era.

[42] When asked about the advice from the South African Department of Home Affairs indicating that their identity documents were genuine, both AA and BB replied that these had been genuinely issued, but they had been obtained by the two MDC helpers who had bribed Department of Home Affairs officials. However, they maintained that neither they nor AA's daughter are South African citizens.

[43] AA was then asked about further details contained in the South African documentation supplied by the Department of Home Affairs:

(a) The appellant child's South African birth certificate

AA told the Authority that she had been obliged to obtain a false South African birth certificate for her daughter in July 2000 so that she could have the necessary shunt implantation operation. AA had travelled to South Africa to obtain the document and verified that it was her signature on the Notice of Birth which was issued in March 2000. When asked why the date of issue was some four months prior to the date on which she claimed to have obtained the birth certificate, she replied that it had been "backdated" to March 2000. She was then referred to the maternity certificate issued on 18 March 2000 from the hospital in Johannesburg. She stated that she had forgotten about having had to obtain that document and have that backdated also.

(b) AA's first South African passport

AA's South African Notice of Birth was issued by the South African Department of Home Affairs on 11 October 1996. Prior to the appeal hearing a copy of this document was supplied to AA. Subsequently in her evidence to the Authority, AA advised that she had obtained the Notice of Birth and a false South African passport in 1996 because the situation in Zimbabwe was deteriorating and her father thought that it might be

necessary for her to live in South Africa in future. She claims that she used this document to travel from South Africa to Zimbabwe in 2000 on return from her daughter's operation but had not used it on the outward journey to South Africa because she did not have enough money to bribe border officials. The bribes were necessary because the officials could tell from her accent that she was not South African but Zimbabwean. She also gave this passport to other people who left Zimbabwe on shopping expeditions to Botswana. She had used it to travel to the United Kingdom in 2001 and to return in 2006. The last time she used it was in 2007 on her travel from Zimbabwe to South Africa on her way to New Zealand. She did not use this passport for travel from South Africa to New Zealand because it was about to expire in 2007. AA advised that the South African passports were issued for 10 years. She was then asked to explain why her passport, if obtained in 1996, had not expired until some 11 years later in 2007. She then changed her evidence stating that she thought she had obtained her passport in 1997. (The United Kingdom Home Office information states that she travelled there on a South African passport valid from 4 June 1997 to 3 June 2007). This however does not explain why (as she claims) she had not used this document to travel from South Africa to New Zealand and suggests that this was the passport used to travel to New Zealand.

(c) AA's second South African passport

The appellant AA advised the Authority that her true name was AC. AA claims that she travelled to New Zealand on a second South African passport in the name of ABC (Christian name, middle name and surname). She destroyed this passport prior to her arrival in New Zealand. On arrival she advised Immigration New Zealand officials that she had travelled on a South African passport in the names AB only (Christian and middle names). When asked by the Authority why she had not supplied the correct passport names ABC, she replied that she thought that Immigration New Zealand officials required Christian names only. She later added that when asked her name she nearly always provided her Christian name only unless specifically asked for her surname. AA advised the Authority that her true names were AC only; ABC was the name used on her false South African passport.

She was then asked to explain why, on the appellant child's South African birth certificate issued in 2000, the name ABC was used for the child's mother and why she used the names ABC on the statutory declaration relating to her own birth which had been issued in South Africa in 1996. The same names ABC also appear on the appellant child's Notice of Birth issued from the South African Department of Home Affairs in 1996. She replied that she had used the false ABC name on the statutory declaration because "it was my first time to say it. They didn't want things to correspond with my Zimbabwean ones" (to have the same names as in her Zimbabwean documents). She was then asked why in that event they had not used completely different names for her South African documentation rather than repeating the names A and C on the South African Notices of Birth for herself and the appellant child and her statutory declaration. She replied that the same names A and C on the false South African documentation had been used so that she could easily remember these (as being the same as her real names).

Conclusions as to the South African documentation

[44] The Authority does not accept AA's evidence that she gave the names AB to the New Zealand Immigration officials because she thought she had to provide Christian names only. We find that she deliberately misled Immigration New Zealand officials about the identity on which she travelled to New Zealand.

[45] Our conclusions in this regard are strengthened by the evidence of BB who initially told Immigration New Zealand officials in her interview at the airport that AA had travelled on a South African passport in the name AC (the name that the appellant told the Authority was her true name). Later BB, in a statement dated April 2007, changed her evidence and stated that the names on her sister's passport were AB (consistent with the misleading information AA herself had provided to the Immigration New Zealand officials on arrival). BB later admitted to the Authority, at the appeal hearing, that AA had in fact travelled on a passport in the name AC.

[46] We conclude that AA attempted to mislead the Immigration New Zealand officials by supplying the names AB only while knowing that, in an official immigration context where identity was a crucial issue, her full name (Christian and

surname) was being sought by the officials. It is disingenuous to suggest that she believed her Christian names only were being required.

[47] AA initially told the Authority that her South African passport was obtained in 1996 because of the difficulties she and her family had been experiencing. However, when she was questioned by the Authority about her experiences during the years 1994 to 1998 in Zimbabwe while she was a nurse aide, she stated that “life was fine”. She was enjoying living at home and always being around people she knew. She further added that she could not think of anything bad about her life at that time.

[48] When this contradiction in her evidence was put to her, she attempted to explain this by saying that her family were looking ahead and predicting trouble in 1996. This explanation is not accepted – it is simply a late invention in an attempt to justify her contradictory and untruthful evidence.

[49] The Authority also does not accept that the appellant child’s South African birth certificate and maternity certificate, issued by a Johannesburg hospital in March 2000, were fraudulently backdated by four months from July 2000 (when the appellant claims to have obtained them) to March 2000 (the month in which the appellant child was born). We find that the documents were genuinely obtained and issued in March 2000. It follows that AA’s daughter was born in South Africa. The Authority concludes this is another example of the appellant attempting to explain away documentary evidence which had not come to light until the appeal hearing and which shows her earlier account of events of her travel from Zimbabwe to South Africa in July 2000 (not March) to obtain identity documents for her daughter to be false.

Zimbabwean documentation

[50] To support her claim that she and the appellant child are Zimbabwean nationals, AA provided a Zimbabwean birth certificate for her child obtained by her in Zimbabwe and issued on 4 January 2007 and for herself a Zimbabwean “National Registration Application for Identity” document issued on 2 January 2007. On the birth certificate there is a designated space for the applicant’s signature or mark. AA’s signature does not appear in the space provided, in its stead her name is printed in full in apparently the same printing in which the rest of the document has been completed. The lack of any signature in the appropriate

space raises concerns as to the authenticity of the birth certificate given that she claims to have been present at the time it was obtained. When asked to explain this AA said that this is how they fill it in; she had never seen one before because this was her first child. When asked why she had not obtained her daughter's birth certificate until January 2007 – seven years after her birth – she replied that her first one had become hard to read because of travelling, apparently contradicting her earlier statement that she had never seen one before.

[51] The dates on which these documents appear to have been obtained are significant when considered against the appellant's account of her last detention in Zimbabwe on 4 January 2007. When asked about the circumstances of obtaining the birth certificate she told the Authority that she, the appellant child and her niece went to the Registry Office on 4 January 2007 and obtained the birth certificate. It took them about 30 minutes to obtain the document and then they went shopping. She could not recall any other events on that day.

[52] AA was then shown the signed statement she had prepared with her lawyer's help on 12 April 2007 in which she stated that on 4 January she was arrested and detained overnight by the police. This date was repeated in the Refugee Status Branch interview report. On 21 June 2007 her lawyer wrote a 16 page reply to the interview report. No issue was raised concerning the date of her detention. The appellant then told the Authority that the date in her statement was wrong.

[53] The appellant child's birth certificate does not contain AA's signature (unlike the South African Notice of Birth of the appellant child which bears a signature similar to AA's signature on the Confirmation of Claim form and her signed statement dated 12 April 2007). This suggests that (contrary to her own evidence) AA was not present when the appellant child's birth certificate was obtained in 2007 in Zimbabwe.

[54] On 15 September 2007, counsel for the appellant supplied the Authority with further documentation subsequent to the hearing which the appellants' father had sent from Zimbabwe. These documents included a copy of a Zimbabwean birth certificate in the name of AA issued from a provincial registry on 28 December 2006 and attests to her birth in Zimbabwe on 23 September 1978. There is no apparent reason for her obtaining this birth certificate on 28 December 2006.

[55] The Authority concludes that these documents were obtained by someone other than the appellant and in preparation for the appellant's departure to New Zealand and the lodging of her refugee claim.

Telephone call from South African Police

[56] The Refugee Status Branch had received a telephone call on 24 May 2007 from a police station in Johannesburg. The police officer who gave his name and badge number advised that AA was in breach of bail conditions imposed by the Court in respect of charges she was facing and had unlawfully taken the appellant child from South Africa. Furthermore, the father of the child had sole custody of the appellant child. This information was made available to AA for comment in June 2007.

[57] When asked by the Authority about this, AA said that the allegations were entirely untrue and that she had tried to follow the matter up. When questioned further it became apparent that her attempts to "follow this up" had consisted solely of telephoning friends in the United Kingdom to check on the whereabouts of the appellant child's father whom she said that she knew to be in the United Kingdom.

[58] When asked why she had not attempted to contact the police station in Johannesburg she answered that "she did not know the name of the police officer". It was put to her that she could have made enquiries of the police station to discover if any records relating to herself were held by them or to obtain confirmation that there were none. To this she replied that the telephone call may have been a ruse on the part of her ex-partner's brother who did not get on with her ex-partner. Again it was put to her that she could have checked with the police station given that this was potentially highly prejudicial information. To this she answered that if it had been a real police officer the message would have been conveyed in writing not by telephone. The Authority (while not attaching any weight to the unverified allegations about the existence of charges against AA) concludes that had AA genuinely wished to refute these allegations she would have attempted to, at least, contact the police station. Furthermore, the existence of the telephone call from a Johannesburg police station is a further connection between AA and South Africa and suggests that (contrary to her evidence) she and the appellant child have lived in South Africa for some period.

The Zimbabwean experiences

[59] AA's evidence about harassment, detention and mistreatment by the Green Bombers and the Zimbabwean police was characterised by inconsistencies and omissions which cause the Authority to conclude that this account is untrue.

[60] The Authority asked the appellant why her father, who was the ward chairman of the MDC, was not harassed as his daughters had been despite his position being well known in the small town of X. She replied that he was not beaten because the Green Bombers are young and they respected him as an older man. The Authority then asked why the Green Bombers did not respect him when he ordered them not to beat or mistreat his daughters. The appellant's response was that the Green Bombers beat up young people. The Authority does not accept that Green Bombers, who could act with impunity, would refrain from mistreating an MDC official because of his age. His high profile in the MDC would have attracted more animosity than that experienced by his daughters who were mere members of the MDC. Furthermore, it is simply not credible to suggest that the Green Bombers respected him yet ignored his orders not to mistreat his daughters.

[61] AA told the Authority that in January 2001 when she was first arrested, she was kept in the charge office of the police station and BB was taken out to a cell and beaten. However, her earlier evidence when interviewed by the refugee status officer was that she and BB were kept together the whole time and were not mistreated. When asked about this inconsistency she replied that she "tried to say 'I' was not mistreated rather than 'we'".

[62] AA told the refugee status officer that she had been detained by the police on four occasions. In her written statement dated April 2007 she described only three detentions. Her explanation to the Authority for this discrepancy was that she had been detained on four occasions but had given the wrong account (of three detentions only) because she had been questioned all day and was getting tired. However, the omission was from a written statement prepared with the help of her lawyer, rather than her oral evidence, so the explanation is not accepted.

[63] AA told the Authority that she had held the office of vice-chairman of the MDC while she lived in the United Kingdom. No mention of this position was made in either her Confirmation of Claim, her statement, or at her interview with the Refugee Status Branch. This came to light only after it was put to AA by the

refugee status officer who first was given this information by BB. This is a significant role and would be particularly relevant to AA's profile (as a political enemy) with the Green Bombers. When asked why she had failed to mention this of her own accord, AA said this was because she had not been asked by the refugee status officer what she was doing in the United Kingdom. In response to the Authority expressing some surprise that she would fail to volunteer such an important fact given that her profile with the MDC was the basis of her refugee claim, she replied that she did not think it would have helped and she was not asked.

Differences between AA's and BB's accounts

[64] BB's evidence to the Authority was that the police did not come to the family home after AA returned in December 2006, other than the one occasion when BB herself was taken by the Green Bombers and left on the road. AA had described the police visiting the family home on a number of occasions after her return in 2006 and how she had hidden from them.

[65] When asked about the contradictions in their accounts, BB replied initially that the police had come on several occasions and she herself had hidden from them. She then attempted to explain the discrepancy in their accounts by saying that the Authority had not asked her the same question as AA had been asked (although AA's account was part of her narrative in her written statement, not in response to any questions) and then finally BB asserted that she had not understood the question. None of these responses is credible. They are all simply invented excuses amounting to an attempt to account for two clearly contradictory versions of the same events.

[66] BB described how in June 2000 she was detained for a week at the police station and that AA was also taken to the police station and detained but for only a few hours because she had a baby. AA had given a quite different account, recalling the visit by the police and BB being taken to the police station while AA herself was forced to express breast milk at the family home to prove she had a child and was allowed to remain there and not taken to the police station. The house was searched and her identity card, MDC membership card and her medical report were taken.

[67] BB attempted to explain this contradiction in their evidence by saying that AA may have forgotten the incident. Again the Authority does not accept this explanation. AA's account of the incident was quite different and contained specific details of the search, the items taken and the way she was treated by the police. AA had no apparent difficulty recalling this event.

[68] BB gave inconsistent accounts of the event of January 2007. To the Authority she described her detention in the following terms: the ZANU-PF had come to their home searching for AA who at the time was on a shopping trip in town. They beat BB in the house and then dragged her onto the street where she collapsed and fainted. She first saw AA the next day when AA found her in hospital. When BB returned home AA was not there but had gone with her father to the MDC to organise their departure from Zimbabwe. BB told the Authority that her father was a quiet person. He was never picked up by the police or beaten by the Green Bombers because he was an older man and respected by them.

[69] When asked by the refugee status officer to comment on AA's evidence of their father being mistreated on that occasion in January 2007, BB replied that her father was not physically mistreated but "if AA saw that he was pushed then he probably was but I didn't see that" (contradicting herself further by implying that AA was present at the time). She further stated to the refugee status officer that she returned home from the hospital the next day to find that AA was absent. She had been taken by the police (rather than gone with their father to arrange for their departure) and did not arrive home until later in the day.

[70] AA also gave inconsistent evidence of the events of January 2007. In her written statement she described returning from a shopping trip in town that night to find that BB had been taken by the police. AA herself was taken by the police the following day. To the Authority her evidence was that she was taken by the police on the same day as BB had been. When this inconsistency was put to her she attempted to explain it by saying that it was late at night and therefore could have been the same day or the following day. In regards to her claim that her father had been mistreated, she attempted to explain the contradiction between her evidence and BB's by saying that BB and she had different conceptions of mistreatment because BB had become inured to the violence meted out by the Green Bombers.

[71] The inconsistencies and changes in their evidence concerning the events of January 2007 exemplify the mobility of the appellants' evidence and the efforts they made to collaborate and amend their accounts so they would coincide. As to the doctor's opinion contained in the medical reports that the appellants' injuries were consistent with their accounts of being assaulted by ZANU-PF in January 2007, little weight can be given to this opinion given that the doctor was reliant solely on the appellants' accounts of how the injuries occurred. These accounts have been thoroughly examined by the Authority over a period of two days and found not to be credible.

[72] Both AA and BB maintained that ZANU-PF was continuing to search for CC in 2007, some seven years after her disappearance (which apparently had been at the instigation of the ZANU-PF). They could offer no explanation for this continuing interest in CC who had taken no part in MDC activities for seven years and even then had a less significant position than her father, the ward chairman, who had never been detained or physically mistreated by the authorities or ZANU-PF on account of his MDC activities. The Authority does not accept that ZANU-PF would continue to seek out CC seven years after her political activities had ceased.

The collusion of AA and BB

[73] In response to questions on her Confirmation of Claim form BB had answered that neither she nor any of her family members had ever applied for refugee status (although at the time she knew that AA had claimed refugee status in the United Kingdom). When asked to explain this, BB denied that she had been asked about AA. When shown her answers on the Confirmation of Claim form she then changed her evidence admitting that AA had told her not to mention her asylum claim in the United Kingdom.

[74] A further example of BB misleading Immigration New Zealand and covering up for AA was her initial advice to the officials at the airport that AA had travelled under her true name AC. She then changed her account in her statement where she reported AA had used the name AB (which coincided with AA's false account to the refugee status officer and to Immigration New Zealand officers on arrival at the airport). The Authority advised BB that this suggested collusion between AA and BB. BB denied this claiming that she did not know that AA had told the officers at the airport that she had used the false name, AB. It is highly unlikely

that independently BB would have come up with the name AB some months after their arrival and after AA had given the false name AB to Immigration New Zealand officials at the airport. The Authority finds that BB gave the false name AB to the refugee status officer in her statement after AA had told her to do so, so that their fictitious accounts would correspond in this respect.

Identity documentation relating to BB

[75] BB travelled to New Zealand on a South African passport in the name of XY showing a birth date of 28 September 1972. A copy of a South African Notice of Birth in the name of XY issued in 1995 and also containing a birthday of 28 September 1972 was provided by an official of the South African Department of Home Affairs to Immigration New Zealand's Fraud Branch. The South African Department of Home Affairs official concluded that BB was a South African by birth because the identity number on the birth certificate indicates that this was issued during the apartheid era.

[76] BB had told the refugee status officer that she did not possess a genuine Zimbabwean passport. However she later told the Authority that she did have a genuine Zimbabwean passport but was afraid to admit this to the refugee status officer lest she was asked why she had not used this for her travel to New Zealand.

[77] BB has supplied to the Authority the following documents which she claims were issued by the Zimbabwean authorities:

- (a) A national registration card in the name of BB showing a date of birth 7 November 1973.
- (b) A certified copy of a birth certificate issued in July 2001 in the name of BB showing a birth date of 7 November 1973.
- (c) A copy of the bio-data page of a passport issued on 16 February 2001 in the name of BB also showing a birth date of 7 November 1973. The photocopy of this page (not the entire passport) was produced to the Authority subsequent to the hearing at which BB had advised the Authority that she would have her own passport sent from Zimbabwe. The complete document has not been produced.

Conclusions as to nationality

[78] The Authority has received contradictory identity documentation concerning all three appellants:

- (a) Birth certificates have been provided for all three appellants which apparently have been issued by both the Zimbabwean and South African authorities.
- (b) BB has supplied a bio-data page of a Zimbabwean passport in her name.
- (c) BB, AA and the appellant child all travelled to New Zealand on South African passports.
- (d) BB has produced a Zimbabwean national registration card and AA has produced a copy of an application for her Zimbabwean national registration card.

[79] The Authority has considered all these documents, the views expressed by the South African Department of Home Affairs official and the United Kingdom Home Office and the findings of the United Kingdom Immigration Judge. We can make no determination as to the genuineness of this documentation and we make no finding as to the identity and nationality of any of the appellants or whether any of them has more than one nationality and identity.

Credibility conclusions

[80] In summary the Authority is concerned about the following aspects of the appellants' accounts:

- (a) The date and circumstances in which the appellant child's Zimbabwean birth certificate and AA's Zimbabwean registration document were obtained (apparently on the day AA claims to have been arrested and without AA's signature appearing on the birth certificate). This suggests that AA was not detained on that day and also that she was not present when the birth certificate was issued.
- (b) The concealment by both AA and BB of AA's failed asylum claim and her sojourn in the United Kingdom.

- (c) The false information given by AA to Immigration New Zealand officials concerning the name in which she travelled to New Zealand and BB's collusion in this attempt to mislead Immigration New Zealand officials.
- (d) AA's claim that she obtained her first false South African passport in 1996 in response to deteriorating conditions in Zimbabwe when she had previously described her life as "fine" at that time.
- (e) AA's failure to attempt to follow up the police report from Johannesburg.
- (f) AA's evidence that the appellant child's South African nationality documentation was backdated from July 2000 to March 2000. The March 2000 issue date suggests they were obtained by the appellant in South Africa in March 2000 (contrary to AA's evidence that she was in Zimbabwe at that time).
- (g) It is highly unlikely that the Green Bombers continued to persist in their pursuit of CC in 2007, some seven years after her disappearance (at their hands).
- (h) The appellants' father's ability to remain unharmed by Green Bombers despite being an MDC officeholder, whilst his daughters were detained and assaulted.
- (i) AA's failure to mention to the refugee status officer that she had held an official position in the MDC while living in the United Kingdom.
- (j) The various inconsistencies in the appellants' evidence as to their detentions and mistreatment by ZANU-PF, particularly in January 2000 and January 2007.

[81] When considered cumulatively these concerns cause the Authority to reject their accounts as not credible. We find that they were not harassed or pursued by ZANU-PF as claimed and have never been of adverse political interest to ZANU-PF or the authorities in Zimbabwe.

Well-foundedness

[82] As individuals of no adverse political profile, the three appellants will not be persecuted on return to Zimbabwe (or South Africa) on suspicion of being MDC supporters or related to MDC members, or of spreading adverse political propaganda abroad. Furthermore, as to their inability to access medical treatment, the Authority is unable to determine “any issue of a humanitarian nature that arises outside the context of a decision relating to the recognition of refugee status in New Zealand” (section 129W(e) of the Act). Having rejected their claimed fear of persecution for reason of adverse political opinion, they will not be denied medical care for reason of any Convention ground (refer *Refugee Appeal No 75585* (13 September 2007) [131]-[141]). Their claims in this respect also fail. They have no well-founded fear of being persecuted.

CONCLUSION

[83] For the reasons mentioned above, the Authority finds the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

“J Baddeley”

J Baddeley
Chairperson