

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76093**

**AT AUCKLAND**

<b><u>Before:</u></b>	B Burson (Member)
<b><u>Counsel for the Appellant:</u></b>	S Eyre
<b><u>Appearing for Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	17 September 2007
<b><u>Date of Decision:</u></b>	10 October 2007

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Zimbabwe.

**INTRODUCTION**

[2] The appellant claims to be at risk of being persecuted in Zimbabwe because of poetry and music that he has written and continues to write, which would, he claims, be perceived by the government as critical and anti-government.

[3] What follows is a summary of the appellant's evidence to the Authority. An assessment will follow thereafter.

**THE APPELLANT'S CASE**

[4] The appellant was born in 1982 in Harare. He is the youngest of three children. His father died of natural causes in the late 1980s and thereafter the appellant and his siblings were raised by his mother.

[5] During the 1990s, his elder siblings left for the United Kingdom (UK) to take up permanent residence. His mother followed them to the UK in 1999 because the economy in Zimbabwe worsened and she had to seek employment abroad in order to continue to support the appellant with his studies. It was his mother's intention that the appellant should attend university.

[6] At the time of his mother's departure, the appellant was in his final year at high school. After her departure the appellant stayed, first with the family of one of his close friends who had a spare room, and then with his mother's siblings all of whom lived in Harare.

[7] His mother returned to Zimbabwe briefly in 2000 to visit the appellant and check up on property that had been rented out. During his mother's visit the appellant's future career was discussed. His mother wanted him to travel to the United Kingdom with her and attend university there. The appellant, however, had decided that he wished to go to university in Australia. During his last year at high school, a representative of an Australian college had visited his school and shown the students promotional material about the university and life in Australia. The appellant decided that study in Australia was financially more viable than attending university in the UK or elsewhere. Also, as Zimbabwe is a land-locked nation, he wanted to spend time in a country that had access to beaches.

[8] The appellant decided to travel to the UK with his mother for a visit before going to Australia. He was in the UK for approximately two or three weeks. In this time he received notification that he had been accepted into the university in Australia. However, he was advised that he would have to return to Zimbabwe to make application for a student visa from there. He therefore returned to Zimbabwe towards the end of 2000 and made his application for a visa. The process took longer than he anticipated and his student visa was not granted until July 2001. After receiving the visa the appellant departed for Australia in late July 2001 and commenced his studies. He stayed with one particular aunt throughout his period in Zimbabwe.

[9] The appellant had not become involved in any political party prior to leaving Zimbabwe for Australia. While he and his close friends, F1, F2 and F3, discussed amongst themselves various things of a political nature that were reported in the press, none were ever politically active. In 1999, after the Movement for Democratic Change (MDC) had been formed, the appellant went to two large open-air meetings held in his area of Harare to listen to what the MDC was saying.

However, he became disillusioned with both the MDC and the Zimbabwe National Union – Patriotic Front (ZANU-PF), the ruling party, because he observed that both parties' supporters used violent tactics against supporters of the other party. To the appellant, this meant that the MDC were no different to Zanu-PF and he chose not to actively support either of them.

[10] During the 1999/2000 period, the level of political violence in Zimbabwe increased and during this period the appellant was occasionally stopped by the police. He was allowed to continue on his way after confirming that he was a Zanu-PF supporter. On one occasion in 2000 while walking with some friends, the appellant noticed a group of people running towards them. At that time, there were riots and demonstrations taking place about increasing food prices and food shortages. Understanding that they had inadvertently walked into the place of a riot, the appellant and his friends began running. However, after turning into what turned out to be a dead-end street, the appellant, his friends and other people who had run into the street, were all surrounded by riot police who began assaulting them with batons. The appellant and others were arrested and taken to a police station where he was detained for the next 12 hours. During this time he was periodically beaten by the police although eventually released without charge. The purpose of this detention was, the appellant believes, simply to intimidate him and the others and deter them from protesting and supporting the opposition party.

[11] The appellant has remained in close contact with F1, F2 and F3 since leaving Zimbabwe. His friends left at around the same time. F1 went to South Africa. F2 came with the appellant to Australia and F3 went to the United Kingdom.

[12] While in Australia, the appellant and F2 decided to take steps to publish poetry they had separately written. The appellant had been writing poetry since his early teenage years. At that time his poetry reflected personal feelings relating to his father's death and the like. However, over the years the appellant's poetry came to reflect his own political beliefs. The appellant regards himself as politically neutral supporting neither ZANU-PF party nor the MDC. However, he believes that to restore prosperity to Zimbabwe, policy should focus on restoring the country's infrastructure and improving the economic condition of Zimbabweans regardless of their background.

[13] This political belief was reflected in the music and poetry that he began to write while he was in Australia. The appellant registered with an online poetry

website he understands to be one of the most popular globally. In 2003 - 2004, the appellant began to place poems on the website and has since that time placed approximately 30 poems, a number of which have been selected by a panel to be included in a published anthology of work.

[14] During this same period, the appellant began collaborating with his friends, F1 and F3, in making music. While some of his poems formed the lyrical content of the music, he began writing lyrics and collaborating with F1 and F3 in making songs from them. While at school the appellant, together with F1 and F3 had formed a band and played at various clubs and outdoor events, some of which attracted up to 3,000 people. At this time their music did not have any overt or indirect political connotations. However, as with the appellant's poetry, the content of his music began to discuss issues affecting contemporary Zimbabwe albeit often in an indirect way.

[15] The appellant's music, together with his poetry, has been uploaded to the appellant's MySpace web-page where it is available for downloading and distribution. Also, as soon as a song is finished the appellant distributes the completed song to friends, family and also to DJs in Australia, Canada, the United Kingdom for playing at events frequented by expatriate Zimbabweans in those countries.

[16] The appellant, who was responsible for mastering the music, has also sent the music to internet radio stations specialising in African or world music and to student radio stations where it has been played. As part of this process, in approximately 2003, the appellant sent completed singles to a friend, F4, in Zimbabwe. F4 took a copy to the station manager of a radio station that was part of Zimbabwe Broadcasting Corporation (ZBC). This first single was selected to be on the national play list and began to be played on national radio. A follow-up single by the appellant and F1 and F3 met with similar success and also received national exposure.

[17] In 2003, a poem the appellant wrote as a eulogy to a friend who had recently died was published in a national newspaper. The appellant later received advice from friends and relatives in Zimbabwe that people that they knew believed that the poem was "angry" and un-African. This poem again remarked on a contradiction between the potential and reality of life in Africa and made direct reference to "the President."

[18] In 2004, the appellant and his colleagues completed a third single (the 2004 single) which was sent to F4 for submission to the ZBC. This song was not, however, accepted for playing at the station. While not mentioning any one political party or another, the song nevertheless referred to the poor socio-economic conditions in Zimbabwe. It refers to Zimbabwe “running out of ideas”. This song was released in 2004 at which time there was rampant inflation in the country although the government was continuing to deny there were any problems. As a result of this song’s content, the previous two songs which had continued to be rotated on the station’s play list were removed. However, the 2004 single continues to be available from the appellant’s “MySpace” page and was also available on “YouTube” as well as various other internet radio sites.

[19] In 2005, the appellant and his friend F2 began discussing producing an anthology of their poetry together with a third person. The appellant approached a publishing house who agreed to publish their work on a pre-order basis. The anthology was advertised on the publishing houses’ website and in excess of 500 orders were taken. However, the appellant’s friend F2, had to return to Zimbabwe because of a family illness and became concerned for his safety if the book was published while he was there. It was F2’s intention to go from Zimbabwe to South Africa and the intention was to publish the book at a later date. The monies paid by the people who had pre-ordered the book were returned.

[20] In 2006, the appellant felt under increasing strain and pressure with study, work and his various artistic pursuits. By this time, his mother, who suffered from a heart condition, had become ill and was increasingly financially dependent on the appellant and his siblings. The appellant abandoned his studies in Australia with only one year left to complete them. He applied for and was granted a visitor’s visa to New Zealand for one month. Although advised it could be renewed several times up to a total of nine months, the appellant misunderstood the nature of this advice and understood that he had, in fact been granted a visitor visa valid for nine months.

[21] Upon learning that he had in fact overstayed his one month visa, the appellant began taking steps to regularise his immigration status in New Zealand by making various applications under the Immigration Act 1987. It was his intention that if he could secure his immigration status in New Zealand he may be able to transfer his study credits from the Australian university and complete his tertiary education in New Zealand.

[22] However, these applications were ultimately unsuccessful and the appellant lodged his claim for refugee status because he understood that this was the only way to prevent him being returned to Zimbabwe.

[23] Since being in New Zealand the appellant has continued to write poetry and music and is in the process of completing a compilation CD of the music he has performed with his friends F1 and F3.

[24] The appellant is anxious about returning to Zimbabwe. The appellant also believes that as a poet and a musical artist he has a responsibility to speak out about social injustice. He believes it is his responsibility to try to promote compromise and dialogue for the benefit of Zimbabwe through his poetry and music. He believes this will put him at odds with the government and he would be arrested upon arrival at the airport. Even if this does not happen, there is no freedom of speech and the government cracks down on singers and entertainers who do not support the government line. They cannot perform inside Zimbabwe and many are detained and beaten.

#### Submissions and materials received

[25] On 11 September 2007, the Authority received from counsel written submissions in support of the appeal. Counsel also submitted a further statement from the appellant dated 11 September 2007. Attached to the appellant's statement were representative samples of the appellant's music and poetry.

[26] On 13 September 2007, the Authority received a schedule of documents comprising country information from counsel as per schedule A of counsel's list of documents. The Authority also received a CD of various of works which had been attached to the appellant's statement of 11 September 2007. The Authority also received a further statement from the appellant detailing the websites upon which the appellant's music and poetry was listed, details of persons he had himself contacted to play his music, a cover of the album for the CD he is hoping to release with F1 and F3, and a further translation of the lyrics of two of his songs.

[27] At the conclusion of the hearing counsel was given leave to file further submissions and country information relating to the treatment of artists in Zimbabwe. On 2 October 2007 these submissions were received together with further country information as to this issue; a CD containing various items of poetry and prose written by the appellant and a copy of an e-mail to the appellant

regarding inclusion of some of his musical works in a compilation CD to be released in the UK. On 3 October 2007 the Authority received from counsel a professional independent translation of the 2004 single which had previously been only informally translated into English from the Shona language in which he appellant written the lyrics. Brief submissions thereon were set out.

## **THE ISSUES**

[28] 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."

[29] 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 APPELLANT'S CASE**

### **Credibility**

[30] Having seen and heard from the appellant, the Authority accepts he is a credible witness. There is comprehensive documentation on the file corroborating the appellant's claim to have written poetry and music. The Authority has listened to the CDs provided and it corroborates his account of his having produced music in various styles of a professional standard.

[31] Moreover, the Authority has considered the lyrical content of his music as well as the content of the various items of prose in poetry he has produced as evidence. While some of this material is of an entirely personal and politically innocuous nature, there are certain pieces and passages within pieces which, with varying degrees of directness, appear to touch upon issues of deprivation,

freedom and the nature of political authority in Zimbabwe, or at least are reasonably capable of being construed in such fashion.

[32] Having seen and heard from the appellant, has no doubt whatsoever that these lyrics reflect genuine and sincere beliefs on his part both as to their content and as to the duty the appellant considers he bears as an artist to speak out about social issues.

[33] The Authority, therefore, accepts the appellant's account both as to his past experiences and to the genuine nature of the various political and artistic beliefs he claimed.

### **A well-founded fear of being persecuted**

#### *General human rights situation in Zimbabwe*

[34] In *Refugee Appeal No 75971* (15 May 2007) the Authority commented, at paragraph 66:

"[66] There is no doubt that the nation of Zimbabwe is largely dysfunctional, and that many of its inhabitants live in circumstances of great hardship. The most recent United States Department of State *Country Report on Human Rights Practices 2006* (6 March 2007) refers to an "authoritarian" government responsible for "pervasive and systematic abuse of human rights". Political intimidation and violence, high crime rates and desperate economic circumstances prevail."

[35] The United States Department of State *Country Reports on Human Rights Practices 2006* (6 March 2007) comments, at section 1c:

"Although the constitution prohibits torture and other cruel, inhuman, or degrading treatment or punishment, security forces continued to engage in such practices. Police reportedly used excessive force in apprehending and detaining criminal suspects, as well as ordinary citizens, for holding meetings or participating in demonstrations. Government supporters continued to assault suspected opposition members. Violent confrontations between various youth groups aligned with either the government or the opposition continued.

Human rights groups reported that physical and psychological torture perpetrated by security agents and government supporters increased ... ."

[36] Freedom of expression continues to be suppressed in Zimbabwe. The Human Rights Watch report *A Call to Action: The Crisis in Zimbabwe* (August 2007) at p7 states:

"There continue to be serious limits to freedom of expression and information in Zimbabwe, particularly in the form of threats of closure of independent media organizations, as well as the intimidation, arbitrary arrest, and criminal prosecution of journalists. The government's actions seem primarily designed to inhibit criticism of government officials and institutions, and to muzzle independent reporting and commentary on the political situation in the country.



In the last five years, Zimbabwe's government has enacted laws that give it discretionary control over which actors may practice journalism and operate a media outlet, as well as broad powers to prosecute persons critical of the government."

[37] The substantial curtailment of freedom of expression is confirmed in the country information submitted by counsel as it relates to the ill-treatment in Zimbabwe and exile of many independent Zimbabwean journalists for criticising the Mugabe regime – see for example, E Wichtel Zimbabwe's Exiled Press Committee to Protect Journalists Briefing Note (19 October 2005) [http://cpj.org/Briefings/2005/DA\\_fall05/zim/zim\\_DA\\_fall05\\_2.html](http://cpj.org/Briefings/2005/DA_fall05/zim/zim_DA_fall05_2.html) (accessed 28 September 2007)

### *Music and Politics in Zimbabwe*

[38] Although not speaking about music, George Orwell "The Frontiers of Art and Propaganda" *The Listener* [http://www.orwell.ru/library/articles/frontiers/english/e\\_front](http://www.orwell.ru/library/articles/frontiers/english/e_front) (accessed 4 October 2007) famously remarked in 1941:

"...propaganda in some form or other lurks in every book, that every work of art has a meaning and a purpose — a political, social and religious purpose — that our aesthetic judgments are always coloured by our prejudices and beliefs."

[39] This observation is particularly apt to describe the role of music in Zimbabwe which has a strong historical link to the politics of struggle and conflict. Liberation (or resistance) music, known as *chimurenga* music, played a key role in the liberation struggle in Zimbabwe. Thus, at its foundation event in 1962, the Zimbabwean African People's Union (ZAPU) presented a concert of various musical types including Zimbabwean traditional dancers and Shona Mbira music associated with traditional practices reviled by then Southern Rhodesian authorities. Commenting on the political function music played at this event, T. Turino *Nationalists, Cosmopolitans and Popular Music in Zimbabwe* (University of Chicago Press 2000) at p178 notes:

"Although this event was to celebrate the founding of a new Nationalist Party, the main activity revolved around the music, dance and performative speech by the ex-Chief, and only brief introductions and words about the party by the Deputy President... . *ZAPU's rally was carefully orchestrated to attract people to the party and to create emotion.* For this reason, music and dance, rather than propositional political speeches were the activities programmed." (emphasis added)

[40] Similarly M. Sabanda, former Arts and Entertainment Editor of the Daily News paper in Zimbabwe in an article *Complete Control: Music and propaganda in*

*Zimbabwe* (20 September 2004) - available at <http://www.freeneews.org/sw7086.asp> (accessed 18 September 2007) also comments:

“In Zimbabwe music has for years held a special place in the country’s political history. During the colonial era Zimbabwean musicians recorded inspiring compositions that sought to remind the black populous of its need to free itself from oppression. Most of the songs were banned by the colonial regime government fearing that such compositions would incite a black uprising.”

Sabanda notes that during its war with the colonial Ian Douglas-Smith regime, ZANU-PF launched its own pirate radio station, Voice of Zimbabwe, which broadcast from Mozambique. Militant songs were composed by the party’s choirs and broadcast on the station as a morale booster to its fighters and supporters. Music, thus became central to its war strategy. Indeed, he notes even after black independence in 1980, a number of ZANU-PF choirs throughout the country continued to sing and record political songs. However over time the ruling ZANU-PF government found itself confronting a band of musicians criticising its policies and bad governance through published songs.

[41] Country information available to the Authority establishes that the Mugabe regime, no doubt acutely conscious of the centrality of music to political protest in Zimbabwe, has acted so as to censor music which it deems to be unsympathetic to the regime. The issue of censorship in Zimbabwe has been addressed in a comprehensive report: B. Eyre *Playing with Fire: Fear and Self-Censorship in Zimbabwean Music* (FreeMuse 2001). Eyre conducted a numbers of interviews with persons associated with the music industry. Eyre concludes from these interviews (at p 42)

“Zimbabwe has the means and methods at its disposal to censor or ban anything it likes. The guarantee of freedom of expression in the constitution leaves ample room for exceptions and the Board of Censors is ready and waiting to do business. Over time, though, it seems that government, industry and media mechanisms have evolved to the point where direct proclamations of censorship and banning are not needed.”

[42] Eyre notes that artists interviewed for the report confirmed they had been questioned about lyrics in songs by government officials. The impression that is formed from the number of interviews that Eyre conducted is that many artists write in ambiguous terms but that if they cross the line their problems will escalate from their songs not being played by state controlled media outlets, and questioning about the purpose of the lyrics to more serious forms of harm. The report confirms that a climate of fear amongst artists prevented them from speaking out directly about matters which might be considered critical of the regime.

[43] Eyre's research has been confirmed by D. Thram in "Zvakwana! – Enough! Media control and unofficial censorship of music in Zimbabwe", in Drewett, M., and Cloonan, M., (eds.) *Popular Censorship in Africa* (Ashgate Publishing 2006) at p72. Thram states that her own research has revealed that the regime's most overt vehicle to control and suppress public access to resistance/protest music has been the enforcement of the Broadcasting Services Act 2001 (BSA) with its tight controls on what music can be played. Thram also confirms, (at page 77) that interference with musical freedom of expression is often done in an official capacity but that, careful to cover the tracks of official censorship, instructions as to what music is to be played and not to be played on national radio stations are given verbally rather than in writing.

[44] Thram also observes (at p72) that two less direct methods of censorship also exist. First, the Information Ministry funds musicians to compose music written to promote its propaganda. These state commissioned artists have been featured in propaganda videos that saturate state-owned television and radio stations, as well as the live entertainment galas that were staged regularly as a propaganda tactic during Jonathan Moyo's five-year reign as Minister of Information and Publicity between 2000 and 2005. Similar observations are made in "Zimbabwe's spokesman puts words to music" *BBC News* (Friday 4 August 2001) which details the use of music by the government as a form of propaganda. Examples include musical jingles aimed at promoting the land distribution programme and the production and release of pro-government music albums.

[45] The second method mentioned by Thram is harassment of musicians at their nightclub shows by "regime thugs". While Thram does not give any examples of this, an Africa Online article *Government tries to silence musicians* (3 May 2007) <http://www.afrol.com/printable/article/19049> (accessed 11 September 2007) also refers to the use of threats of physical violence by the state to coerce musicians into not performing as scheduled when this is deemed contrary to the regime's interests. It reports that an award winning musician was forced to pull out from performing at a function for the Zimbabwe Congress of Trade Unions after receiving death threats on his mobile telephone and a South African DJ has been banned from performing in Zimbabwe because he is said to have "uttered bad things" during a visit to the country in 2006.

[46] Eyre (*op. cit.* at page 55) cites a response of one person described as a "veteran guitarist" as to whether this perception of harm held people back from

singing about subjects they were otherwise liked to sing about. The response was:

“Of course, they would like to do that, but they can’t do that because they are afraid of the government. If you say something direct to the government, something bad, you disappear. The only guy who doesn’t disappear for saying something is Thomas. They are not afraid of Thomas [Mapfumo - a famous Zimbabwean musician], but Thomas is a public figure. If they do something wrong to Thomas there will be a noise.”

[47] This assertion that being more famous brings less risk of trouble is confirmed in an interview with another less well known artist by Eyre who records (op. cit at p 50) that the artist was interrogated at a police station by some plain-clothed officials about the possible anti-regime content of his lyrics and told by his interrogators “you know we can deal with you, and we can silence you.”

[48] In a 2005 update, *Playing with Fire: Postscript 2005* (5 January 2005), Eyre states that the 2001 report recorded what was the beginning of an “extensive, uncompromising government campaign of artistic censorship and propaganda.” Eyre goes on to state:

“Not only have Zimbabwean voices of criticism-whether musicians, playwrights, poets or journalists –been almost completely silenced, they have been replaced by a host of state-sponsored shrills...An environment of fear and self-censorship has morphed into one of outright censorship and corrupted cultural institutions that seek to distort the very essence of the artistic impulse.”

[49] Eyre notes how, in November 2004, the father of the producer of an album by Mapfumo which contained a song critical of misbehaviour by Zimbabwean police and soldiers was attacked and his car set alight. As a result of threats against him, Mapfumo now also lives in exile.

#### *Conclusion as to well-foundedness*

[50] The appellant has not been in Zimbabwe since 2001 and has not encountered any direct problem with the Zimbabwean authorities. However, the inquiry under Article 1A(2) Refugee Convention is forward looking in nature. In this regard, the Authority is satisfied that, regardless of his country of domicile, the appellant would continue to write songs about issues in Zimbabwe in a manner which could be considered critical of the government.

[51] Country information clearly establishes an active, official campaign of censorship of music in Zimbabwe. This official campaign, in part, takes the form of the intimidation of artists whose music criticises, or is perceived to criticise, the

regime. Against this background, the removal of his previously acceptable songs from the national air waves as a result of the controversial 2004 single becomes significant in that it establishes that the appellant has a negative political profile from the regime's perspective.

[52] While the Authority does not accept that the appellant possesses such a profile that he would be arrested at the airport, country information available to the Authority establishes that unless the appellant thereafter practices a form of self-censorship, there is a real chance that he would become subjected to this campaign of harassment and intimidation in which there is a real chance the negative profile he has as a result of the banning of his music from the ZBC will be held against him. Given the parlous general state of human rights in Zimbabwe and, in particular, the use of violence by state agents against those opposed to the regime, the Authority is satisfied that there is a real chance of the appellant suffering serious harm at the hands of government officials.

#### **Convention ground and nexus**

[53] The appellant's predicament is being contributed to by a negative political opinion being imputed to him by the government and the second principal issue is also therefore answered in the affirmative.

#### **CONCLUSION**

[54] For the above reasons, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B Burson"  
B Burson  
Member