

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

**REFUGEE APPEAL NO 75788**

**AT AUCKLAND**

<b><u>BEFORE:</u></b>	M A Roche (Member)
<b><u>COUNSEL FOR THE APPELLANT:</u></b>	H Ratcliffe
<b><u>APPEARING FOR INZ:</u></b>	No Appearance
<b><u>DATE OF HEARING:</u></b>	20 February 2006 & 30 April 2007
<b><u>DATE OF DECISION:</u></b>	12 June 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 Immigration New Zealand (INZ) declining the grant of refugee status to the appellant who claims to be a Zimbabwean national.

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 29 August 2005 and claimed refugee status at the airport. She was interviewed by a refugee status officer on 29 and 30 September 2005. On 16 December 2005, a decision was published declining her application for refugee status. She has appealed from that decision to this Authority.

[3] The appellant claims that she is a Zimbabwean national and that she is at risk of being persecuted in Zimbabwe because she is a lesbian. She claims she left Zimbabwe approximately three weeks prior to arriving in New Zealand. However, documents found in her possession at the airport indicate, on their face, that she has been residing in South Africa rather than Zimbabwe. The central issues to be determined in this appeal are whether she is, in fact, a Zimbabwean resident and whether her claims to have been a lesbian in Zimbabwe, and to have encountered difficulties with the authorities there as a result, are true.

[4] More than a year elapsed between the first and second days of the hearing of this appeal. This was because, following the first day of the hearing, the appeal was adjourned in order to allow counsel to obtain information from the South African authorities, verifying whether or not the appellant is a South African citizen or resident. By letter dated 10 July 2006, counsel advised that she had not been able to obtain any such information. The Authority then requested, pursuant to s129P(4) of the Immigration Act 1987, that the chief executive of the Department of Labour make enquiries with the South African authorities as to whether the appellant was a South African national. A letter concerning the appellant was eventually obtained from the South African authorities and will be referred to later in this decision.

### **THE APPELLANT'S CASE**

[5] What follows is a summary of the evidence given by the appellant at the hearing. An assessment of this evidence follows later in this decision.

[6] The appellant is a widow aged in her early forties. She was born in Bulawayo, Zimbabwe. Three of her grandparents were Zimbabwean while one, her father's mother, was South African.

[7] When the appellant was aged approximately 13, her South African grandmother took her to live with her in Durban in South Africa. She completed her education there and also trained as a teacher in South Africa.

[8] Although the appellant occasionally returned home to Zimbabwe for holidays, she remained in South Africa until 1996.

[9] In 1985, the appellant married a Zimbabwean national who also resided in South Africa. Their daughter, XX, was born in South Africa in 1987.

[10] In 1990, the appellant began working as a teacher in a South African primary school (M school). The principal of M school was a Mrs YY.

[11] In 1995, the appellant's husband was shot. He had been missing for some time and was eventually found by the appellant and her mother-in-law in a mortuary in South Africa. After her husband's death, the appellant moved back to Bulawayo in Zimbabwe because her culture required her to return home and mourn for her husband for one year. Accordingly, she resigned from her

employment at M school. Her departure is not reflected in the records of M school however as they “kept her on their books” until 2000.

[12] Prior to her husband’s death, the appellant had begun a course of study at a university in South Africa. After she returned to Zimbabwe, she continued this study by correspondence. In Zimbabwe, she lived with her mother and younger sister who was an activist with the Movement for Democratic Change (MDC).

[13] In Zimbabwe, the appellant obtained work as a teacher in a school in Bulawayo. By coincidence, one of the teachers there was a Mr YY (the same surname as the principal of M school in South Africa). In 1999, the appellant completed her Bachelor of Arts from the South African university.

[14] In 2000, the appellant’s grandmother obtained a South African identity book and a South African passport for her. Although the appellant subsequently used the passport to travel to a number of countries including the United Kingdom, she believes that it is a false passport in that it was improperly obtained. When applying for a South African passport, applicants are required to provide fingerprints. The appellant did not make the application herself and so her own fingerprints were not submitted with the passport application. She is uncertain as to the identity of the person, if any, whose fingerprints were submitted on her behalf.

[15] In October 2000, the appellant’s sister was killed by the Zimbabwean security forces because of her (the sister’s) involvement with the MDC. Subsequently, the appellant’s home was visited by the Zimbabwean security forces who were there to ascertain whether anyone else in the household was continuing activities for the MDC.

[16] In 2001, the appellant entered into a lesbian relationship with a woman named NN who lived in Bulawayo. They did not cohabit but spent a lot of time together and, together, regularly attended meetings of an organisation called Gays and Lesbians of Zimbabwe (“GALZ”). Initially, the appellant and NN tried to conceal their relationship because it could be dangerous to be known to be homosexual in Zimbabwe. However, by 2003, they decided that they had the right to be open about their lesbianism and accordingly began attending GALZ meetings. They also walked hand in hand in public in Bulawayo.

[17] In October 2003, the appellant was raped by four men in her mother's home because she was a lesbian. The men who raped her told her that women should have relations with men and not other women. The appellant's mother was at home at the time. Afterwards she questioned the appellant about whether she was a lesbian, however, the appellant denied it. Around this time the appellant moved out of her mother's house because she did not wish her mother to know that she was in a lesbian relationship.

[18] In November 2003, the Zimbabwean security forces visited the appellant's home and confiscated a Zimbabwean passport that had been issued to her in 2001. Thereafter, the appellant stored her important documents at the church she attended.

[19] In 2003, the appellant took her niece to a school in South Africa to continue her education. She did this because her sister had died and her mother was unwell. She and the niece also feared that she (the niece) may be targeted by the members of the Zimbabwean security forces. The appellant left the niece in the care of a South African friend who agreed to enrol the niece at school in South Africa under the friend's name because as a Zimbabwean, the niece was not entitled to receive an education in South Africa.

[20] In May 2005, the appellant left Zimbabwe because she had been accepted to participate in a study trip to the United Kingdom which was sponsored by Shell. The purpose of the study trip was to improve the English language and computer skills of the African teachers who participated in it. The appellant travelled from Zimbabwe to Zambia using her South African passport. In Zambia, she was joined by teachers from Botswana and Mozambique.

[21] The group flew from Zambia to the United Kingdom where they participated in a two month course. The appellant used her South African passport to enter the United Kingdom. Prior to her departure from Zimbabwe, her lover, NN, gave her the contact details of NN's brother in the United Kingdom who resided near to where her course was being held. Once in the United Kingdom, the appellant made an unsuccessful attempt to contact NN's brother.

[22] In July 2005, the appellant returned to Zimbabwe using her South African passport which she placed in the safekeeping of the church after her return.

[23] In early August 2005, the appellant went to visit NN. When she returned she found that her home had been burnt down. Her neighbours told her that members of the Zimbabwean security forces had started the fire and that they had said that they wanted to kill the lesbians who lived in the house. The appellant immediately went to the church where she took refuge prior to her departure for South Africa. The appellant did not disclose her lesbianism to the people at the church who assumed that the house had been burnt because the appellant was Ndebele and because her sister had been involved with the MDC.

[24] The appellant stayed at the church for approximately two weeks. Other Zimbabweans who feared the security forces were also sheltering at the church. An elder of the church, AB, who was white and whom the appellant thought might be British, visited the church from time to time bringing food and blankets for the approximately 80 people who were sheltering there. The church was unable to provide sufficient food and blankets and many of the people there were cold and hungry.

[25] In mid-August 2005, AB led a group of approximately 10 church members who needed to leave Zimbabwe to Johannesburg in South Africa. The appellant was amongst the group. AB took the group by lorry to the South African border where they crossed illegally by climbing under a fence. Thereafter, they were transported by lorry to Johannesburg. In Johannesburg, the appellant hid in another church while arrangements were made for her departure from South Africa to New Zealand. It had been decided by AB and another church member that the appellant would be safe in New Zealand and should be sent there. The appellant did not contribute any funds toward her travel which was paid for by the church on the understanding that she would repay them at a later date.

[26] In late-August 2005, the appellant departed South Africa using her South African passport. She was accompanied on the flight by AB who looked after her passport for her. The appellant and AB flew directly from Johannesburg to Sydney where they were in transit for a few hours before their flight departed for New Zealand. When they boarded the plane for New Zealand, AB presented the appellant's South African passport and his own travel documents to the airline officials. The appellant then walked ahead through the air bridge tunnel and boarded the plane. During the flight, although she was not seated with AB, she assumed he was on the plane with her. When she arrived in Auckland she was unable to locate him and assumes that he somehow absconded with her passport.

[27] After arriving in New Zealand, the appellant resumed contact with her daughter, with whom she had lost contact after the house fire. She has also lost contact with her niece in South Africa. After being unable to contact her niece for some time she contacted another friend in South Africa who told her that the person who had been caring for her niece had ill-treated her and that the niece had left. The appellant has been unable to contact NN from New Zealand. She has rung her telephone number many times but the telephone is only ever answered by an answering machine.

[28] While in New Zealand, the appellant has joined a church and has involved herself in voluntary work caring for the elderly. She has not joined any gay and lesbian groups but has formed a platonic friendship with a woman from Zimbabwe who is bisexual.

[29] The appellant fears returning to Zimbabwe because she believes she will be persecuted there because of her lesbianism. She does not believe that she has the right to reside in South Africa. However, she also believes that South Africa is an unsafe place for lesbians.

#### Documents Received

#### **SOUTH AFRICAN DOCUMENTS**

[30] A number of documents, indicating on their face that the appellant has been residing in South Africa, were discovered in her possession on her arrival in New Zealand. These were:

- (a) a South African bank card in the appellant's name;
- (b) a receipt dated 14 January 2005, made out to the appellant from a firm of lawyers in South Africa;
- (c) handwritten details of another South African bank account in the name of the appellant;
- (d) a South African card from a company, "Macro", in the name of the appellant with the name of M school also embossed on it;
- (e) a Woolworth's card in the name of the appellant;

- (f) a Truworths card in the name of the appellant;
- (g) a receipt dated 30 April 2005 in the appellant's name from a South African clothing store, noting the appellant's South African postal address;
- (h) a receipt dated 8 December 2004 in the appellant's name from another firm of South African lawyers;
- (i) a deposit slip dated 26 April 2005 from a bank in South Africa, noting the deposit of funds into a bank account, signed by the appellant;
- (j) a copy of the appellant's Bachelor of Arts awarded by the South African university on 26 May 1999;
- (k) copies of two teaching diplomas awarded to the appellant in South Africa in 1986 and 1990;
- (l) a certificate of appreciation awarded to the appellant by the M school signed by the principal, Mrs YY, dated 29 November 2002;
- (m) a copy of the appellant's high school qualification (senior certificate) awarded to her in South Africa on 1 January 1983;
- (n) a reference dated 10 August 2005, from M school certifying that the appellant was a teacher at the school from 1997 until April 2005, signed by the principal, Mrs YY;
- (o) Two *curricula vitae* for the appellant which record her residential address is in South Africa, that her referees are South African and that she worked for M school from 1997 to April 2005;
- (p) a settlement statement dated 18 August 2005 relating to a loan advanced to the appellant by a South African bank; and
- (q) a 2005 diary. Within this diary are various notations made by the appellant including the contact details for a hospital in South Africa, the start dates for the school term in South Africa and contact details in England for NN (the woman with whom the appellant claimed to have been in a relationship in Zimbabwe).

[31] Certificates recording the appellant's attendance at a computer course in the United Kingdom in July 2005 were also found in the appellant's possession.

[32] Counsel filed written submissions dated 16 February 2006 prior to the hearing. Closing submissions under cover of a letter dated 22 May 2007 were also filed. Attached to those submissions were some items of country information concerning the treatment of homosexuals in Zimbabwe and a list of hospitals in South Africa.

### **THE ISSUES**

[33] 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."

[34] 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**

[35] Prior to determining the framed issues it is necessary to make an assessment of the appellant's credibility.

[36] The Authority did not find the appellant to be a credible witness. For the reasons which follow, the Authority disbelieves her account. In particular it is found that:

- (a) she gave false evidence concerning her lesbianism and experiences in Zimbabwe between 1996 and 2005.

- (b) the documents found in her possession at Auckland airport, which indicate that she was a South African resident between 1996 and 2005, are true documents.
- (c) the appellant's claims concerning her departure from South Africa (i.e., that her travel to New Zealand was funded by a Zimbabwean church and that she was accompanied by a senior church member who abandoned her and stole her South African passport) are fictitious and intended to conceal the fact that she has deliberately divested herself of her South African passport.

[37] The reasons for the findings noted above are as follows:

#### **CLAIM TO BE LESBIAN – RELATIONSHIP WITH NN**

[38] The appellant's evidence about her lesbian lover, NN, was unsatisfactory. She has provided a number of conflicting accounts of the last occasion she saw NN. In her handwritten statement filed in support of her refugee claim, she stated that she and NN had stopped seeing each other after the appellant was raped (in 2003). To the RSB, however, she claimed that she last saw NN the day before the fire at her house (in August 2005). To the Authority, she then claimed that she was with NN when her house was being burnt down.

[39] When questioned about these inconsistencies she claimed that she and NN had only temporarily ceased their relationship in 2003 and that there had been a misunderstanding with the RSB. She also contradicted her earlier evidence to the Authority and said that she had visited NN in the morning (before the fire). Earlier in the hearing she had been asked where she was when her house was being burnt. She had replied that had been with NN and that they had gone to town together. Her inconsistency suggests that NN is a fictional character. If NN had been real, and in an intimate relationship with the appellant, the Authority would expect the appellant to be able to give a consistent account of when, and in what circumstances, she last saw her.

[40] Her evidence about her "coming out" with NN was also contrived and had an air of unreality about it. She claimed that, after concealing her relationship from her church (who she says never knew about the lesbianism) and her family, she and NN began to regularly attend meetings of GALZ and continued to attend the meetings even after she was raped by people who had "heard that I had joined the lesbian club". When asked why she continued to attend GALZ despite the rape

and her fear of being arrested, she responded that “it was because I liked it”. She also claimed that she and NN were insulted and spat on in public when they walked hand in hand together. When asked why they walked hand in hand if they provoked such a reaction she replied “it just happens when you are with someone you love”.

[41] The appellant’s diary lists NN’s name above a United Kingdom address and telephone number. Her explanation for this was that the address and telephone number were of NN’s brother and that she had written NN’s name there rather than the brother’s name so that she would not forget to whom the address and telephone number related. This contrived explanation is rejected. The Authority finds that NN is indeed a contact of the appellant’s in the United Kingdom and that the appellant has used NN’s name for a fictitious character in her false account.

[42] The appellant claims to be at risk in Zimbabwe and South Africa because of her lesbianism. However, the sole lesbian relationship she claims to have been in was conducted with a person whom we find does not exist (albeit that a real person’s name may have been used). It is also claimed to have been conducted in Zimbabwe at a time when (as follows below) the Authority finds that the appellant was residing in South Africa. The appellant has not claimed to have been involved in any other lesbian relationships. As her evidence of her relationship with NN is rejected, it follows that the appellant has never been in a lesbian relationship and that her claimed lesbianism is false.

## **SOUTH AFRICAN DOCUMENTS**

[43] As noted above, documents found in the appellant’s possession at Auckland airport indicate that she was a South African resident between 1996 and 2005. These documents included receipts, references and two *curricula vitae*.

[44] The appellant gave inconsistent explanations for the existence of the *curricula vitae*. When questioned by the RSB as to why they recorded that she had lived in South Africa and worked at M school until 2005, she replied that she had created them while living in Zimbabwe and that they were the product of wishful thinking. Accordingly, the details recorded in the *curricula vitae* were the details of her life as she wished it to be. To the Authority, she claimed that the false details in the *curricula vitae* were put there to create the impression that she resided in South Africa in case she was apprehended by the police there. She also claimed that, for the same reason, she forged the reference written by YY and

the certificate of appreciation from M school that record she was a teacher there during the period she claims to have lived in Zimbabwe.

[45] When questioned at her RSB interview about the reference, she claimed that she had made the document up and that YY was the name of the principal of the school she taught at in Zimbabwe. In contrast, she told the Authority that YY was the name of the principal of M school in South Africa and that, by sheer coincidence, there was another person with the name YY who was a teacher at the Zimbabwean school. When asked why she had told the RSB that YY was not the name of the principal of M school but rather the name of the principal of the school in Zimbabwe, she claimed that the RSB must have made a mistake in recording her answers.

[46] This explanation is rejected. The question and her corresponding answer at the RSB interview were unequivocal. Nor did she correct the point when given the opportunity to comment later on the "interview report". We find that at her appeal hearing, she simply forgot an untrue statement she had made to the RSB. We find that the reference is genuine.

[47] The appellant provided various explanations for the other South African documents found in her possession. She claims that the receipt dated 14 January 2005 from the firm of lawyers in South Africa was generated when she travelled briefly to South Africa from Zimbabwe to pay off a debt related to the supply of gas to her South African residence in the mid-1990s. With respect to the clothing company receipt dated 30 April 2005, she claims that someone had shopped on her behalf in South Africa using her store card and, that someone had made a payment on her account for her. With respect to the bank deposit slip dated 26 April 2005, she claims that she filled it out herself in Zimbabwe but sent someone to South Africa to deposit it for her.

[48] With respect to the various entries in her diary that are consistent with residence in South Africa, she claims that the start of the South African school term date she had recorded was marked so that she would know when her niece had to return to school. When questioned about the entry concerning the South African hospital, she claimed that her niece had been at that hospital for six months with a chest infection.

[49] The documentary evidence before us overwhelmingly establishes that the appellant has spent her life in South Africa where she qualified as a teacher and

had a long career at M school before leaving there in April 2005 to attend a two month course in the United Kingdom. Her documentation contradicts her claim to have spent a decade in Zimbabwe from 1996-2005. In contrast with the abundance of documentation establishing her South African residency, her claim to have been born in and spent both her early and recent life in Zimbabwe is entirely undocumented. The appellant has failed to produce anything establishing her Zimbabwean citizenship or any period of residence there.

[50] The appellant's claim that she deliberately assembled the documents found in her possession to give the false appearance that she resided in South Africa is rejected. On the contrary, we find that the appearance conveyed by the documents is accurate. She has recently been a resident of South Africa, not Zimbabwe as she claims.

### **SOUTH AFRICAN PASSPORT**

[51] When interviewed at the airport and interviewed by the RSB, the appellant claimed that her South African passport was genuine. Before the Authority she claimed that it was a false passport but confirmed that she had used it to enter Zambia, the United Kingdom, South Africa and that it was presented at Sydney airport to enable her to board a plane for New Zealand.

[52] Because the passport is no longer in the appellant's possession, it is not possible to examine it and to make a finding as to whether it is genuine or not. The letter from the South African Department of Home Affairs concerning the appellant's South African passport and citizenship is of limited assistance. It states as follows:

"Determination of South African Citizenship [appellant's name] born on [appellant's date of birth]

According to information at my disposal, a South African passport was issued to [the appellant] on 6 August 2005, [passport number]. Unfortunately contradictory information occurs like according to you she was born in Zimbabwe whilst our population reflect her as being born in South Africa... ."

[53] The passport number recorded in the letter differs from that in the appellant's passenger details as recorded by the airline that transported the appellant to New Zealand from Sydney. At the hearing, the appellant denied that a South African passport was issued to her on 6 August 2005. She also suggested that her name and date of birth could be shared by another person.

[54] In finding that the appellant resided in South Africa during the time she claimed to have been living in Zimbabwe, the Authority does not place reliance on either the passport or the letter from the Department of Home Affairs. Rather, reliance is placed on the numerous documents found in the appellant's possession that reflect South African residence and the fact that she has provided an account of a departure from Zimbabwe via South Africa that is simply not credible.

[55] The appellant's explanation for no longer being in possession of her South African passport is implausible. She would have the Authority believe that the church in Zimbabwe was unable to supply sufficient food and blankets to the 80 or so people sheltering within it. However, in spite of this extreme poverty, the same church is said to have been able to fund the travel of the appellant and the "elder" who accompanied her to New Zealand. Given the substantial cost of such travel, transiting through two other countries, the assertions are simply irreconcilable.

[56] The appellant adds to this account the claim that the elder abandoned her at some stage between Australia and New Zealand and absconded with her passport. When questioned as to why a Zimbabwean church elder would behave in such a manner the appellant stated that he was not really an elder and was more involved on the political side of things and, with reference to his stealing of her passport, that she suspected "he was up to something".

[57] On the second day of the hearing, however, she resiled from this evidence, confirming that he was an elder of the church and also had the role of treasurer there. It was not possible to discern which version, if either, was truthful.

[58] The Authority finds that the appellant's story about having her passport stolen by a church elder who accompanied her on her trip to New Zealand is simply a device she has used to conceal the real fate of her South African passport. The Authority finds that the passport was disposed of between Australia and New Zealand by the appellant herself in order to prevent it being scrutinised by immigration authorities in New Zealand.

[59] Country information referred to in the RSB decision states that Zimbabwean citizens with dual citizenship must have revoked their claim to foreign citizenship by January 2002 in order to retain their Zimbabwean citizenship. It also states that Zimbabwe revokes the citizenship of persons who fail to return to the country in any five-year period: United States Department of State *Country Reports on Human Rights Practices for 2004: Zimbabwe* (28 February 2005) at section 3.

This indicates that, even had the appellant at one stage been a Zimbabwean citizen, it is unlikely that this is still the case.

[60] In the absence of the appellant's South African passport and any truthful evidence from her about her movements between 1996 and 2005, the Authority is not in a position to determine her citizenship. Nor is it necessary to resolve the point, because the events upon which she bases her claim to be a refugee (related to her claimed lesbianism) are false. There is no evidential basis before the Authority upon which it can find that she has a well-founded fear of being persecuted either in Zimbabwe or South Africa.

[61] At this point it is noted that in counsel's closing submissions it was asserted that the appellant had an additional claim for refugee status on the basis of her dead sister's involvement with the MDC. In her evidence, the appellant claimed that her sister was an MDC activist, that she found her sister's murdered body on a road in Zimbabwe in October 2000, and that subsequently, her mother's home was visited by the Zimbabwean security forces looking for MDC activists.

[62] As we have found that the appellant lived in South Africa between 1996 and 2005, it follows that her evidence about first-hand involvement in the events surrounding her sister's death is rejected. There is no evidence before us about the circumstances of the sister's death other than the word of the appellant upon which we cannot rely. This being the case, there is no basis upon which we can find that the circumstances of the sister's alleged death (about which nothing is known) result in any risk of the appellant being persecuted.

[63] The first question framed for determination is therefore answered in the negative. The issue of Convention ground does not arise.

## **CONCLUSION**

[64] For the above reasons, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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M A Roche  
Member