

1101472 [2012] RRTA 422 (28 May 2012)

DECISION RECORD

RRT CASE NUMBER: 1101472

DIAC REFERENCE(S): CLF2010/102506 S2008/493

COUNTRY OF REFERENCE: Zimbabwe

TRIBUNAL MEMBER: Peter Murphy

DATE: 28 May 2012

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Zimbabwe arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2008 and applied to the Department of Immigration and Citizenship for the visa [in] July 2010. The delegate decided to refuse to grant the visa [in] January 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis the applicant was not a person to whom Australia has protection obligations under the Refugees Convention. The applicant applied to the Tribunal [in] February 2011 for review of the delegate's decision.
4. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

5. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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, is unable or, owing to such fear, is unwilling to return to it.

8. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.
9. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
10. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
11. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
12. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
13. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
14. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
15. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of

former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

16. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

17. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (‘the complementary protection criterion’).
18. ‘Significant harm’ for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. ‘Cruel or inhuman treatment or punishment’, ‘degrading treatment or punishment’, and ‘torture’, are further defined in s.5(1) of the Act.
19. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

20. The Tribunal had before its departmental file relating to the applicant’s protection visa and departmental movement records relating to his travel to and from Australia. The Tribunal also had regard to material referred to in the delegate’s decision and other material from a range of sources which are referred to below.

The Protection Visa Application and Departmental File

21. In his visa application the applicant states he was born in Harare, Zimbabwe, on [date deleted: s.431(2)]. He indicated he completed 8 years of post-secondary education in the [Country 1], [Country 2] and Australia, and since coming to Australia had worked [in community services], and previously worked in Zimbabwe [in a number of different professions]. He described his occupation or profession as [the media industry].
22. His application indicates he entered Australia [in] July 2008 on a student visa issued in June 2008, using a Zimbabwean passport issued in 2008 which was current until 2018. He states

he legally departed Zimbabwe through Harare [in] July 2008. At question 50 in the application he claimed he had difficulty obtaining a travel document (such as a passport) in Zimbabwe as “*they did not want to renew my expired passport in order to detain me.*”

23. In respect to family composition, he stated his father was widowed and lived in Zimbabwe. He said he had two [siblings] in Zimbabwe, two [siblings] in [Country 1] and [another sibling] in [Country 3].
24. In his application form he said when he left Zimbabwe he was frustrated by the situation which hindered any meaningful personal development. He said he was upset at the way the political, economic and social environment was turning out and that this was no longer conducive for his personal goals. He said he was afraid of ZANU PF neighbours or youths who considered everyone who did not join their party as “the enemy” There were personal incidents relating to this situation, and he decided to escape by going overseas. He went to the [Country 2] in 2002, [Country 1] from 2002-2008 and Australia from 2008. He could not contemplate going home as it would be “suicide” for him, and sentence his family to persecution.

He said that trumped up charges against him demonstrated how the ZANU PF can create anything to put you away, and his family had been with death and painful scenarios if he turned up in Zimbabwe. He also said ZANU PF sponsored state security agents and ZANU PF youths are determined to catch him for escaping detention at the airport, and for leaving to come to Australia to study. He said it became too personal for him when they came to his house and beat his sister and cousin, and ransacked his sister’s house and threatening her husband and child, and detained and interrogated his father without charge. He believed the persons who would harm him were the state security agency, the ZANU PF women’s league and youths in his area who were connected to state security and would harm him if he showed up.

25. He said when he was last in Zimbabwe he was harassed physically and mentally on arrival and was lucky to get in. Family members were harassed and beaten and forced to attend ZANU PF meetings. He believed his sister was also not disclosing the extent to which she had been mistreated, and he is angry at the present situation. The persons he fears will harm him are frustrated he escaped at the airport, and are unhappy with his role in [broadcasting] in [Country 1] and as a “master of ceremony” at gatherings involving human rights. He did not believe authorities in Zimbabwe would protect him and said whilst there is the government of national unity between ZANU PF and MDC, ZANU PF have the power, making it harder for the MDC to unblock the dictatorship.
26. Attached to his application was a statement, and documents including:
 - “Letters from Harare intelligence detectives”.
 - [A] July 2010 report from a student counsellor at [College 4] detailing discussions since he first attended that service in November 2009.
 - Extracts from his current passport and a copy of his old passport which expired in 2007.
 - Letter of support dated [July] 2010 from [City 5] Zimbabwe Association.

The delegate’s decision

27. The application was considered by a delegate, who after interviewing the applicant concluded he did not have a genuine fear of harm, and there was no real chance of persecution on return to Zimbabwe. In reaching that conclusion the delegate noted the applicant had, at interview stated he was not an MDC member but his parents may have been. The delegate referred to the protection application which indicated he had never married or been in a defacto relationship, but noted the [Country 1 immigration department] had indicated the applicant applied in May 2006 applied for a spouse visa, but withdrew that application in October 2006.
28. The delegate rejected specific claims by the applicant that he had a profile as a political or human rights activist through [broadcasting] in [Country 1], and concluded he would not have an adverse profile because of his activities in [Country 1], nor would he be targeted or harassed because of his activities in [Country 1]. The delegate noted the applicant claimed there was an incident around July or August 2005 when he was approached in a pub in [Country 1] and threatened because of his activities. The delegate noted the applicant had at interview stated he had applied for a student visa to study in Australia whilst he was in [Country 1], but did not accept the applicant had strong concerns about safety, as he also stated he had considered moving back to Zimbabwe after the alleged pub incident.
29. The delegate also noted the applicant claimed to have returned to Zimbabwe in 2008 on an expired passport, and to have been questioned by officers in Harare about this. The delegate did not however accept questioning of this nature amounted to persecution. The delegate also expressed considerable concerns about the credibility of the applicant in respect to his claims.
30. The delegate found the applicant did not have a genuine fear of harm and that there was no real chance of persecution occurring, and concluded the applicant was not a person to whom Australia owed protection obligations, and refused to grant him a protection visa.

The Tribunal Application

31. [In] February 2011 the applicant sought review by the Tribunal of the decision to refuse him a protection visa. No further factual information was provided at that stage, although the applicant's representative indicated a fresh statement would be provided.
32. [In] March 2011 the Tribunal wrote to the applicant advising it had considered the information available, but was unable to make a favourable decision on that information. He was invited to appear before the Tribunal to give evidence and present arguments at a hearing [in] May 2011. The applicant subsequently confirmed he would attend that hearing. No new factual material was provided at that stage or by close of business the day prior to the hearing. [In] May 2011 the applicant provided an unsworn declaration in which he stated:
 - His claims were set out in the "Part C" of his protection application, and the statement attached to that application. He wished to provide further clarification of his situation.
 - From 1998 -2002 he worked for [a financial institution] and was a member of the Bankers Union. When the ZCTU decided to form an opposition party. In 2000 and 2002 elections he voted for the MDC. Although he did not campaign for the MDC his lack of outward support for ZANU PF made him a target for its thugs. In 2002 ZANU PF youth threw stones at his home at night, and he felt unsafe in his own home. Whilst the DIAC officer thought these actions were not targeted at him, he was certain they were not random and strongly believed he and his family were targeted because they did not support ZANU PF.

- There were several reasons why the family had come to the attention of the ZANU PF. His [sister] was arrested during the 2002 campaign and accused of having voted twice. A bribe was later paid to the CIO for her release. He may also have come to ZANU PF attention because he did not attend neighbourhood meetings. His late mother was forced to attend such meetings and mark attendees and was questioned about his absence. He believed he and his siblings were reported by his mother's friends for non-attendance.
- His car was targeted, and broken into twice in what he believed was an attempt to locate MDC material. Simply driving a decent car was a sign to them of treachery and that he did not care about ZANU PF ideology.
- He and his father attended 2 MDC rallies in 2000 and 2001. At the time it was not unusual for ZANU PF supporters to pose as MDC supporters to identify MDC supporters.
- He left Zimbabwe and went to the [Country 2] disillusioned and fearful for his safety. He hoped to return to Zimbabwe at some point, but wanted to stand up for human rights, which in Zimbabwe would lead to imprisonment, assault or worse.
- In 2004 he returned to Zimbabwe for 6 weeks. His family warned him it was not safe for him but he was stubborn, and kept a low profile
- He met his [Country 1] spouse in 2005 and married within 12 months. He sought a spouse visa in May 2006 but in October 2006 withdrew his application as the relationship had broken down due to a series of events. His mother was diagnosed with cancer and came to [Country 1] for treatment, and he became her full time carer, which placed enormous strain. In 2006 he underwent surgery which went "horribly wrong" and was off work for months, causing financial and further stress. At interview he did not realise his relationship was relevant and "clammed up and panicked".
- As a student doing [media] studies in [Country 1] his college encouraged participation [in that field]. He participated on "[Station 8]" representing his country and sub region in its programming. He wanted to spread the word on human rights abuses in Zimbabwe.
- Impressed by his program, [Association 6] invited him to facilitate events as MC, and he attended the 2005 Independence Day as MC. He also attended other meetings and events centred on ways to assist Zimbabweans displaced in [Country 1]. In June 2007 he attended a forum organised by [Association 6] for MDC officials touring [Country 1] which led to the formation of the MDC [City 5] Branch in August 2007.
- There were informers in the community. He knew this but chose to express his views. It is the same in Australia. After he completed his studies he worked for [Station 7] and was on [every Friday and Saturday] for 4 weeks producing and presenting a [show]. He used his role at [Station 7] to highlight the plight of Zimbabweans at home, and to celebrate their culture but stopped when his mother came to [Country 1].
- In 2008 he returned to Zimbabwe as it was his home. He thought the situation would pass as the MDC was very popular and he wanted to be a media personality and be in IT. He visited his mother's grave as he did not attend her funeral in 2007 as he could not afford it. He waited until the March 2008 election to return, as the MDC was favoured to win, and he was confident things would be more stable, but was wrong. Now there was no way he could live safely in Zimbabwe as Mugabe and the ZANU PF will never give up power.

- He continued to hold grave concerns for his safety, however before 2008 he was hopeful of change. He was intercepted on arrival at Harare Airport [in] March 2008. His passport had expired and was confiscated. His case officer believed his detention was because he had an expired passport, but he believed he was detained because he was suspected of supporting the MDC. He was placed in a room and interrogated by 2 men who accused him of subverting the government and physically abused and accused of working for [an overseas media organisation]. He was forced to sing ZANU PF songs. When they left a plain clothed woman CIO officer assisted him, and after his release he returned home.
- He applied for a certificate at [a] police station. His neighbours became suspicious of him and then they were raided by people claiming to be CIO. His sister's home 40 Km away was also raided. He believed she was targeted because she was suspected of being from an MDC family. It is possible neighbours tipped the CIO off about his return, or it may have been a follow up from the airport. During the raid his media material was confiscated, including research material from [Country 1].
- He left Zimbabwe on his new passport, and can only speculate as to why he did not arouse suspicions with immigration officials.
- Since he left there have been raids on his family home. He believed they were done to maintain a presence of fear in him and his family. He does not know the identity of the perpetrators, but felt it was because they consider him "the enemy".
- His father was kidnapped after a raid in November 2009, and he approached his school counsellor about this. A letter from the school was provided. His father was later released.
- There were copies of three "police warrants" given to his sister after he left. Whilst the case officer believed the warrants were not genuine, he maintained they were the documents given to his sister, and that the ZANU PF may have authored them in an attempt to intimidate him and his family.
- When he arrived in Australia he thought about applying for protection but was studying and had a pathway to permanent residence, which became difficult when the government changed the skilled migration system. It was a big decision to apply for protection, and he hoped his misguided wish for things to improve did not go against him.
- Since coming to Australia he has participated in community activities with other people from the [Zimbabwe community]. He also provided [services] for Zimbabwe based activities to provide a platform in Australia for Zimbabweans.
- If he returned he feared being detained and harmed or even killed by CIO or police or various militia and thugs loyal to Mugabe. There are a lot of young people who attack anyone who does not express loyalty to Mugabe or ZANU PF, and who believe middle class Zimbabweans returning from overseas support the MDC and send money to the MDC. A large proportion of educated Zimbabweans in [a city in Australia] support the MDC although they have no formal MDC branch they socialise and express their views. Informers in the community report political views back to the ZANU PF in Zimbabwe.
- His family has been targeted for supporting the MDC, and he had already been accused of supporting, it and he does support it. He cannot get protection from authorities because they are loyal to Mugabe and he cannot go to any other part of Zimbabwe because rural

areas are dominated by the ZANU PF, and he has no contacts. If he expressed his opinions, which he wants to do, he will be attacked by ZANU PF supporters.

33. [In] May 2011 a signed copy of the declaration was provided. Unfortunately, due to unforeseen circumstances the hearing did not proceed [in] May 2011 and was rescheduled.

The Tribunal Hearing

34. The applicant appeared before the Tribunal [in] September 2011 accompanied by his [authorised representative]. At the commencement of the hearing the Tribunal confirmed there were no further documents or submissions to be provided.
35. The Tribunal asked why he feared return to Zimbabwe. He said he feared the ruling party would persecute or kill him, because they believed he may have worked against them and did not support their cause. He also believed they might consider him to have been involved in sabotage. The Tribunal asked why this would be the case.
36. He said the government and its supporters in Zimbabwe had proof he collected evidence of human rights abuses in Zimbabwe, and had been on a variety of platforms overseas talking about human rights abuses. He said when he was detained in 2008, they escalated this by confiscating certificates and [property at his home]. In response to further questioning he said his certificates were not taken, but were examined by officials at the airport.
37. He said during his stay in Zimbabwe in 2008 his home was ransacked, and other materials were taken. He said that having pursued media studies, he thought he could change things, and there have been several documentaries he had collected which were not available in Zimbabwe. He had also recorded footage from the Internet of persons being beaten up. The Tribunal queried whether such information would not already be available in Zimbabwe. He said it was not, and he had wanted to make a stand about human rights abuses.
38. The applicant said he was one of [six children]. His [youngest sibling] was studying at [university] and lived with their father in the family home in Harare. The applicant said his father was now working for an importer [of building products], and has been there since about 1996, prior to which he worked for a government-owned board from which he was made redundant in 1996.
39. The applicant said he attended high school, completed a [Diploma] and then worked for [a financial institution] in Zimbabwe. In terms of travel outside Zimbabwe he said he first left the country to go to [a neighbouring country] for holidays in the 1990s, but more recently went to the [Country 2] in May 2002 to study, but in about October 2002 moved to [Country 1] where he studied media studies in an educational institution at [City 5], finishing in 2004. He then gained further [certificates].
40. The Tribunal asked about returns to Zimbabwe. He said he had returned twice, first in August 2004 for about six weeks in summer holidays. The second trip was [in] May 2008 when he went back with the hope of travelling to Australia, and to pay respects to his late mother who died in January 2007. He said he was unable to return to Zimbabwe at the time of her death, as there were insufficient funds, and he preferred for [a sibling] who was also living in [Country 1] to go back.

41. The Tribunal asked about problems in Zimbabwe. He said before he left in 2002 he was getting frustrated, as he was forced to attend meetings by government parties, and sometimes his car was broken into, or his family home stoned. He said he believed this was carried out by ZANU-PF supporters and supporters of the ruling party.
42. The applicant was able to provide a relatively detailed history of the political background in Zimbabwe, and the formation of the MDC. The Tribunal asked about his link to the MDC. He said in 2001 he went to MDC meetings with his father, but whilst he supported the MDC, he did not actually join. The Tribunal asked if members of his family were MDC supporters. He said his father had never said he was a cardholding member, but had friends who were.
43. The Tribunal asked whether he experienced problems because of political affiliation or his opinion prior to 2002. He said the last straw for him was being forced to produce his ID and when his car was damaged. He said in his local area youths would observe he did not attend meetings, and his mother who did attend ZANU-PF meetings was asked why he and other family members were not there, and said they were working or studying. He said he had been stubborn, and would not go to those meetings.
44. The Tribunal asked why he left in 2002. He said it was due to frustration, being targeted and the economy, and he decided to seek a new role as an entrepreneur. The Tribunal queried whether his motivations for leaving were for reasons of personal achievement and the poor economy in Zimbabwe, and he said this was partly the reason.
45. The Tribunal asked about his time in [Country 1]. He said whilst he was studying, the college he attended sent people on placement with [organisations]. He said he chose the [Station 8], and covered the southern part of Africa because he knew this area. The Tribunal asked when he became associated with [Station 8]. He said it was approximately November in 2003, but said his memory was a little hazy. He said he later made contacts in [City 5] through the [Association 6] which approached him, and then worked for that [organisation] at events from about 2005 onwards, until his mother came to [Country 1] for treatment around the end of November 2005. He said his mother left [Country 1] in 2006, and he then recommenced [media] activities, and was involved in a documentary on [another African country].
46. He said he went to an MDC meeting in [City 5], as there was talk about forming a [City 5] branch of the MDC. In response to questioning, he indicated the [Association 6] was not really a political organisation but more a cultural and community organisation. He said in August 2007 the MDC returned to [City 5], and launched the [City 5] MDC Branch. He did not join that branch, but saw his role as a “facilitator” rather than a political person.
47. The applicant also said that one night in a local pub in [City 5] he was approached by two Africans who said they knew he was doing broadcasting and told him to “watch out” as his family wasn’t here, and anything could happen, and a friend told him it was rumoured there were Zimbabwean government “moles” in [Country 1].
48. He said he broadcasted with an organisation called [Station 7] and did a [show] before his mother’s death in 2007. The Tribunal said its research indicated that program was not politically oriented, but more a cultural program. The applicant agreed with this, but said he could be [identified] on that program. He said other people who did [broadcasts] hid their identity, but he was open about who he was.

49. The Tribunal asked why his broadcasting in [Country 1] five years ago would have an impact on him if he returned to Zimbabwe now. He said if he [said] Mugabe was a dictator, this would be illegal in Zimbabwe, and even when he was in [Country 1] he initially thought he was safe, but did not know the extent of the Zimbabwean agents there.
50. The Tribunal asked why he returned in 2008 if he was fearful for his safety. He said by then his relationship in [Country 1] had collapsed, his mother had died, and life was unbearable for him, and friends suggested he should go to Australia and start a new life. He started to plan to come here, and it took him time to save, and he had to go to Zimbabwe to organise things. He said he overstayed in [Country 1], his Zimbabwean passport had expired and he had married a [Country 1] resident but their relationship broke down, and he withdrew his spouse application.
51. The Tribunal asked again why if he had fears about safety in Zimbabwe he returned in 2008. He said he had waited until after the 2008 elections, when he thought things might be better, but they had got worse. The Tribunal queried in light of this why he went back. He said he had already moved out of his accommodation, said good bye to people, and applied to study in Australia, and had to go through with it. He also said once he got to Harare he felt he could lie low and avoid problems.
52. The Tribunal observed his protection application indicated he had never been in a married or de facto relationship, which was clearly inconsistent with the evidence he was now giving. He agreed this was the case, but said he was stressed at the time, and thought his privacy was being invaded, and did not think that question was relevant, otherwise he would have answered accurately. He confirmed that he had undergone a civil marriage, and was lawfully still married to his wife in [Country 1] although their relationship had ceased.
53. He told the Tribunal his passport expired in January 2007, and in response to a question about how he was able to leave [Country 1] on an expired passport, said he did not think it would be a problem, because the [Country 1] government was happy to let him go. The Tribunal observed that by the time he returned to Zimbabwe in May 2008 he had a new Zimbabwean passport which was issued in March 2008. He agreed, but said that passport was held in Zimbabwe by his family, and he did not want it sent to [Country 1] in case there were problems with the post. He also said he did not believe there would be a problem returning on his expired passport. At the request of the Tribunal, the applicant produced his current Zimbabwean passport and said his old Zimbabwean passport could be produced if necessary.
54. The Tribunal asked what had happened to him on arrival in Zimbabwe in 2008. He said an immigration official identified his passport had expired, and he was passed to other people he believed were Central Intelligence Organisation (CIO) officers. Whilst in their custody, they described him as a saboteur, searched his bags and discovered his broadcasting certificates, and beat him up. He said he was called [derogatory name deleted: s.431(2)], and told they believed he was [in broadcasting]. He said the men got a call and left the room leaving him in the company of a woman who had previously half-heartedly told the men to stop hitting him. When they left she asked him about [Country 1], and why he brought certificates and other things with him. He said he told her he was going to study in Australia and she seemed moved by this and let him go, allowing him to take his suitcase and media materials and certificates.
55. After being released from the airport he decided not to concentrate on what had happened and to go to his mother's grave, and later returned to his family home with his father. He said he

arrived home on a Sunday, and on the following day representatives of the ZANU-PF Women's League and Youth Group came to his house, and banged on the gates and were let in by his [sibling]. They asked if he was [broadcasting] in [Country 1] and if he was here to sabotage the country, then one of the youths remembered he went to school with a [sibling] of the applicant, and they left with a warning to him to follow the rules, and if he went back to [Country 1], not to broadcast.

56. He said some time after this his family home was ransacked whilst he was away, and he believed this was carried out by CIO or authorities, as the only thing they took were [broadcasting materials] but no valuable items in the house. He said he later learned his sister's house 40 kilometres away was also ransacked at the same time, which resulted in his relationship with that sister falling apart, as she blamed him for her troubles.
57. The Tribunal asked if he had any further interaction with authorities in Zimbabwe during that visit. He said he went to a police station away from his house to get a police clearance certificate for his student visa, as he was concerned if he reported locally, police would alert the Women's League who would in turn tell the CIO he was back. The Tribunal asked why he believed the CIO would be interested in him, given they already appeared to be aware he was in the country. He said he did not want the locals in his area to know he was back.
58. The applicant said he subsequently left the country and travelled to [Country 3] and then ultimately to Australia. He denied any problems leaving Harare Airport.
59. The Tribunal asked him about his activities in Australia. He said he kept quite a low profile but occasionally did work [at Zimbabwean community events]. The Tribunal observed this seemed to suggest he was more involved in charity and community, rather than political activities, and he agreed this was the case.
60. The Tribunal asked if Zimbabwean authorities or supporters of the government there had any interest in him since he had left in 2008. He said he believed plain clothed CIO officers came to his house wanting to know about him. He said they thought he might have returned to [Country 1], and be broadcasting, rather than being in Australia. The Tribunal asked why authorities in Zimbabwe would still be interested in him, as he was not involved in activities opposed to the government. He said they might wish to intimidate him and his family.
61. The Tribunal asked about three documents dated 2002, 2004 and 2008 which had been referred to as "police warrants" The applicant said he had copies of those documents and knew their content, and said they were all given to his sister after he left in 2008. The Tribunal read the July 2008 letter and indicated it had significant concerns about the authenticity of the documents, given the absence of letterhead, the nature and language used and the references. The applicant agreed they were "ridiculous" but said they were the documents given to him by his sister, who told him they were left by people believed to be government agents or supporters. The Tribunal observed if these documents were genuine, they suggested he had been "wanted" since 2002, and it had difficulty accepting he could have entered and left Zimbabwe and got a police clearance certificate in 2008.
62. The Tribunal referred to country information from the Department of Foreign Affairs and Trade, which suggested the CIO maintain an active presence at Harare Airport, and a person who was wanted, or of adverse interest would have difficulty leaving through that airport. The applicant said it might be possible that systems were not effective, and that information may not move around quickly between the police, the CIO and local area supporters.

63. The applicant said his father was kidnapped in November 2009, and believed this was at the behest of the CIO, or youth militia and the family had to pay to get him back. The Tribunal asked about the relevance of this to his concerns about returning to Zimbabwe. He said when they visited the house they talked about him and possibly wanted to send a message to him and believed his family was targeted as an example. He said his father was detained for about 10 days, and released, and his family wanted him to go to South Africa for safety, but he was stubborn and stayed. The applicant denied knowledge if any further CIO visits to his home.
64. The Tribunal referred to a letter dated [July] 2010 from a student welfare officer at [College 4], and asked if he was confident the author would endorse the contents and accuracy of that letter. The applicant said he was. The Tribunal noted the letter referred to the applicant attending counselling because of the alleged kidnapping of his father in November 2009, and that there had been discussion at that stage about whether he should seek asylum because of his own concerns. The applicant agreed, but said he did not wish to seek protection at that stage as he believed there was a stigma attached to being a refugee, and to some extent it was a matter of pride on his part.
65. The Tribunal asked if he had any further information about what was happening in his home location since he lodged his application. He said a family member told him people still come to the house and asked questions of his sister. He also indicated his sister had been seized and raped [in] July 2011, and in the course of that assault was accused of going to [Country 3] to meet him. He said his sister could explain this when she gave her evidence.
66. He said his sister initially only told him about the [assault]. He said his sister blamed local ZANU-PF and state security elements, and the matter had not been reported to police. He said he found out about the assault about four days after it occurred. The Tribunal asked how he believed this was linked to him. He said he felt responsible for this assault, because they only came to the family home because of him, and it seemed that as a result of him, his family was marked.
67. The Tribunal indicated that it had sought additional information relating to his time in [Country 1], and his broadcasting activities. Broadly speaking it indicated information from the [Country 1 immigration department] suggested he had never applied for protection in [Country 1], but had applied for a spouse visa, but withdrew that application. The applicant agreed this was correct.
68. The Tribunal also indicated enquiries had been made to verify what activities he had been involved in associated with broadcasting in [Country 1]. In essence it said those enquiries were unable to identify or confirm whether he participated in broadcasts with [Station 8], [Station 7], or if there was a [program]. In relation to the [Association 6] the Tribunal indicated its research suggested this was primarily a Zimbabwean community support association and cultural event organiser, although it did note that in 2010 the [Association 6] participated in a rally during which some speakers were reportedly highly critical of the Mugabe government. It also indicated there were no sources that could confirm or deny he had been a Master of Ceremonies for the [Association 6] in its 2005 Independence Day celebrations. Finally it indicated enquiries about the three “police warrants” could not confirm whether or not the signatories on the letters were at [the] Police Station between 2002 and 2008.

69. The applicant referred to a letter from [Association 6] on the Departmental file showing involvement in the [Association 6] and he was confident that the author would confirm the accuracy of the letter.
70. The Tribunal raised country information from DFAT from May 2011, suggesting returnees to Zimbabwe did not face a strong risk of being imputed to have an anti-ZANU-PF belief simply because they studied abroad in places like Australia. It noted that report also suggested most Zimbabweans of all political persuasions had close family members and friends abroad, including children of many people who had obtained wealth through their association with ZANU-PF. It also indicated other reports suggested both President Mugabe and Prime Minister Tsvangarai had actively encouraged expatriate Zimbabweans to return to help rebuild the country. As such the Tribunal indicated this suggested there would be no adverse treatment of him simply because he studied in countries such as [Country 1] and Australia. The applicant said each case had to be treated on its merits, and in his local area there were reports that not only high level or prominent activists were targeted by government.
71. The Tribunal referred to [country information in] 2010 related to a downturn in the level of political violence since peaks around the 2008 period. The Tribunal read extracts from that report to the applicant, who agreed there had been a downturn compared to earlier times, but with the pending election, said there were still risks for persons considered to be opponents of the government.
72. The Tribunal asked if there was anything else he wished to add. He said in Australia he was fearful of having to explain his case, and was “a bit paranoid” about discussing it. He believed however he had explained his situation at the hearing, and did not have anything else to add. The Tribunal observed he had brought his partner with him to the hearing, and asked about that relationship. He said it had been ongoing for about three years, and his partner was an Australian citizenship by grant.
73. The Tribunal asked the applicant’s representative if there were other matters she wished the Tribunal to consider. She indicated she thought everything had been covered.

Evidence of a Witness

74. The Tribunal took evidence by phone from the applicant’s [sister] from Zimbabwe. She confirmed basic details of family composition consistent with that described by the applicant. The Tribunal asked her what she wished to say. She said [in] July 2007 she returned from [Country 3] where she went to help her sister who was expecting a baby. [In] July 2011 she said she was approached by thugs from the ZANU-PF at about 10am at her home. She said they questioned her about her travel to [Country 3], and accused her of going there to meet the applicant, who could not come to Zimbabwe. She said they thought he had come from Australia to [Country 3] to meet her, and said they believed he sent money home for her education and to support the MDC.
75. The Tribunal asked if she believed her brother was an MDC member. She said she thought he was, and may have joined around the 2000 elections. She said she and her brother were active supporters of the MDC, but did not have membership cards as it was dangerous. She said other family members were also supporters, and went to meetings.
76. The Tribunal asked how ZANU-PF supporters would know the applicant sent money home to support the MDC. The witness said she gave the money to the MDC chairman. She said

when she was questioned by ZANU-PF thugs she tried to explain she had visited [Country 3] to see another sibling, but they did not believe her. She said they wrecked the house, and told her she had to explain her situation to the local ZANU PF chairman. She said she went to their car and was further questioned, and they drove around for some time and said if her brother was here they would kill him because he was anti-government.

77. During this event, she said they stopped the vehicle, and she was raped by several men and later placed back in the car and driven for 20 to 25 minutes before being left at her local shopping centre. She said she was in shock after the assault, and knew the men, because they were local ZANU-PF supporters, associated with the Women's League.
78. The Tribunal asked if the assault was reported. She said at first she kept quiet and did not go to the police as reporting would make it more dangerous. She said she told the applicant some days later. The Tribunal asked if she sought medical attention, and she said her brother sent money for pregnancy and HIV tests. She said she went to her local doctor who urged her to have counselling, and she had since told other family members about the assault.
79. The Tribunal invited the witness to add anything else. She said she believed if her brother ever came home the thugs would be looking for him because of his anti-ZANU-PF views. The Tribunal asked why she thought ZANU-PF would be interested in him. She said it may be because he drew attention to their behaviour in [Country 1] and they may wish to get him.
80. The Tribunal indicated to the applicant that the evidence of his sister seemed to suggest a stronger link or connection with the MDC than he himself had claimed. He said his sister was younger than him, and may not have fully understood what was going on. The Tribunal indicated it had some concern over aspects of her evidence and her assertions about the MDC association.
81. The Tribunal noted there may be other matters it needed to raise, and that it would consider whether to seek confirmation of the letters of support written by the [Association 6], and the college counselling service. It also indicated it would like to see his original Zimbabwean passport.

Post Hearing Action

82. [In] September 2011 the Tribunal received a copy of the 1997 passport of the applicant.
83. Following the hearing the Tribunal initiated enquiries with both [College 4], and the [Association 6] relating to the authenticity of letters of support provided by each of those organisations.
84. [In] September 2011 the Tribunal received a written response from the Manager, Student Services at [College 4], confirming the letter provided by the applicant was written by the counsellor concerned, and that the contents of the letter held by the Tribunal matched the copy on the student services counselling service file.
85. The Tribunal subsequently received a written response from the [Association 6] which confirmed the applicant had been associated with the [Association 6], was involved in its Independence Day celebrations in 2005, and was a volunteer for the association. The response also confirmed the [Association 6] letter of support provided with the protection application was authentic, and the contents were accurate. It indicated whilst the [Association

6] was “*apolitical*” it was unavoidable that the “*crisis of governance in our homeland*” was talked about, and the group comprised human rights activists who championed for restoration of justice and human rights in Zimbabwe. That response also said the author was “*not surprised*” the applicant had become a target because the Zimbabwe regime tended to target persons with opposing views, but acknowledged he was not aware specifically of why the applicant may have been targeted.

COUNTRY INFORMATION

General information

86. The United States Department of State “*Country Reports on Human Rights Practices*” for 2010 (published in April 2011) contained this overview on Zimbabwe:

Zimbabwe, with a population of approximately 11.4 million, is constitutionally a republic, but the government, dominated by President Robert Mugabe and his Zimbabwe African National Union-Patriotic Front (ZANU-PF) since independence, was not freely elected and was authoritarian. The last four national elections--the presidential election in 2002, parliamentary elections in 2005, harmonized presidential and parliamentary elections in March 2008, and the presidential run-off in June 2008--were not free and fair. In the March 2008 elections, two factions of the opposition Movement for Democratic Change (MDC), known as MDC-T to denote Morgan Tsvangirai's faction and MDC-M for the group led by Arthur Mutambara, gained a parliamentary majority. Mugabe was declared the winner of the June 2008 run-off election after opposing candidate Tsvangirai withdrew due to ZANU-PF-directed violence that made a free and fair election impossible. Negotiations subsequently took place, and in September 2008 the three parties signed the Global Political Agreement (GPA), a power-sharing agreement under which Mugabe would retain the presidency and Tsvangirai would become prime minister. In February 2009 Tsvangirai was sworn in as prime minister, and new cabinet ministers and deputy ministers from MDC-T, MDC-M, and ZANU-PF also were sworn in. Although the constitution allows for multiple parties, ZANU-PF, through the use of government and paramilitary forces, continued to intimidate and commit abuses against members and supporters of other political parties and obstructed their activities. In numerous instances, ZANU-PF leadership took actions and implemented policies that were contrary to the terms set out in the GPA. In February 2009 the National Security Council (NSC) was established to provide policy oversight and guidance to the security forces and direction to the Joint Operation Command (JOC--a group of senior security and civilian authorities). There were instances in which elements of the security forces acted independently of civilian control.

Security forces, police, and ZANU-PF-dominated elements of the government continued to commit numerous, serious human rights abuses. ZANU-PF's dominant control and manipulation of the political process through trumped-up charges, arbitrary arrest, intimidation, and corruption effectively negated the right of citizens to change their government. There were no politically motivated killings by government agents during the year; however, security forces continued to torture, beat, and abuse non-ZANU-PF political activists and party members, student leaders, and civil society activists with impunity. Projections of an early election in 2011 also led to an increase in the number of cases of harassment and intimidation of civil society, humanitarian organizations, and the media toward the end of the year. Security forces continued to refuse to document cases of political violence committed by ZANU-PF loyalists against members of other political parties. Prison conditions improved but remained harsh and life threatening. Security forces, which regularly acted with impunity, arbitrarily arrested and detained political activists not associated with ZANU-PF, members of civil society, labor leaders, journalists, demonstrators, and religious leaders; lengthy pretrial detention was a problem. Executive influence and interference in the judiciary continued, and the government infringed on citizens' privacy rights. The government continued to use repressive laws to suppress freedom of speech, press, assembly, association, and movement. The government restricted academic freedom. High-ranking government officials made numerous public threats of violence against demonstrators and political activists not associated with ZANU-PF. The government continued to evict citizens and to demolish homes and informal marketplaces. Farm invasions continued, and the government impeded nongovernmental organization (NGO) efforts to assist those displaced, as well as other vulnerable populations, albeit to a lesser degree than in 2009. Government corruption remained widespread. The following human rights violations also continued: government restrictions on domestic and international human rights NGOs; violence and

discrimination against women; trafficking of women and children; discrimination against persons with disabilities, ethnic minorities, the lesbian, gay, bisexual, and transgender (LGBT) community, and persons with HIV/AIDS; harassment and interference with labor organizations critical of government policies; child labor; and forced labor, including by children.

...

In 2009 at least 19 citizens died as a result of injuries sustained from political violence that targeted members of the opposition party in 2008, in addition to the more than 270 who died in 2008. The MDC-T released a statement in early July that named approximately 11,000 perpetrators and catalogued them by province. Mashonaland East had the largest number--approximately 3,700--of perpetrators. The killings were primarily committed by members of ZANU-PF, ZANU-PF youth militia, war veterans, and, to a lesser extent, members of the military and police. At year's end, no one had been held legally accountable for the killings.

There were no reported killings in connection with the Chiadzwa diamond fields during the year; 40 persons were killed there in 2009.

...

Despite the more than 270 confirmed killings resulting from political violence in 2008, there were no prosecutions or convictions in any of the cases. The Zimbabwe Human Rights NGO Forum filed 655 suits in court against perpetrators for human rights violations. Of the total cases, 305 were filed against nonstate actors. By year's end, four cases were settled out of court, three cases were scheduled for trial, and 280 cases were referred to the community courts.

During his annual address on Heroes' Day on August 9, President Mugabe stated that the government would not punish those responsible for past politically motivated violence.

87. The March 2009 UK Border Agency (“Operational Guidance Note for Zimbabwe”) made the following observations on developments since the power sharing agreement in 2008:

Treatment. Since the party was formed in 1999, many MDC activists have been subjected to restrictions on their freedom of expression, political intimidation, assault, arbitrary arrest and detention, imprisonment, torture, kidnapping, rape and murder. This treatment has mostly been perpetrated by the Government, the security forces, ZANU-PF activists and youth and war veterans groups. Historically, such treatment has escalated around the time of general, presidential and by-elections.²⁰

3.6.3 There was a dramatic increase in political violence and repression in March and April 2007 with hundreds of activists arrested and detained without charge following protests that culminated in Harare on 11 March. However, it was after Morgan Tsvangirai won the presidential poll on 29 March 2008, but according to official figures without the 50% plus one vote he needed for outright victory, that arguably the worst political persecution of recent times in Zimbabwe occurred. The result necessitated a run off which was scheduled for 27 June. ZANU-PF's response was to unleash a whirlwind of violence in which over 150 people, mostly those perceived to be MDC supporters, were killed, thousands injured and at least 36,000 displaced. The violence continued after the election, particularly in rural areas, and even after a Memorandum of Understanding, which included a call for an end to the political violence, was signed by the parties to the talks on 21 July 2008. Shortly after the MOU was signed ZANU-PF reportedly dismantled some of the bases that ‘war veterans’ had used to launch attacks on MDC supporters after the MOU was signed but some remained, particularly in Mashonaland West, East and Central provinces.²¹

3.6.4 By 22 August 2008, the FCO was reporting that levels of political violence and intimidation had fallen relative to the peak period of electoral violence, with the groups of ZANU-PF youth previously prevalent in the wealthier northern suburbs of Harare having dispersed.²² However, by the end of September there were reports that violence had flared up in the Mbare suburb of Harare when MDC supporters sought to reoccupy properties they had been evicted from during the height of the violence. According to the FCO, the situation also remained tense in parts of Mashonaland and Manicaland, where the ZANU-PF leadership is exceptionally vicious. Access to the rural areas continued to be restricted by roadblocks, with groups of ZANU-PF youth still present in those areas and the main bases still in place.

Attacks, abductions and arrests of perceived MDC activists were still occurring around the country, but at a lower level than April - June. The FCO concluded that while there was a downward trend in violence, the situation remained unpredictable and incidents of violence across the country continued, noting that it could deteriorate further without warning.²³

3.6.5 The situation did deteriorate for a while, with incidents of political violence/human rights abuses against MDC supporters, human rights defenders and others perceived to oppose ZANU-PF increasing between October and December 2008 before falling back again in 2009 to levels broadly comparable to those which have existed in Zimbabwe for the past several years outside periods of heightened tension such as at election times.²⁴

3.6.6 In the October – December 2008 period there were around 30 abductions and prolonged detentions of both high profile and low level MDC activists and human rights defenders. Attempts to secure their release dominated the news through the early months of 2009. Only in March 2009 were most of those who had been detained released but some remained in custody. Also from October to December 2008, demonstrations by students, health workers, women, Zimbabwe Congress of Trade Unions, the National Constitutional Assembly and other human rights groups were brutally broken up. Human rights defenders and journalists experienced heightened levels of harassment. Violence and arrests intensified in the diamond mining area of Marange, Manicaland and sporadically, elsewhere in the country. In several cases, soldiers protested over pay, assaulting people and confiscating goods and money. In Victoria Falls, 120 households were forced to destroy their homes.²⁵

3.6.7 From early 2009 there were increasing reports of retributory violence perpetrated by MDC supporters on ZANU-PF supporters who had allegedly been responsible for human rights abuses around the time of the presidential elections and of attempts by these MDC supporters to reclaim their looted property. As a result, more than 160 MDC supporters from around the country were arrested, detained and charged. February and March 2009 have also seen the arrest of the new Deputy Minister for Agriculture, Roy Bennett, an intensification of the campaign against white farmers, with arrests and farm invasions on the increase, some involving violence. Reports of political violence have continued, if not on the scale of April – June 2008, and suppression of peaceful protests is still the normal pattern. Teachers have experienced intimidation and harassment on attempting to return to work.

88. In respect to the risk of politically motivated violence towards members and supporters of the MDC, DFAT provided the following observation in May 2011:

Ordinary MDC-T and MDC-N members may be vulnerable to targeted politically motivated violence and intimidation, but the risks to ordinary members are not high compared to highly vocal party activists. The degree of risk generally depends how vocal a member is and where that member lives. MDC-T officials have said that at present, individuals who have membership cards but are not vocal supporters, are not likely to be targets of violence. Those at greatest risk are those who are seen to be vocal supporters of the party or who are perceived to be influencing others in their beliefs. Such individuals are not necessarily party members but may be community leaders like teachers who haven't shown themselves to be sufficiently loyal to local ZANU-PF authority. (DFAT report 1272, 12 May 2011)

Returnees to Zimbabwe

89. DFAT has provided advice over the past 10 years on returnees to Zimbabwe which has generally concluded that except for high profile opposition figures, party officials and organisers, failed asylum seekers or returnees from Australia were not considered to be generally at risk. (See CX61279 DFAT, CIR No. 13/02. “*Treatment of returnees in Zimbabwe*” 18 January 2002). In April 2002 DFAT noted contacts in British and South African High Commissions and airlines from countries which “*ferry the bulk of deportees by air back to the country, have told us they are aware of no incidents where returnees have been taken away by authorities or otherwise subjected to harm on return.*” (See CX 63792 – Country Information Report No. 091/02, 15 April 2002). In October 2007 DFAT updated its advice about overseas students stating:

We are not aware of difficulties by Zimbabweans returning from study from overseas in countries critical of the Government of Zimbabwe (GOZ) such as Australia, the United States, Canada and the United Kingdom. We have seen no evidence that the simple fact of studying in those countries would attract punitive action by the GOZ. Officers of the Central Intelligence Organisation (CIO) have been working under cover for some time as Immigration Officers at Harare International Airport. If an individual student was active in organisations subject to harassment by the GOZ, such as the Movement for Change (MDC), trade unions or civil society organisations, it is possible that she might be identified on arrival at Harare Airport. If so, any punitive measures taken against her by the GOZ would be the result of such activism, not of simply having studied in Australia. (Department Foreign Affairs and Trade, 2007, DFAT Report No. 717, 23 October 2007)

90. More recently (May 2011) DFAT responded to a Tribunal enquiry, stating:

Post does not consider that there is strong risk a person returning from studying abroad would be imputed with anti-ZANU-PF beliefs in the absence of other factors like prior political activism. Zimbabwe has an exceptionally large Diaspora. While the Diaspora is viewed as pro-MDC, most Zimbabweans of all political persuasions have close family and friends abroad. Many children of those who have attained wealth through their association with ZANU-PF seek to study abroad in countries like the UK, USA and Australia which are still seen as attractive destinations regardless of political persuasion.

Those returning to rural areas may face a higher risks but this risk is similar to that faced by those returning to rural areas after extended periods of time in Harare and Bulawayo, which are seen as pro-MDC urban areas. In some rural areas, those who have spent time abroad or in Harare or Bulawayo may be perceived to have pro-MDC beliefs and may have missed the opportunity to establish their loyalty and win the trust of local power structures. Nonetheless, the majority of Harare residents retain strong ties to their rural home, which they visit frequently without significant problems. (Source: DFAT report 1272 to the MRT/RRT: 12 May 2011).

91. Non-government sources also comment on returnees. In March 2009 the Institute for War and Peace reporting (IWPR) in an article entitled “*ZIMBABWE: Exiles Start to Return*” reported:

Zimbabwean professionals, many of them teachers, are coming home and seeking readmission into the public service, in response to a move by the country's new inclusive government to pay civil servants in foreign currency and relax conditions for rejoining the sector.

The influx is a response to calls from President Robert Mugabe and Prime Minister Morgan Tsvangirai for the more than three million exiles, who sought refuge from their country's chaotic economic situation in Southern African Development Community, SADC, countries and abroad, to return to Zimbabwe to help rebuild the country.

Zimbabwe's public service commission has announced that teachers who resigned between January 2007 and March 1 2009 should be allowed to rejoin the profession. It has also waived existing procedures for re-engaging engineers, surveyors and other public servants.

Beitbridge and Plumtree - the busiest entry posts into Zimbabwe from SADC countries - have reportedly recorded an increase in recent weeks in the number of economic and political refugees returning to Zimbabwe.

Most of them are teachers who fled the country's economic and political crisis and sought refuge, mainly in South Africa and Botswana, where, in desperation, they took menial jobs for paltry salaries. Teachers unions estimate that 70,000 teachers left the profession between 2,000 and 2008.

...

One official, speaking to IWPR on condition of anonymity, said her office was receiving hundreds of telephone calls from Zimbabweans in Botswana inquiring whether they could receive assistance in applying for their former jobs. (IWPR 19 March 2009).

92. In its 20 July 2009 “*Country of Origin Information Report*” for Zimbabwe, the UK Border Agency indicated there was no recent information that identified any particular problems for returning failed asylum seekers, and noted that both the MDC leader and Prime Minister Morgan Tsvangirai and President Mugabe were reported to be encouraging Zimbabwean expatriates to return (see para 33). That sentiment was repeated in the more recent UK Border Agency “*Country of Origin Information Report*” for Zimbabwe of September 2010.
93. A September 2010 UK Border Agency report by a fact finding mission in August 2010 noted:

Political environment

Most organisations interviewed reported that there had been an opening-up of the political environment since the formation of the Government of National Unity in February 2009. However, uncertainty over the future and doubts about the sustainability of the current governing coalition were a concern.

Most organisations reported that the parliamentary constitutional outreach process (COPAC), which is consulting with the public about the content of the new constitution, had led to renewed reports of intimidation and violence. As a result, there were fears that the current situation may deteriorate ahead of national elections which are likely to take place in the next couple of years.

Political violence

All organisations reported that current levels of violence were down on that experienced during 2008. However, all organisations reported that low-level violence, or the threat of violence, continued, particularly in some rural areas, and that this had increased with discussions about the new constitution. Although, a couple of organisations suggested that recent reports of violence may be exaggerated.

While there were some reports of an improvement in the way the police operated, most organisations stated that the police remained politically biased and that they often ignored, or were complicit in, the persecution of Movement of Democratic Change (MDC) supporters and civil society activists.

All organisations reported that politically motivated violence was rare in most urban centres in Zimbabwe. Bulawayo and Harare were noted as being relatively safe, and that they benefited from higher levels of scrutiny by the media, civil society and international organisations than smaller towns and rural areas. However, rural areas, especially areas that had traditionally voted for the Zimbabwean African National Union – Patriotic Front (ZANU-PF) such as the Mashonaland provinces - Central, East and West - and Manicaland, were noted to be particularly problematic. Matabeleland North and South were however considered to be relatively safe.

While some organisations noted that influential MDC supporters could be at risk, ordinary opposition and MDC supporters were not thought to be at any particular risk.

Non-Government Organisation (NGO) activity

All organisations interviewed reported that they were able to operate relatively freely in most areas of the country - political interference was reported to have decreased since the formation of the Government of National Unity.

Urban areas were reported to be relatively open, with the distribution of aid less open to political manipulation. However, most rural areas were more tightly controlled by ZANU-PF, with politically-appointed district administrators holding a large measure of influence. Rural areas considered by ZANU-PF to be its ‘heartlands’ were more difficult to access, especially for organisations that distributed food and which were involved in projects that were perceived to have a political angle. The distribution of medicine and medical care was reported to be relatively free from interference.

Internal relocation

It was reported that there were no legal requirements or restrictions for those wishing to re-settle in other parts of Zimbabwe. While in theory resettlement to any part of the country was possible, in practice,

resettlement to rural areas was reported to be difficult, especially for those considered to be opposed to ZANU-PF. However, most organisations stated that relocation to the country's main urban centres posed relatively few problems – the main constraint being economic.

Returnees to Zimbabwe

In addition to interviewing international and national NGOs the mission also spoke to seven Zimbabweans who had previously claimed asylum in the United Kingdom but then had returned to the country in 2009 and 2010. While all seven reported that they had decided not to divulge the fact that they had claimed asylum in the United Kingdom upon arrival in Zimbabwe, none experienced any significant problems on return. All chose to resettle in Bulawayo or Harare. UK Home Office, 21 September 2010: “REPORT OF FACT FINDING MISSION TO ZIMBABWE HARARE 9 – 17 AUGUST 2010”).

94. The 2010 UK Border Agency “*Fact Finding Report*” (above) also noted the Zimbabwe Human Rights NGO Forum was unaware of mistreatment of returnees. It stated:

The Forum has not come across any cases of returnees from the UK being mistreated and would expect to know of any such cases because its member organisations are represented across the country. It works closely with the Zimbabwe Association in London and is alerted where there are concerns a returnee might be at risk but has not come across any cases where that is happened. They are unable to say that there have been no such cases but if there have been they have been isolated examples. They do however have concerns that those who are known to have claimed asylum in the UK would be considered necessarily to have been disloyal to Zimbabwe and may therefore face additional problems reintegrating because the fact that they had claimed asylum would become known. This would not apply to returning economic migrants unless their families were known to be political activists. The Forum considers that the abolition of hate speech against asylum seekers returning from the UK is central to creating a more conducive environment.

Internal Relocation

95. Advice from DFAT to the Tribunal in August 2009 indicated “*MDC supporters can live safely, that is free from politically-motivated violence, in Harare and other major population centres in Zimbabwe. The only exception might be the squatter district of Epworth on the fringe of Harare, where community violence is not uncommon*”. (DIAC Country Information Service 2009, Country Information Report No. 09/63 – CRS Request No. ZWE9736: Update of country information post February 2009, (sourced from DFAT advice of 31 August 2009).
96. The UK Border Agency, in its 19 August 2011 “Country of Origin Report” for Zimbabwe” referred to enquiries by the UK Border Agency’s “Fact Finding Mission” and noted:

As part of the UK Border Agency’s Fact Finding Mission to Zimbabwe (see Report of the Fact Finding Mission to Zimbabwe: Harare 9-17 August 2010, dated 21 September 2010 (reissued 27 October 2010)) a representative of a major NGO who asked to remain anonymous stated that there were ... no express legal restrictions [on internal relocation]. ... [but] the intelligence systems of the main political parties are sophisticated and it would not be possible for those who have come to the adverse attention of a party to avoid that risk by relocating within Zimbabwe.

This applies equally to rural and urban areas. Thus, once a low level but influential supporter had been singled out for attention in a rural area had been identified as such, it would not be possible for that person to avoid the threat by relocating to an urban area because that knowledge would follow them to the city, even though someone with a similar profile in the city would be unlikely to attract the same level of interest and so would probably not be at risk. || [121a] (p45)

Also interviewed, the Research and Advocacy Unit (RAU) noted that while internal relocation was possible, there were potential difficulties in registering to vote. The RAU noted that: —It is difficult to change the area a person is registered to and they may therefore have to return to a rural area to vote. The Registrar General’s Department requires a large amount of documentation to alter a person’s voter registration area.

FINDINGS AND REASONS

97. The Tribunal finds the applicant is a citizen of Zimbabwe, and no other country. He was born in Zimbabwe, has held two passports issued by that country, which he used to legally depart Zimbabwe on several occasions, and most recently to lawfully enter Australia. In reaching these conclusions the Tribunal relies on the evidence of the applicant, and the copies he provided of his current and past Zimbabwe passports. His claim to refugee status is therefore assessed on the basis that Zimbabwe is his country of nationality.
98. The Tribunal had several concerns about the credibility of the evidence of the applicant and the authenticity of some of his claims. A number of those concerns were addressed by its enquiries with external sources, responses from the applicant himself, and the evidence of his sister at hearing. Whilst the Tribunal is still left with the conclusion that the applicant may have embellished and exaggerated some aspects of his past history, it accepts there is nevertheless an underlying degree of truth in his assertions about developing an adverse profile, and having been targeted as a perceived critic of the Zimbabwe government.
99. The Tribunal is not satisfied the applicant was at any stage “wanted” by police or that a formal warrant or warrants had been issued for his arrest. Had this been the case the Tribunal considers he would have been unable to obtain a police clearance certificate in 2008 to seek his student visa, and would not have been able to easily depart or enter Zimbabwe. In this respect the Tribunal gives no weight whatsoever to the three documents purported to be “police warrants” or “letters” Such documents are amateurish, and inconsistent with what would be expected from a functioning police force such as exists in Zimbabwe. The Tribunal also notes with interest that whilst the applicant provided those documents, he also indicated they were “unbelievable” but said they were simply given to his sister and passed to him, and may have been an attempt by local ZANU PF supporters to scare or intimidate him and his family. The Tribunal considers this explanation plausible.
100. Some of the strongest evidence of past targeting of the applicant and his family and his fear of harm on return to Zimbabwe arises from the [College 4] student counselling service report dated [July] 2010. That report was the subject of post hearing Tribunal enquiry, and the Tribunal is satisfied it is genuine, and accurately reflects the information available to the author of that report. It indicates the applicant first attended that service for assistance in November 2009, about 8 months before he lodged his protection application. It also indicates at the time of his first attendance he gave a history of his own past activities in broadcasting, and asserted his father had been recently “picked up” by the CIO, and that he felt responsible for this. The letter also notes the question of protection was discussed, but the applicant was reluctant to pursue that course then. It also provides external support for his claim his father was detained in 2009, and that some 8 months prior to applying for protection, the applicant attributed that detention to his own activities and situation. In the Tribunal’s view, this substantially dispels its concern that the claim his father was abducted was one of recent concoction to support his protection visa, or that there was an absence of evidence he had previously expressed concern about his safety if he returned to Zimbabwe.
101. Similarly, the confirmation from [Association 6] provides a degree of corroboration of the factual claims of the applicant to have been involved in that association in [Country 1], and that this was a basis on which he had concerns about his safety in Zimbabwe. The Tribunal considers this confirmation to be credible, and largely consistent with the claims of the applicant in terms of his past activities in [Country 1] and involvement in broadcasting there.

102. The Tribunal also found the evidence of the sister of the applicant to be largely credible in respect to the claim that there was continuing interest in the applicant in his local area, and that local ZANU PF supporters use violent assault as a means to intimidate family members. The assertion of what occurred to his sister in July 2011 is also consistent with the timing of the protection application, and with the earlier claim that his father was also targeted by agents or supporters of the Zimbabwe government because of the applicant.

Imputed political opinion

103. The Tribunal does not accept the applicant fled Zimbabwe in 2002 when he went to the [Country 2], and finds the reason for that travel was essentially educational and economic in nature, rather than related to concern for his safety because he was not a supporter of the government. In this respect the Tribunal considers the applicant overstated or embellished his evidence on this aspect. Similarly, the Tribunal does not accept he had a genuine fear for his safety when he returned to Zimbabwe in 2008 using his expired passport. Had he held such fear, it does not accept he would voluntarily have returned. The fact he did is, in the Tribunal's view, more consistent with his claim that he wished to study in Australia and was simply returning to Zimbabwe after a lengthy period overseas to arrange a visa to come to Australia.
104. The Tribunal is however prepared to accept the applicant was questioned by officials at Harare airport on his return to Zimbabwe in 2008. It also accepts that during that questioning it became apparent authorities were aware of his broadcasting activity in [Country 1] with [Association 6] and other outlets, or alternatively became aware of those activities during questioning. Whilst the Tribunal considers the primary reason he would have initially come to the attention of authorities was his arrival on an expired passport, it accepts that following his arrival he became the subject of further interest, most likely because of concern (real or otherwise) that he may have used broadcasting to criticise the government. The Tribunal accepts that from that point the applicant may well have developed a profile that exposed him to ongoing scrutiny and interest both at an official level, and at a less official level in his local area. It does not however accept his claim in his written statement that he "escaped" from the airport, and prefers his evidence at hearing that he was released by a female officer. As a result, the Tribunal does not accept authorities in Zimbabwe would be seeking the applicant because he had "escaped" from the airport.
105. The Tribunal does however accept that following his arrival and release, there may have been further interest in the applicant, and that his home and that of his sister were raided by persons who were either officials or government supporters. The Tribunal accepts the possibility that in the course of these raids, additional information or material about his broadcasting background could have emerged.
106. The Tribunal is satisfied the applicant was involved in the [Association 6] in [Country 1] as claimed. It is also prepared to accept he may have been involved in other African and Zimbabwe community activities in [Country 1], and as such may have developed a modest profile in [Country 1]. Whilst it does not accept the nature of his involvement was overtly political or directly opposed to the government of Zimbabwe, it cannot exclude the possibility he would be perceived to be an opponent of the government because of those activities, or because the [Association 6] may itself be perceived to be opposed to the Zimbabwe government. In reaching this conclusion, the Tribunal relies on its post hearing enquiries concerning that organisation.

107. The applicant returned voluntarily to Zimbabwe in 2008, and during that stay, claims to have experienced harm and harassment because of the perception he was opposed to the government or was working against it. The Tribunal accepts that this is possible. Country information (above) makes it clear that persons involved in media or journalism, or those who seek to influence others to adopt views opposed to the government do face the prospect of harsh treatment and serious harm. (See the 2010 United States Department of State “*Country Reports on Human Rights Practices*”).
108. The Tribunal accepts that collectively the factors set out above amount to the applicant being imputed to have a political opinion opposed to the Government of Zimbabwe.

Overseas study and presence in Australia

109. The applicant also claimed he may face scrutiny and harm on return to Zimbabwe as he was studying and living in Australia for several years, and may be perceived to be opposed to the Zimbabwe government. He does not however make any claim to have been involved in activities of a political nature in Australia that would identify him as an opponent of the government. On the material available the Tribunal is not satisfied the applicant has engaged in any activity in Australia that would result in him being perceived to be an opponent of the Government of Zimbabwe.
110. The Tribunal does not accept lawfully leaving Zimbabwe as a student and entering Australia of itself results in the applicant being perceived or regarded as opposed to the Government of Zimbabwe. Similarly the Tribunal does not accept simply living in or studying in Australia (in the applicant’s case for about 4 years) creates a risk of harm, in the absence of some risk creating factor. As indicated at hearing, many Zimbabweans come to Australia for various reasons, such as study, and there is no indication this leads to harm on return to Zimbabwe from the Government of Zimbabwe or its supporters. In reaching these conclusions the Tribunal accepts country information raised at the hearing (and set out above) that returnees including students from Australia and other “western” countries are generally at no greater risk than persons remaining in Zimbabwe. Whilst that information suggests returnees may be scrutinised by authorities on arrival, such scrutiny alone does not amount to the “serious harm” required under the Migration Act to constitute persecution.
111. The Tribunal also accepts other country information (above) which indicates the Government of Zimbabwe, and both major parties have actively encouraged expatriate Zimbabweans to return to help rebuild Zimbabwe and its public services (see “*ZIMBABWE- Exiles Start to Return*” Institute of War and Peace Reporting (IWPR) 19 March 2009, and the UK Border Agency “*Country of Origin Information Report*” for Zimbabwe, 20 July 2009 set out above).
112. The Tribunal does however accept that if there are personal factors relating which profiles or draws attention to an individual, the degree of scrutiny and attention to which they might be subjected on return to Zimbabwe from authorities and non-state actors could be increased because they have lived in a country like Australia, which is generally considered to be unsympathetic to the Mugabe regime. Such adverse attention does not arise solely from formal government agencies or authorities, but also from supporters of the ruling regime or its elements, such as ZANU PF supporters and youth militias which, country information indicates exercise considerable power, and act with relative impunity in their local areas.
113. The United States Department of State “*Country Reports on Human Rights Practices*” for 2008 noted that during 2008 and early 2009 unlawful killings and politically motivated

abductions increased. That report also noted “*killings were primarily committed by members of ZANU-PF, ZANU-PF youth militia, war veterans, and, to a lesser extent, members of the military and police*”. It noted State-sanctioned use of excessive force increased in that period, and security forces tortured members of the opposition, student leaders, and civil society activists with impunity. Since then there appears to have been some improvement, as the more recent 2010 United States Department of State “*Country Reports on Human Rights Practices*” (see above) notes, however that report still indicates security forces continue to refuse to document cases of political violence committed by ruling party loyalists against members of the opposition, and such perpetrators appear to act with relative impunity.

114. Whilst there is no evidence of routine or widespread interrogation of, or harm to returning students by officials or non-state actors such as ZANU PF and youth militia, in this case the Tribunal cannot dismiss as fanciful or remote the possibility that the risk to the applicant in his local area, because of his past imputed political opinion could, in a cumulative sense be increased because he has returned from several years in Australia.

Is there a real chance of persecution for one or more Convention reasons?

115. Country information makes it relatively clear that persons attributed with anti-government beliefs or opinions (whether actual or perceived) continue to face real risks, including death or significant injury from government elements or supporters such as ZANU PF supporters, youth militia or war veterans. (See the US Department of State “*Country Reports on Human Rights Practices*” for 2010). Such risk amounts to “serious harm” for the purposes of s91R(1)(b) of the Act. In this case, whilst the Tribunal does not consider there is a high probability the applicant would face serious harm on return to Zimbabwe because of past involvement in broadcasting in [Country 1], his interaction with authorities in Zimbabwe in 2008 and a perception he may be opposed to the Government of Zimbabwe, it cannot dismiss as remote the possibility this could occur. The Tribunal must decide if the applicant’s fear of harm is well founded. As set out in paragraph 14 above, this will be the case where there is a real substantial basis for that fear, but not if it is only assumed or based on mere speculation. A ‘real chance’ is one that is not remote or insubstantial or a far-fetched possibility, and a person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
116. On the material available, the Tribunal is satisfied the applicant faces a real chance of serious harm in his local area if he returned to Zimbabwe now or in the reasonably foreseeable future. It is also satisfied the essential and significant reason he could face such persecution is his imputed political opinion, arising from past involvement in broadcasting in [Country 1], the perception he is opposed to the government of Zimbabwe and his interaction with authorities in Zimbabwe in 2008. In light of this, the targeting of his family in incidents in 2009 and 2011 suggest there remains ongoing adverse interest in him in Zimbabwe. Finally the Tribunal considers that given the adverse profile identified above, the fact he has spent 4 years in Australia, could to some extent increase the degree of scrutiny to which he would be subjected on return to Zimbabwe and further enhance the profile he already has with both authorities and government supporters. As such the Tribunal is satisfied he has a well-founded fear of persecution for those reasons, and that the persecution he fears falls within the scope of the Refugees Convention.
117. The harm the applicant fears arises both from authorities and from non-state agents such as the ZANU PF or youth militia supporters, who are able to act with impunity. In reaching this conclusion the Tribunal accepts the observations contained in the 2010 UK Border Agency

“*Fact Finding Mission*” report, (above) which indicated whilst there had been some improvement, police remain politically biased and often ignored or were complicit in persecution of MDC supporters and civil activists. Other information (such as the 2010 US Department of State report, above) indicates police and security forces continue to refuse to document cases of political violence by ZANU PF loyalists against persons perceived to opposed the Government, or critical of the Government. As a result the Tribunal is satisfied the applicant would be unable to obtain effective protection from authorities in Zimbabwe.

Third Country protection and internal relocation

118. There is no evidence the applicant has a legally enforceable right to enter and reside in any other country, and the Tribunal is not satisfied he has such right. The Tribunal therefore finds he is not excluded from Australia’s protection by s36(3) of the Act.
119. The Tribunal is satisfied the persecution the applicant fears could not be avoided by him relocating elsewhere in Zimbabwe. In reaching this conclusion the Tribunal accepts the submission that relocation is not feasible in his case. Whilst there is country information (see the DFAT report of May 2011 above) suggesting relocation might be viable in some cases, particularly to an urban area, the Tribunal notes the applicant previously lived in an urban area of Harare. Country information indicates relocation to a rural area was, in practice considered difficult (see the UK Border Agency “*Fact Finding Mission*”) and the Tribunal therefore considers relocation to a rural area would not be reasonable in this case.
120. The Tribunal also notes and accepts the observations in the August 2011 UK Border Agency COR that “*the intelligence systems of the main political parties are sophisticated and it would not be possible for those who have come to the adverse attention of a party to avoid that risk by relocating within Zimbabwe*” Whilst that advice was in the context of low level or influential political supporters, the Tribunal considers the same rationale would also apply to a person attributed with an anti-government belief who has already been the subject of adverse interest, or who was from a profession or group (such as journalists or those in the media) considered to be opposed to the government.
121. In this case the applicant has a background in broadcasting, and some exposure through a role in that medium in [Country 1], in an organisation which may be perceived to be opposed to the Zimbabwe government. The Tribunal is also prepared to accept his [Country 1] activity may now be known in Zimbabwe, and that this has resulted in the applicant and his family being targeted.
122. Having found the applicant possesses such attributes, and that he and his family had been identified in their local area of Harare, the Tribunal considers relocation, even to some other urban area, would not avoid a real chance of serious harm. As such, the Tribunal is not satisfied internal relocation is reasonable in this case.

CONCLUSION

123. Having considered the applicants claims individually, and (importantly in this case) cumulatively, the Tribunal is satisfied he is a person to whom Australia has protection obligations under the Refugees Convention, and that he satisfies the criterion set out in s.36(2)(a). In the light of this conclusion the Tribunal was not required to address or consider whether the applicant met the complementary protection criterion.

DECISION

124. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.