

1205253 [2013] RRTA 263 (28 March 2013)

DECISION RECORD

RRT CASE NUMBER: 1205253

DIAC REFERENCE(S): 06/691 CLF2011/190628

COUNTRY OF REFERENCE: Zimbabwe

TRIBUNAL MEMBER: Tony Caravella

DATE: 28 March 2013

PLACE OF DECISION: Perth

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 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, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] October 2011.
3. The delegate refused to grant the visa [in] March 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. 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 in respect of 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 in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. 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 in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of 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.
7. 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.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.

15. Whether an applicant is a person in respect of 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

16. 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 in respect of 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').
17. '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.
18. 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

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Background and claims for protection

20. In his written application for a protection visa submitted to the Department [in] October 2011, the applicant claims that he left Zimbabwe initially in 2002 because his parents could no longer find work and lost their jobs because of their political support of the opposition.
21. The applicant also claims that if he returns to Zimbabwe he fears he may be detained and physically abused or killed. He claims he was detained in 2006 for supporting the opposition party when he briefly returned to Zimbabwe. He also claims that if his family return to get him they will also be killed. He writes that his claimed persecutors will think that he and his family fund the opposition movement (MDC). He claims that he will be deemed to be a threat to the current government.

22. The applicant writes that he is in fear of the police, the army and the central intelligence office. He also claims that if the supporters of the government in and around the area he lives in realise that he has returned they will also kill him or inform the applicant to the police, the army or to the central intelligence.
23. The applicant claims that he has been beaten, detained, and questioned for participating in a rally in his neighbourhood. He also claims a close friend of his was killed by the government forced in March 2008 for organising and participating in rallies. He claims that he has ties with the youth worker [Ms A] who is currently in hiding out of Zimbabwe.
24. The applicant claims that the authorities will not protect the applicant on his return because they are the persecutors.

The delegate's decision

25. The delegate's decision record dated [in] March 2012 indicates that the delegate accepted certain claims, including that the applicant may have been detained at the [police station deleted: s.431(2)] and also accepted that the applicant's friend named [Mr B] passed away. However, the delegate found that in the absence of further evidence to suggest that he will be systematically and selectively harassed for a convention ground, the applicant's fear of persecution is not well founded. The delegate also found that in view of the relatively little time the applicant has spent in Zimbabwe since 2002, he does not have a political profile that would cause him to be of interest to the security forces or to the ZANU-PF governing regime. The delegate characterised the applicant would be an ordinary, non-vocal MDC member and the risk to him as such would not be high.

Application for review

26. The applicant applied to this Tribunal for a review of the delegate's decision. The applicant's application was received by this Tribunal [in] April 2012. The application for review was constituted to the present member [in] November 2012.

Tribunal hearing

27. The applicant appeared before the Tribunal [in] January 2013 to give evidence and present arguments.
28. The Tribunal opened the hearing by explaining the procedural aspects of the hearing and then invited the applicant to explain why he fears returning to Zimbabwe. He said he has been detained for no reason in the past and because he took part in a peaceful rally. He added that his parents have departed Zimbabwe and live in Uganda and his father is seen as an opposition supporter. He added that having spent time in Australia he would be seen as being a source of funds for the opposition because he has been away from Zimbabwe for so long. He added that he would also be targeted because of holding a good education and because his parents are educated and he would be seen as being more white than black. He added that another reason why he would be targeted is because his friend [Mr B] had been detained because the authorities were after his sister [Ms A] who he claimed to be an activist. He said that his friend [Mr B] turned up dead a week later. He said this happens in Zimbabwe.

29. The applicant told the Tribunal that his parents do not return to Zimbabwe because of the danger there. He said that his parents are Shona. He said he was not sure of his parents' visa status in Uganda but thinks they can renew their visas to stay there every couple of years so long as they are working. He told the tribunal that his brother is also a student at [university deleted: s.431(2)] Western Australia. He said his [sisters] live with his parents in Uganda.
30. The applicant told the Tribunal that all his uncle's have moved to South Africa, one moved to [city deleted: s.431(2)] but he does not know whether he is still there. He said his grandparents live in [location deleted: s.431(2)] which is about [distance deleted: s.431(2)] from Harare. The applicant told the tribunal that he arrived in Australia in February 2007 as a student. He said that while in Australia he has worked several part-time jobs including with [employers deleted: s.431(2)].
31. The Tribunal asked the applicant why he had referred to his family as becoming known for their opposition in 1997-1998. The applicant replied that it was because there was an election around that time, and that it was the first time that he had seen political violence he said jobs dried up and his father left Zimbabwe in 2001. He said he remembers his parents talking about politics in the circumstances in Zimbabwe during this time.
32. The Tribunal invited the applicant to provide comment on his MDC membership and activities in that organisation. He said that in 2005, having seen the decline in the government and the increase in violence in Zimbabwe, he thought he could not do anything except support people who could make a difference. He said he was not in Zimbabwe in 2005 to 2006 because he was in [country deleted: s.431(2)] studying there. He said however he would speak to his friends in Zimbabwe over the phone, and returned in 2006. He said that on that occasion he was supposed to be remaining in Zimbabwe for one and a half months, but the only stayed for three weeks. He said he went to [location deleted: s.431(2)] to a MDC member's house there and he would talk with them about what needed to be done. He said he was also involved in handing out T-shirts, posters and MDC caps.
33. The applicant told the Tribunal that he also attended a rally in July 2006 held at [location deleted: s.431(2)]. He said he recalls people singing and chanting but cannot recall who spoke to the rally on that occasion. He said the police arrived in vans. He said he remembers seeing police cars full of police. He said that they were still handing out T-shirts and posters. He said that he and others were taken by police, put into one of the vans, and taken to the central police station. He said they were asked what they were doing and asked whether they did not realise that they were bringing the country down. He said it was very intimidating. He said he was hit on the back of the night stick to confirm that the police were serious. He said that there were about eight of those who attended the rally taken in by police on that occasion. He said the police wanted their parents to come and collect them from the police station. He said that the police eventually let them or go when they realised that they did not know anything about MDC matters. He claimed that the police wanted to scare them. The applicant told the tribunal that on that visit, he was staying with an aunt in [suburb deleted: s.431(2)] but then after the incident of being taken in and questioned by police he left and returned to Uganda. He told the tribunal that he has not returned to Zimbabwe since that incident in 2006. The tribunal asked the applicant whether he had been charged with any offence during the course of this incident; he replied he had not.
34. The Tribunal asked the applicant whether he has been involved in any pro-MDC, or anti-Zimbabwe government activity since being in Australia. He replied that he had not.

35. The Tribunal asked the applicant whether he has maintained his membership of the MDC. He replied that he had not. The tribunal asked the applicant whether he could provide a copy of his MDC membership card. He replied that he could not find it.
36. The applicant told the Tribunal that he fears returning to Zimbabwe because he has been away for so long, and because of his father [Mr C] who is an academic and who is working with the [agency deleted: s.431(2)] in Uganda.
37. The applicant told the Tribunal that he departed Zimbabwe via Harare airport and flew to Kampala, however he had no trouble departing or getting through security at Harare airport. He also told the tribunal that he faced no problems in getting a passport in Zimbabwe, although he added that this occurred prior to the 2006 incident.
38. The Tribunal asked the applicant whether there had been any other incidents before the one in 2006 which he describes. He replied that there had been no others.
39. The Tribunal asked the applicant to comment on the apparent delay in applying for a protection visa after his arrival in Australia. The applicant said he could not apply for a protection visa in Uganda, and he did not want to apply for a protection visa but rather wanted to take the student-sponsor pathway. He said his father is a scholar and wanted the applicant to get an education in Australia. He added that he was personally not aware of protection visas, but said his father did not mind arranging for the applicant to leave Zimbabwe by paying for him to get a good education in Australia. He told the tribunal that he began studying a [course deleted: s.431(2)] but that he had failed some units. He said he has six units to finish his degree.
40. The applicant told the Tribunal that his wife [name deleted: s.431(2)] is an Australian citizen. He said that she works as a [occupation deleted: s.431(2)]. He said they met in Australia and married here in November 2011. The tribunal asked the applicant whether he has told his parents about being married in Australia; he replied that he had not told his parents because they would not have agreed to the marriage. The tribunal asked the applicant whether he had considered making an application for a partner visa. The applicant indicated he would make enquiries about whether he was eligible for such a visa.
41. The Tribunal explained to the applicant the complementary protection provisions of the Act and invited the applicant to make comment or submissions on this, or on any other matter in his application. The Tribunal invited the applicant to provide further submission or evidence on the status of his parents' visa in Uganda; evidence of fathers political activity, outspokenness, or being known to the ZANU PF; a copy of his MDC membership card, and a timeline of the applicant's absences from Zimbabwe. The Tribunal advised the applicant that it would consider any further submission or documentary evidence submitted to it by [a date in] February 2013. As at the date of the Tribunal's decision, it has not received any further submission or documentary evidence from the applicant.

Independent country information

Background information on the current political context of Zimbabwe

42. On 29 March 2008 Zimbabwe held simultaneous parliamentary and presidential elections. The Movement for Democratic Change – Tsvangirai (MDC-T) party won the

parliamentary poll with 99 (of the 210) seats, compared to ZANU-PF's 97 seats.¹ The balance of legislative power was held by the MDC splinter group the Movement for Democratic Change – Mutambara (MDC-M)² which won 10 seats.³ The result denied ZANU-PF a legislative majority for the first time since independence.⁴ According to the *Enough Project*⁵ ZANU-PF's loss in the March 2008 election was unexpected as the party's history of vote-rigging made an opposition victory unlikely.⁶

43. The results of the presidential election were released by the Zimbabwe Election Commission (ZEC) in May 2008. The ZEC found that Tsvangirai received 47.9 per cent of the presidential vote, compared to 43.2 per cent for Mugabe.⁷ The ZEC ruled that as neither candidate had won an absolute majority a presidential run-off election would occur on 27 June 2008.⁸ The MDC accused the ZEC of fraud and claimed that Tsvangirai had won the presidential election outright with over 50.3 per cent of the vote.⁹ Due to the widespread violence and repression of MDC supporters following the announcement of a run-off election,¹⁰ Tsvangirai withdrew from the run-off election and President Mugabe was declared the winner.¹¹ International condemnation of the run-off election led to a mediated solution which resulted in the 2008 Global Political Agreement (GPA) and the formation of the Government of National Unity (GNU) in 2009.
44. Elections have been proposed for June or July 2013; however, an official date has not been set. It is noted that under the GPA, elections cannot occur until a referendum on a new Constitution is held. On 13 February 2013 *Reuters* reported that Tsvangirai expects elections to be held in July 2013 (a precise date was not given);¹² Mugabe, however, has called for

¹ Freedom House 2010, *Freedom in the World – Zimbabwe*, June
<<http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7952>> Accessed 10 September 2010

² It is noted that in January 2011 the MDC-M elected Welshman Ncube as its new president, changing the party's acronym to MDC-N.

³ Bratton M & Masunungure E 2011, *The Anatomy of Political Predation: Leaders, Elites and Coalitions in Zimbabwe, 1980-2010*, Developmental Leadership Program, January, Research Paper 09, p.30
<<http://www.dlprog.org/ftp/download/Public%20Folder/1%20Research%20Papers/The%20Anatomy%20of%20Political%20Predation.pdf>> Accessed 23 February 2011

⁴ Freedom House 2010, *Freedom in the World – Zimbabwe*, June
<<http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7952>> Accessed 10 September 2010

⁵ The *Enough Project* is a project of the Centre for American Progress (CAP) in Washington DC. The *Project* works to end genocide and crimes against humanity in Africa. Partners of the project include Amnesty International and Human Rights Watch.

⁶ Jafari J 2008, *Mugabe's Revenge: Halting the Violence in Zimbabwe*, May, Enough Project Strategy Paper 20, p.1 <http://www.enoughproject.org/files/zimbabwe_may_08.pdf> Accessed 17 August 2012

⁷ Freedom House 2010, *Freedom in the World – Zimbabwe*, June
<<http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7952>> Accessed 10 September 2010

⁸ Freedom House 2010, *Freedom in the World – Zimbabwe*, June
<<http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7952>> Accessed 10 September 2010

⁹ Freedom House 2010, *Freedom in the World – Zimbabwe*, June
<<http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7952>> Accessed 10 September 2010

¹⁰ Perry A 2008, 'Tsvangirai Pulls out of Election', *Time News*, 22 June
<<http://www.time.com/time/printout/0,8816,1817057,00.html>> Accessed 9 July 2008;

¹¹ US Department of State 2012, *2011 Country Reports on Human Rights Practices: Zimbabwe*, 24 May, p.1
<www.state.gov/j/drl/rls/hrrpt/2011/index.htm> Accessed 25 May 2012

¹² Chinaka C 2013, 'Tsvangirai Says Zimbabwe Elections Expected in July', *Reuters*, 13 February
<<http://www.reuters.com/article/2013/02/13/us-zimbabwe-election-idUSBRE91C17520130213>> Accessed 28

elections to be held on 29 June 2013.¹³ A faction within ZANU-PF reportedly opposes the 29 June 2013 date, claiming the party is not ready for the polls.¹⁴

45. Election timings have been a point of tension within the GNU, with Mugabe and his ZANU-PF party previously pushing for elections in March 2013, 2012 and 2011 and Tsvangirai's MDC-T party refusing to hold elections until Constitutional and electoral reforms have been made.¹⁵ In September 2012, Mugabe unsuccessfully called for elections to be held in March 2013.¹⁶ Prior to this, ZANU-PF had proposed elections for 2012, however SADC blocked ZANU-PF's efforts because the GPA required Zimbabwe to adopt a new Constitution before elections can be held.¹⁷ In 2010 Mugabe threatened (to no avail) to hold elections in 2011.¹⁸

State security institutions

46. Zimbabwe's security sector comprises the Zimbabwe Defence Force (ZDF), Zimbabwe Republic Police (ZRP), the Central Intelligence Organisation (CIO) and the Zimbabwe Prison Service (ZPS). Overseeing these institutions is the Joint Operations Command (JOC).
47. Fundamental to ZANU-PF's survival has been its creation of a partisan and politically active security sector.¹⁹ Since independence ZANU-PF has sought to transform state security institutions into agencies that serve and advance the interests of the party.²⁰ A 2010 paper by the Institute for Security Studies (ISS) states that ZANU-PF has achieved this by appointing former members of the liberation army to key government positions and rewarding them with seized land and wealth, and 'purging' MDC sympathisers from security forces.²¹ According to the ISS, this has created a situation where leaders of state security institutions who are loyal to ZANU-PF have a vested interest in maintaining the status quo and keeping ZANU-PF in power for fear of being prosecuted for human rights violations or losing farm land and 'ill-

February 2013. Also see African Elections Project 2013, *Zimbabwe Sets March 16 for Referendum*, 14 February, All Africa <<http://allafrica.com/stories/201302140984.html>> Accessed 1 March 2013

¹³ Makova P 2013, 'Mugabe Sets Election Date', *The Standard*, 3 February

<<http://www.thestandard.co.zw/2013/02/03/mugabe-sets-election-date/>> Accessed 1 March 2013

¹⁴ African Elections Project 2013, *President Mugabe Sets Date for Zimbabwe Elections*, 6 February

<http://www.africanelections.org/new_news.php?nid=647> Accessed 1 March 2013; Makova P 2013, 'Mugabe Sets Election Date', *The Standard*, 3 February <<http://www.thestandard.co.zw/2013/02/03/mugabe-sets-election-date/>> Accessed 1 March 2013

¹⁵ Human Rights Watch 2012, *World Report 2012 – Zimbabwe*, 22 January <<http://www.hrw.org/world-report-2012/world-report-2012-zimbabwe-0>> Accessed 16 August 2012; Sibanda T 2012, 'Zimbabwe: Harmonized Elections in June 2013?', *SW Radio Africa*, 11 June, All Africa

<<http://allafrica.com/stories/201206120786.html>> Accessed 14 August 2012

¹⁶ Laing A 2012, 'Robert Mugabe Sets Out Plans for Zimbabwe Elections', *The Telegraph*, 27 September

<<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/zimbabwe/9570187/Robert-Mugabe-sets-out-plans-for-Zimbabwe-elections.html>> Accessed 1 March 2013

¹⁷ Sibanda T 2012, 'Zimbabwe: Harmonized Elections in June 2013?', *SW Radio Africa*, 11 June, All Africa

<<http://allafrica.com/stories/201206120786.html>> Accessed 14 August 2012

¹⁸ 'Mugabe Threat to Nationalise US and UK Zimbabwe Firms' 2010, *BBC*, 17 December

<<http://www.bbc.co.uk/news/world-africa-12021324>> Accessed 12 September 2012

¹⁹ Hendricks C & Musavengana T 2010, *The Security Sector in Southern Africa*, October, Institute for Security Studies, Monograph 174, p.150 <<http://www.iss.co.za/uploads/Mono174.pdf>> Accessed 30 August 2012

²⁰ Hendricks C & Musavengana T 2010, *The Security Sector in Southern Africa*, October, Institute for Security Studies, Monograph 174, p.175 <<http://www.iss.co.za/uploads/Mono174.pdf>> Accessed 30 August 2012

²¹ Hendricks C & Musavengana T 2010, *The Security Sector in Southern Africa*, October, Institute for Security Studies, Monograph 174, p.175 <<http://www.iss.co.za/uploads/Mono174.pdf>> Accessed 30 August 2012

gotten wealth'.²² The International Crisis Group (ICG) similarly states that much of the security establishment has benefited from Mugabe's rule and 'sees democratic reforms as the end of privileged status.'²³ It is noted, however, that not all members of the state security sector support ZANU-PF. In 2009 the Council on Foreign Relations reported that many experts suggest that 'a significant portion of the [state] security sector – particularly in the lower ranks – no longer supports Mugabe.'²⁴

48. Despite the establishment of the power-sharing Government in 2009, ZANU-PF has maintained exclusive control over state security institutions. All executive power, including governance, control and management of the police, security forces, and intelligence agencies remains with ZANU-PF.²⁵ The GPA did not prescribe specific security sector reform.²⁶ It did, however, establish the National Security Council (NSC) to replace the JOC to ensure the accountability of the security sector.²⁷ While the NSC has been formed, it has little power and the JOC continues to operate.

Treatment of MDC supporters

49. No balanced reporting was found regarding whether the treatment of MDC supporters by ZANU-PF has changed since the January 2013 announcement that a Constitutional referendum will be held on 16 March 2013 and that elections may follow in June or July 2013.²⁸
50. Similarly, no published reports were located commenting on whether the treatment of MDC supporters by ZANU-PF changed following Mugabe's unsuccessful call in late 2012 for March 2013 elections.²⁹ However, advice was received from DFAT and an external expert on this matter. Both of these sources indicate that there was no overall change to the way MDC supporters were treated.³⁰ Nevertheless, following September 2012 incidents of

²² Hendricks C & Musavengana T 2010, *The Security Sector in Southern Africa*, October, Institute for Security Studies, Monograph 174, p.175 <<http://www.iss.co.za/uploads/Mono174.pdf>> Accessed 30 August 2012

²³ International Crisis Group 2009, *Zimbabwe: A Regional Solution?*, 18 September, Africa Report No. 132, p.18 <<http://www.crisisgroup.org/~media/Files/africa/southern-africa/zimbabwe/Zimbabwe%20A%20Regional%20Solution.pdf>> Accessed 7 September 2012

²⁴ Hanson S 2009, *Zimbabwe's Security Sector*, Council on Foreign Relations, 9 June <<http://www.cfr.org/zimbabwe/zimbabwes-security-sector/p15793>> Accessed 30 August 2012

²⁵ Kriger N 2012, 'ZANU PF Politics Under Zimbabwe's 'Power Sharing' Government', 30 January, *Journal of Contemporary African Studies*, Vol. 30, No. 1, Sydney University Library Database, p.14 Accessed 14 August 2012; Hendricks C & Musavengana T 2010, *The Security Sector in Southern Africa*, Institute for Security Studies, October, Monograph 174, p.148 <<http://www.iss.co.za/uploads/Mono174.pdf>> Accessed 30 August 2012

²⁶ Kriger N 2012, 'ZANU PF Politics Under Zimbabwe's 'Power Sharing' Government', 30 January, *Journal of Contemporary African Studies*, Vol. 30, No. 1, Sydney University Library Database, p.14, Accessed 14 August 2012

²⁷ US Department of State 2012, *2011 Country Reports on Human Rights Practices: Zimbabwe*, 24 May, p.12 <www.state.gov/j/drl/rls/hrrpt/2011/index.htm> Accessed 25 May 2012

²⁸ The following sources were unsuccessfully consulted: ECOI Network, UNHCR Refworld, Immigration and Refugee Board of Canada (IRBC), the Integrated Regional Information Networks (IRIN), major human rights groups, think tanks, Australian and foreign government reports, and local and major international news sources. Internal tribunal databases and the DIAC CISNET database were also consulted.

²⁹ Nature of the research conducted included internal tribunal databases, the CISNET database and FACTIVA; publically available documents on the internet (including the Immigration and Refugee Board of Canada, European Country of Origin Information Network and UNHCR Refworld) were also searched.

³⁰ Lyons T 2012, Email to RRT, *Re: Request for Information from the Australian Refugee Review Tribunal*, 29 November; Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December

alleged ZANU-PF orchestrated violence and intimidation of MDC supporters continued to be reported.³¹

51. Prior to Mugabe's September 2012 call for March 2013 elections, 2012 was characterised by localised reports of violence and intimidation against MDC supporters, concentrated at particular 'flashpoints'³² across Zimbabwe. In September 2012 and June 2012 the UK Foreign and Commonwealth Office reported that low-level harassment of MDC supporters appeared to have increased.³³ Levels of violence and intimidation against MDC supporters increased in the first half of 2011; however, the increased levels of violence did not persist once it became clear that the elections would not occur.³⁴
52. Reports discussing general levels of political violence since the call for a Constitutional referendum on 16 March 2013, and possible elections in June or July 2013, focus on the treatment of civil society activists and non-government organisations. These sources indicate that the treatment of such actors has worsened since these announcements. On 27 February 2013 the UN Human Rights Council published an article in which three UN Special Rapporteurs expressed concern about the increasing number of reports of 'acts of intimidation and harassment, physical violence and arrests against civil society, mostly working on human rights issues.'³⁵ On the same day the UN News Service, referring to the concerns of the same three UN Special Rapporteurs, similarly stated that 'since the official announcement of the date for the referendum... there has been an increase in attacks against civil society actors.'³⁶ On 14 February 2013 Amnesty International reported that in recent months it had documented a series of arbitrary arrests and raids targeted at key human rights groups 'suggesting the space for political dissent is narrowing as the country prepares for the referendum and election.'³⁷

³¹ Examples of incidents include: Karimakwenda T 2012, 'ZANU PF threatening MDC-T in Binga with Amputations', *SW Radio Africa*, 20 November <<http://www.swradioafrica.com/2012/11/20/zanu-pf-threatening-mdc-t-in-binga-with-amputations/>> Accessed 22 November 2012; Phiri G 2012, 'Zanu PF launches terror campaign', *Daily News*, 15 November, Nehanda Radio <<http://nehandaradio.com/2012/11/15/zanu-pf-launches-terror-campaign/>> Accessed 22 November 2012; Gweshe E 2012, 'Zanu (PF) activists wrest housing stands from MDC', *The Zimbabwean*, 24 October <<http://www.thezimbabwean.co.uk/news/zimbabwe/61744/zanu-pf-activists-wrest-housing.html>> Accessed 22 November 2012; 'ZANU PF Denies Savage Attack on MDC White Couple' 2012, *Voice of America*, 2 November <<http://www.voazimbabwe.com/content/zanu-pf-denies-attacking-mdc-treasurer/1538528.html>> Accessed 22 November 2012; 'Senior MDC Official, Wife Hospitalised After Brutal Zanu PF attack', *SW Radio Africa*, 2 November <<http://www.swradioafrica.com/senior-mdc-official-wife-hospitalised-after-brutal-zanu-pf-attack/>> Accessed 22 November 2012

³² Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1415 – ZWE40895*, 21 August

³³ UK Foreign and Commonwealth Office 2012, *Human Rights and Democracy: The 2011 Foreign and Commonwealth Office Report – Quarterly Updates: Zimbabwe (Last Updated 30 September 2011)*, 30 September, ECOI Network <http://www.ecoi.net/local_link/228782/336871_en.html> Accessed 26 November 2012

³⁴ UK Foreign and Commonwealth Office 2012, *Human Rights and Democracy: The 2011 Foreign and Commonwealth Office Report: Zimbabwe*, April, Relief Web, p.382 <<http://reliefweb.int/sites/reliefweb.int/files/resources/Cm-8339.pdf>> Accessed 24 April 2012

³⁵ UN Human Rights Council 2013, *Zimbabwe Must Respect Fundamental Freedoms in Run-Up to Constitutional Referendum, Warn UN Rights Experts*, 27 February <<http://reliefweb.int/report/zimbabwe/%E2%80%9Czimbabwe-must-respect-fundamental-freedoms-run-constitutional-referendum%E2%80%9D-warn-un>> Accessed 1 March 2013

³⁶ UN News Service 2013, *Ahead of Referendum, UN Experts Call on Zimbabwe to Respect Fundamental Rights*, 27 February <<http://www.un.org/apps/news/story.asp?NewsID=44240&Cr=&Cr1=>>> Accessed 1 March 2013

³⁷ Amnesty International 2013, *Zimbabwe: Arrest of Peaceful Protestors casts doubt on possibility of credible referendum*, 14 February <<http://www.amnesty.org/en/for-media/press-releases/zimbabwe-arrest-peaceful-protestors-casts-doubt-possibility-credible-refere>> Accessed 1 March 2013

53. In May 2011 DFAT provided advice to the tribunals regarding the treatment of MDC supporters. According to DFAT ‘ordinary MDC-T and MDC-N members may be vulnerable to targeted politically motivated violence and intimidation’³⁸ The advice goes on to state, however, that ‘although intimidation occurs...MDC-T party officials are generally able to carry out party activities.’³⁹ In its advice, DFAT supports this statement with the example of the MDC-T National Congress in Bulawayo in April 2011. According to DFAT, ‘in the main the Congress went smoothly and most members were able to openly and safely participate’; however, the advice goes on to state:

There were incidents of harassment when non-authorized people were excluded from Congress venues. Also a small number of participants were harassed returning from the Congress. For example, some party members were assaulted when they descended from a bus singing party songs in a high-density, poor suburb of Harare.⁴⁰

54. On 20 December 2012 DFAT advised the Tribunal that ‘there has not been a discernible change in the level of risk faced by MDC officials and supporters since the call for elections in March 2013.’⁴¹ The advices go on to state:

Overall, the current levels of violence and intimidation experienced by those associated with MDC have not changed since the latest announcement that elections will be held in March 2013.

...

Incidents of violence and intimidation [of MDC supporters] continue to occur, but levels are relatively low compared to previous years, especially the peak of 2008, and the majority of MDC officials and supporters are able to conduct their activities without being harmed. Currently there are reports of intimidation in the form of forcing people to buy ZANU-PF electronic membership cards.⁴²

55. While the DFAT advice states that at present, ‘there are many people overtly engaged in assisting the MDC...who manage to do so without harm’, it does go on to identify particular individuals who are ‘most at risk’:

- those who are most vocal in their criticism of ZANU-PF or Mugabe
- those who are seen to be organising or mobilising support for MDC
- those at grass roots level who will not generate as much adverse publicity if they are harmed.⁴³

56. Sources were located providing somewhat conflicting information regarding whether ZANU-PF treats high-profile and low-profile MDC supporters differently. In May 2011 and

³⁸ Department of Foreign Affairs and Trade 2011, *Zimbabwe: Country Information Report No.12/13*, 11 May, Response A

³⁹ Department of Foreign Affairs and Trade 2011, *Zimbabwe: Country Information Report No.12/13*, 11 May, Response A

⁴⁰ Department of Foreign Affairs and Trade 2011, *Zimbabwe: Country Information Report No.12/13*, 11 May

⁴¹ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December, Response A

⁴² Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December

⁴³ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December

December 2012 DFAT provided advice to the tribunals on the issue.⁴⁴ On both occasions, DFAT stated that while the degree of risk is generally linked to whether someone is a vocal supporter or MDC organiser, low-profile supporters are also vulnerable. However, DFAT consistently concluded that the risk faced by low-profile supporters is lower than that faced by vocal supporters and MDC organisers. By contrast, on 26 November 2012 PhD researcher, Kudzai Matereke⁴⁵ stated that low-profile supporters are more vulnerable to political violence than high-profile supporters.⁴⁶

57. One report was found commenting on changes in the general level of political violence following Mugabe's unsuccessful announcement in September 2012 that elections would be held in March 2013. In its monthly monitoring report covering events from October 2012, the Zimbabwe Peace Project⁴⁷ observed that 'political tensions are slowly rising across the country' as political parties 'gear up in preparing for another electoral cycle.'⁴⁸ According to the Zimbabwe Peace Project, between September 2012 and October 2012 there was an increase in the number of human rights abuses reported; from 365 in September to 444 in October.⁴⁹ The Zimbabwe Peace Project also reported that during this period 'cases of politically-motivated violence and discrimination experienced an upsurge and were concentrated more in Manicaland and Masvingo Provinces.'⁵⁰

[Information in relation to Ms A]

58. [Information in relation to Ms A deleted: s.431(2)].

[Information in relation to Mr C]

59. [Information in relation to Mr C deleted: s.431(2)].

Treatment of returnees

⁴⁴ Department of Foreign Affairs and Trade 2012, *DFAT Report No. 1463: ZWE40995*, 20 December; Department of Foreign Affairs and Trade 2011, *Country Information Report No.12/13 – Politically Motivated Violence and Intimidation Towards MDC-T and MDC-N Members*, 11 May, Response A

⁴⁵ Kudzai Matereke is currently completing a PhD in political philosophy at the University of NSW. Kudzai has written several articles relating to Zimbabwean politics including a 2009 article in *The Australasian Review of African Studies* by the African Studies Association of Australasia and the Pacific, *Open Democracy and The Conversation*

⁴⁶ Matereke K 2012, Email to RRT, *Re: Information from the Australian Refugee Review Tribunal*, 26 November

⁴⁷ The Zimbabwe Peace Project was established in 2000 by a group of non-governmental and church organisations including the Catholic Commission of Justice and Peace in Zimbabwe and the Zimbabwe Civic Education Trust and Counselling Services Unit. The Zimbabwe Peace Project produces national monthly monitoring reports on violence and human rights violations. For more information please see: Zimbabwe Peace Project n.d., *About Us*

<http://www.zimpeaceproject.com/index.php?option=com_content&view=article&id=3:welcome&Itemid=22> Accessed 30 November 2012

⁴⁸ Zimbabwe Peace Project 2012, *ZPP Monthly Monitor: October 2012*, 15 November, p.2

<http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=11:latest-national-report&Itemid=21> Accessed 29 November 2012

⁴⁹ Zimbabwe Peace Project 2012, *ZPP Monthly Monitor: October 2012*, 15 November, p.2

<http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=11:latest-national-report&Itemid=21> Accessed 29 November 2012

⁵⁰ Zimbabwe Peace Project 2012, *ZPP Monthly Monitor: October 2012*, 15 November, p.2

<http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=11:latest-national-report&Itemid=21> Accessed 29 November 2012

60. No information could be located to suggest that returnees from western countries are imputed by ZANU-PF authorities as supporting enemy or western ideas. A May 2012 DFAT advice to the RRT discussing whether students returning to Zimbabwe from overseas are likely to be perceived as pro-MDC states:

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.⁵¹

61. The same advice states that while a returnee to a rural area may face a higher risk of being imputed with anti-ZANU-PF beliefs, the risk is not any higher than that for a person returning from an extended stay in a pro-MDC area who has not had the opportunity to establish loyalty or earn the trust of local rural power structures.⁵²
62. Various sources describe a UK Border Agency report which outlines the case of seven Zimbabweans voluntarily returning home in 2009 to 2010 after seeking asylum in the UK.⁵³ The returnees did not report experiencing any problems upon their return, although they did not publicly divulge the fact that they had sought asylum overseas.

FINDINGS AND REASONS

Country of reference

63. The Tribunal accepts the evidence provided by the applicant in the form of a Zimbabwean passport which shows the applicant is a Zimbabwean national. The Tribunal accepts that although the applicant's parents may be currently residing in Uganda, the applicant does not have a present and enforceable right to enter and reside in Uganda. The Tribunal therefore finds that Zimbabwe is the country of reference for the assessment of the applicant's refugee protection claims, and that Zimbabwe is also the receiving country for the purposes of assessing the applicant's complementary protection claims.

Credibility findings

64. The Tribunal accepts that the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the

⁵¹ Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1272 – Zimbabwe: RRT Information Request: ZWE38606*, 12 May, pp.3 <> Accessed 28 August 2012

⁵² Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1272 – Zimbabwe: RRT Information Request: ZWE38606*, 12 May, pp.3 <> Accessed 28 August 2012

⁵³ Department of Foreign Affairs and Trade 2011, *DFAT Report No. 1272 – Zimbabwe: RRT Information Request: ZWE38606*, 12 May, pp.3 <\\NTSSYD\REFER\Research\2011\DFAT\Reports\ZWE38606.dfr.doc> Accessed 28 August 2012; Gagare, O 2010, '13,000 face UK deportation', *Newsday Zimbabwe*, 29 October, para.2

<[http://immibelweh03/NXT/gateway.dll/cisnet_bacis/cisnet_bacis_zwe_frame/bacis_cx252735?f=templates\\$fn=document-frameset.htm\\$q=returnees%20\\$x=server\\$3.0#LPHit1](http://immibelweh03/NXT/gateway.dll/cisnet_bacis/cisnet_bacis_zwe_frame/bacis_cx252735?f=templates$fn=document-frameset.htm$q=returnees%20$x=server$3.0#LPHit1)> Accessed 31 August 2012; UK Upper Tribunal, Immigration and Asylum Chamber 2011, *EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC)*, 14 March, pp.29-30, 118-121, accessed 6 September 2012

Tribunal that he or she satisfies all of the required statutory elements. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the Tribunal to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)

65. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the applicant's claims. This may involve an assessment of the applicant's credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims.
66. The Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). On the other hand, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).
67. The Tribunal found the applicant was not a completely reliable witness in respect of all his claims. As is discussed in what follows, the Tribunal found the applicant made vague and implausible claims in certain important areas of his overall claims. The Tribunal concluded that the applicant has embellished or exaggerated his claims for the purposes of bolstering his application for a protection visa.

Assessment of protection claims

68. The Tribunal accepts the applicant's claim that he left Zimbabwe initially in 2002 because his parents could no longer find work and lost their jobs because of their political support of the opposition. The Tribunal accepts this claim based on the fact that it is generally consistent with country information which indicates that Zimbabwe has been the subject of political, civil and economic unrest and problems.
69. The Tribunal also accepts the applicant's claim that applicant attended an MDC rally in 2006 and that he was as a result detained by police with a number of other attendees. The Tribunal accepts that the country information cited above suggest that such interference and detentions and questioning by the Zimbabwean police has occurred in the past. The Tribunal is also prepared to accept the applicant's claim that on that occasion he was mistreated by the Zimbabwean police. The Tribunal is satisfied that the police eventually released the applicant and the others when they realised that they did not know anything about MDC matters. The Tribunal also accepts that the applicant was not charged with any offence during the course of this incident. The Tribunal accepts that this is, according to the applicant's own evidence,

the only incident of harm he has experienced in Zimbabwe for his claimed association with the MDC.

70. On the question of the applicant's claim to have been a member of the MDC more generally, even though the applicant has not been able to provide the Tribunal with credible documentary evidence of his membership, the Tribunal is prepared to give him the benefit of the doubt and to find that the applicant was a supporter of the MDC while he was studying in [country deleted: s.431(2)]. The Tribunal is also prepared to accept that he may have had conversations about political matters when he spoke to his friends in Zimbabwe over the phone. On the evidence before it however, the Tribunal does not accept the applicant was an active member of the MDC or a member with any profile of interest to the ZANU PF or that he handed out T-shirts, posters and MDC caps as claimed.
71. The Tribunal accepts the applicant's claim that his friend [Mr B], who the applicant claims is the brother of [Ms A] was killed. The Tribunal however does not accept that the applicant is thereby at heightened risk of being targeted as a result of his past association with [Mr B] or [Ms A]. The Tribunal accepts the country information cited above which suggests that [Ms A] is, or was, and MDC official and does have something of a profile as a political activist. However, the Tribunal is not satisfied that the applicant has demonstrated a link with [Ms A] such that he would be targeted for harm by the security authorities in Zimbabwe or by ZANU PF supporters or by anyone else. In this regard, the Tribunal also had regard to the fact that the applicant has been residing outside of Zimbabwe since 2002, with the exception of a brief visit there in 2006.
72. The applicant claims that if he returns to Zimbabwe he fears he may be detained and physically abused or killed. He claims he was detained in 2006 for supporting the opposition party when he briefly returned to Zimbabwe. He also claims that if his family return to Zimbabwe to get him they will also be killed. He writes that his claimed persecutors will think that he and his family fund the opposition movement (MDC).
73. The Tribunal considered the applicant's claim that his parents have departed Zimbabwe and live in Uganda and that his father is seen as an opposition supporter. The Tribunal had regard to the country information available to it regarding his father, however, on that information the Tribunal is not satisfied that the applicant's father would in fact be seen as a significant critic of the governing regime in Zimbabwe, or seen as a threat to it. As indicated in the country information cited above, no information was located regarding [Mr C]'s political affiliations. [Mr C]'s profile appears to be restricted to his academic work and role with [details deleted: s.431(2)]. The Tribunal is not satisfied that on the country information before it, indeed on all the information before it, that the [Mr C]'s academic or [developmental work] will give rise to a real chance that the applicant would be targeted for harm for a Convention ground. The Tribunal's invitation put to the applicant to provide evidence or information to support his claim that his father is seen as an opposition supporter went unanswered. The Tribunal does not accept that the applicant would be targeted for reasons of his association with his father, or with his mother.
74. The Tribunal considered the applicant's claim that one of the reasons that he will be seen as an opposition supporter is because he has not lived in Zimbabwe since 2002, that is, has been away a long time. The Tribunal considered the country information that suggests that while returnees are not imputed with an anti-ZANU-PF opinion diaspora may be seen as holding an anti-ZANU PF opinion. The Tribunal considered whether this fact would lead the applicant to be treated as diaspora rather than a mere student returnee and whether a real

chance of serious harm arose from such a view. Having regard to the May 2012 DFAT advice cited above, the Tribunal finds that country information does not suggest that there is a real chance the applicant would be seriously harmed because of the duration of time he has spent out of Zimbabwe or because he may be characterised as a member of the diaspora.

75. The Tribunal considered the applicant's claim that having spent time in Australia he would be seen as being a source of funds for the opposition because he has been away from Zimbabwe for so long. The applicant added that he would also be targeted because of holding a good education and because his parents are educated and he would be seen as being more white than black. Having regard to the country information cited above on the treatment of returnees to Zimbabwe, the Tribunal is not satisfied that the applicant would in fact be targeted by state authorities, or by ZANU PF supporters as therefore being a source of funds for the opposition.
76. The Tribunal had regard to the applicant's evidence that he departed Zimbabwe via Harare airport and flew to [city deleted: s.431(2)], and that had no trouble departing or getting through security at Harare airport. The Tribunal considers that this is further evidence of the fact the applicant is not a person of interest to the Zimbabwean authorities or the ZANU PF or to anyone else. The Tribunal accepts the applicant's claim that he faced no problems in getting a passport in Zimbabwe, however it does not accept his claim that this is the case because the issue of the passport occurred prior to the 2006 incident. The Tribunal does not accept this because the applicant's claim is that he faces serious harm as a result of his parents' opposition to the ZANU PF regime, and for reasons which predate 2006.
77. The applicant claims that he is in fear of the police, the army and the central intelligence office. He also claims that if the supporters of the government in and around the area he lives in realise that he has returned they will also kill him or inform the applicant to the police, the army or to the central intelligence. He claims that he will be deemed to be a threat to the current government. On assessing all the evidence before it, and which has been discussed in this decision record, the Tribunal is not satisfied that he does in fact face a real chance of serious harm for his actual or imputed political opinion, or for any other Convention ground, should he return to Zimbabwe now or in the reasonably foreseeable future.
78. The Tribunal also considered the period of time between the applicant arriving in Australia, and the date he lodged a protection visa application. This amounts to a period of almost 5 years. The Tribunal considers that such a delay is a relevant consideration in assessing the genuineness and depth of a person's claimed fear of harm. The Tribunal finds that in the circumstances of this case, such a period of delay is incongruent with the applicant's claim that he feared serious harm should he return to Zimbabwe. The Tribunal is not satisfied that the applicant's was unaware of protection visas or that he could not have made inquiry to obtain information as to how he might regularise his visa status.
79. The applicant told the Tribunal that his wife [name deleted: s.431(2)] is an Australian citizen. He said that she works as a [occupation deleted: s.431(2)]. He said they met in Australia and married here in November 2011. The Tribunal accepts the applicant's advice that he may be considering making an application for a partner visa, however, such an application is a separate and discrete matter. The Tribunal makes no finding on the question of the applicant's spousal relationship.

80. The Tribunal finds that overall, while the applicant may have had some minor involvement with the MDC and may in fact support its political objectives, he cannot be said to be an MDC activist but is, and would be regarded as, an ordinary MDC supporter who is not a threat to the ZANU PF party or regime. While the Tribunal is prepared to accept that he was seized, detained and questioned by the Zimbabwean police as a result of attending a MDC rally in 2006, and that this incident may even amount to ‘serious harm’ for the purposes of s.91R(1) of the Act, the Tribunal is not satisfied that this, or any other aspects of the applicant’s circumstances give rise to a real chance that he would be targeted for his actual or imputed political opinion, or for any other Convention ground.
81. The Tribunal considered the question of the applicant’s future conduct should he return to Zimbabwe. On the evidence before it, including the evidence pointing to the applicant as having little past active involvement with the MDC, the Tribunal considers the probability that he will be active with the MDC if he returns to Zimbabwe as being remote. The Tribunal considered whether the applicant’s future conduct in terms of MDC activity might be modified as a result of his past experience or past harm in such a way that he feels he would be forced to modify his behaviour to avoid harm. In this regard, the Tribunal is not satisfied that the applicant’s behaviour would in fact be modified, but that it would simply be that he would act as he has in the past and with relatively little activity in respect of the MDC.
82. The Tribunal accepts that the applicant may hold a pro-MDC political opinion, however, the Tribunal is not satisfied on the country information cited above that the mere holding of a pro-MDC political opinion is sufficient for there to be a real chance that a person will be targeted for serious harm in Zimbabwe. The Tribunal accepts that country information indicates that some ordinary MDC supporters may be vulnerable and that the risk of harm in Zimbabwe cannot be eliminated entirely, however, the Tribunal considers that in the case of this particular applicant and given what the Tribunal finds as to his insignificant political activities in the past, coupled with the passage of time since he was last in Zimbabwe, and combined with the sense that the Tribunal has as to the applicant’s lack of political motivations, the Tribunal is therefore satisfied that he would not face a real chance of serious harm in this respect for reasons of actual or imputed political opinion.
83. For all these reasons, the Tribunal finds that the applicant does not face a real chance of suffering serious harm for one or more of the Convention grounds should he return to Zimbabwe now or in the reasonably foreseeable future. The Tribunal therefore finds that this fear of Convention persecution is not well founded and the applicant therefore does not meet the requirements prescribed in s.36(2)(a) of the Act.
84. As the Tribunal is not satisfied that the applicant meets the prescribed criteria in s.36(2)(a) of the Act, the Tribunal is required to consider the complementary protection provisions in s.36(2) (aa) of the Act. Relying on the country information cited above in this decision, the Tribunal finds while there is some risk that the applicant might be caught up in the general violence of Zimbabwe, it finds that such a risk does not amount to substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to Zimbabwe there is a real risk of the applicant suffering ‘significant harm’ as that term is defined. The Tribunal considered all of the applicant’s claims, and also had regard to the fact that the applicant has been absent from Zimbabwe for over 10 years and that he may face some challenges in re-establishing himself there. However, the Tribunal notes that even though his own parents are not in Zimbabwe, the applicant is not without any family support as his grandparents live in [location deleted: s.431(2)]. Having regard to all the evidence before it, the Tribunal finds that there are not substantial grounds for believing

that as a necessary and foreseeable consequence of the applicant being removed from Australia to Zimbabwe there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, or that he will be subjected to torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment. The Tribunal therefore finds the applicant does not meet the requirements specified in s.36(2)(aa) of the Act.

CONCLUSIONS

85. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore, the applicant does not satisfy the criterion set out in s.36(2)(a).
86. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
87. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

88. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.