

0904439 [2009] RRTA 1160 (18 December 2009)

DECISION RECORD

RRT CASE NUMBER: 0904439

DIAC REFERENCE(S): CLF2009/32047

COUNTRY OF REFERENCE: Zimbabwe

TRIBUNAL MEMBER: Peter Murphy

DATE: 18 December 2009

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, being a person to whom Australia has protection obligations under the Refugees Convention.

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 last entered Australia [in] January 2008 on a student visa issued to her [in] April 2008. She applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] March 2009. The delegate decided to refuse to grant the visa [in] May 2009 and notified the applicant of the decision and her review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] June 2009 for review of the delegate's decision. 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
6. Section 36(2)(a) of the Act 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 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).
7. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

8. 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.

9. 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 and *Applicant S v MIMA* (2004) 217 CLR 387.
10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
14. 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.
15. 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 persecution 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.

16. 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.
17. 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.

CLAIMS AND EVIDENCE

18. The Tribunal had before it the departmental file, which included the Protection Visa application, and the decision record of the delegate dated [in] May 2009. The Tribunal also had regard to material referred to in the decision of the delegate, as well as other material available to it from a range of sources. That other material is discussed below.

The Protection Visa Application form

19. According to her protection visa application the applicant was born at [District A] in Zimbabwe, on [a date in] 1984, is of the Shona ethnic group and a Christian. She stated she had never married, and completed 20 years of education, initially in Zimbabwe (primary and secondary schooling) and in Perth, Western Australia since 2003, where she studied business and more recently hospitality. She disclosed that she had worked whilst in Australia, in a number of capacities- most recently as an assistant in nursing.
20. She states she first arrived in Australia [in] October 2003, on a Zimbabwean passport issued [in] March 2003, which remains valid until [a date in] February 2013. Her application form indicated that she had returned legally to Zimbabwe in November 2007.
21. Her application form did not state why she feared return to Zimbabwe, but was accompanied by a statutory declaration dated [in] March 2009, which in summary stated:
 - a. She did not want to return to Zimbabwe as it was very dangerous for her, due to the political situation.
 - b. Her father was a pastor in a small town called [Town A] on the east side of Zimbabwe. The rules of his church are that as a pastor he is not allowed to be politically active.
 - c. [Town A] is in a ZANU PF dominated area and there has been a lot of campaigning there. As her father had not taken part they have assumed he supports the opposition.
 - d. ZANU PF people have become angry with him and once came to the house and threw stones at it. Her father has received threats and has been accused of wanting to “sell out the country”. He tried to get help and whilst police said they would protect him there is nothing they can do as they are part of the problem. ZANU PF controls the police.

- e. Because she is studying in Australia there have been allegations her father is mis-using church funds to send her abroad. This is untrue as she is sponsored by a company but people in her town believe these rumours.
 - f. ZANU PF supporters do not like western countries, and think studying in Australia is treacherous to Zimbabwe. If they thought Zimbabwe money was being used for her study, they would be “very very angry”.
 - g. She hoped the formation of a Unity government would help, but since formation it has been difficult. ZANU PF has lost power and they are very angry and want to try to control her town even though they have lost some power.
 - h. She had a friend from her town who went to South Africa to study and when he returned recently for holidays he was beaten by ZANU PF supporters who said he had run away when his country needed him, and should not come back now. He was so badly hurt he needed medical attention not available in Zimbabwe, and was taken back to South Africa. Now he is afraid to return to Zimbabwe.
 - i. She was also afraid to return as it will be very bad for her and her family. If she returned it would bring a lot of attention to the family and she and the family might be considered to be supporters of the “west” and the MDC.
22. Attached to her application was a copy of extracts from her passport, including pages showing she departed Australia [in] November 2007, and arrived at Harare Airport the same date, before returning to Australia [in] January 2008.
 23. The application was considered by a departmental delegate who in a decision record dated [in] May 2009 noted the applicant had previously had a student visa cancelled ([in] December 2006) although that cancellation was set aside by the Migration Review Tribunal (“MRT”) [in] May 2007.
 24. The delegate referred to specific claims made by the applicant and concluded the assertion of “rock throwing” experienced by the applicant’s family did not amount to “serious harm” as required to amount to persecution. The delegate however was prepared to accept that the harm the applicant feared was “*greater than her family’s experiences*” and could amount to serious harm and systematic and discriminatory conduct as outlined in the Act.
 25. The delegate relied on several references and concluded the applicant did not face a real chance of serious harm because she had lived in the West, and noted she had returned to Zimbabwe between November 2007 and January 2008 without suffering any serious harm. She also considered the delay in the applicant lodging her protection application until 2 days after her student visa expired was not consistent with a person who had a genuine fear of return to their home country.
 26. Finally the delegate considered the applicants fear revolved around return to her home area of [Town A] where her family was known. Whilst the delegate accepted “*the applicant faces a real chance of serious harm if she returned to [Town A]*” she considered the possibility of the applicant moving to some part of Zimbabwe where she was not known. She noted the applicant had lived by herself in Australia for 6 years, and had demonstrated her resourcefulness and skills to live independently and it was

open to her to move to some other area where she and her family were not known. On that basis she considered relocation was a viable option and consequently found the applicant' fear of persecution was not well founded.

The Tribunal Application

27. [In] June 2009 the applicant sought review by the Tribunal. No additional material was provided, and [in] July 2009 the Tribunal wrote to the applicant (through her authorised recipient and representative – [agency deleted: s.431(2)]) advising it had considered the material available, but was unable to make a favourable decision on that information. That letter also invited her to appear before the Tribunal at a hearing [in] August 2009 to give evidence and present arguments. Because of her location, the hearing was scheduled as a video hearing.
28. [In] July 2009 the applicant indicated she would attend the hearing, and asked the Tribunal to take evidence from a witness. A submission was also provided which (in summary) states:
- a. If returned to Zimbabwe, the applicant fears she would be subject to:
 - Scrutiny by local ZANU PF militia
 - Threats and violence from local ZANU PF supporters and militia
 - Kidnapping and detention in a nearby ZANU PF camp particularly in the lead up to the next elections.
 - No protection from authorities or police
 - b. There is clear evidence she and her family are seen as MDC supporters
 - c. Studying abroad adds mistrust the ZANU PF have for her and her family
 - d. There have been allegations her father has used church funds to send her overseas.
 - e. ZANU PF blames western countries for instability in Zimbabwe. As she has been in Australia for almost 6 years this could be misinterpreted as being a spy for the West.
 - f. These factors are both an imputed political opinion and membership of a particular social group (young educated Zimbabweans seen as more closely aligned to the West) which are targeted by ZANU PF.
 - g. The imputed political opinion arises from her father's attempts to remain neutral in accordance with his church edict. This has led him to be seen by local ZANU PF as pro MDC Any action not supporting ZANU PF directly is seen as traitorous.
 - h. The untrue allegations against her father as to use of church funds for her education has increased the violence against her family. Her presence in

Australia is seen as unpatriotic. There is evidence that the family has been subject to attack.

- i. The applicant's mother was attacked and despite police being involved, the threats have continued, and the family home has been subjected to stone throwing and there have been verbal threats to members of the family.
 - j. Country information suggests the police are still controlled by ZANU PF, and other recent information suggests the [Town A] area has continued to see political violence at the hands of ZANU PF militia.
 - k. Despite power sharing arrangements political violence has not improved, particularly in rural areas. The Australian Government "Smart traveller" warns Australians about travel danger in Zimbabwe and notes past instances of violence against MDC supporters and civil society activists.
29. Attached to that submission were several documents including a letter (date stamped [in] June 2008) to the Provincial Education Director from the District Education Officer confirming the mother of the applicant was "*assaulted and victimised by ZANU PF youth supporters and accused of being members (sic) of the opposition political party.*" It asserted persons involved targeted the mother because her eldest daughter (the applicant) was pursuing study in Perth, Western Australia. It noted the assault was reported to police and the "*situation was now under control*". There were also copies of several news reports on the more recent situation in Zimbabwe.
30. [In] August 2009 the Tribunal received a further submission along with an unsigned statement from "[Person A]", a friend of the applicant in which he said:
- a. He was studying in South Africa but was presently in Namibia on holidays.
 - b. Last year during a break he returned to see family in [Town A]. On his second day he was walking and met a group in the street singing ZANU PF songs. They asked him why he ignored them and to avoid trouble he started singing with them.
 - c. ZANU PF controls the [Town A] area and it is dangerous to challenge ZANU PF supporters. After singing, the group went to the community hall. He was one of a number of "new people" who went with the group as it was dangerous to refuse. In the hall they were asked to introduce themselves. When his turn came he said he was studying in South Africa, and was accused of being a deserter.
 - d. He and some others were taken to a room and told they would be shown what happens to people "*who run away from the struggle*" and beaten with sticks. During this time his father rang on his mobile but he was not allowed to answer. He was held overnight then released. He went home and left the country straight away as he feared for his life. He has not returned to Zimbabwe.
 - e. The Unity government has not made a difference especially in Mashonaland and it is still very dangerous for anyone thought not to support ZANU PF.
 - f. He believes the applicant would be in danger if she was to return.

31. [In] August 2009 the Tribunal received further correspondence from the applicant's adviser, enclosing another copy of the statement from "[Person A]" and a separate statement (dated [in] July 2009) from "[Person A]". Whilst there was no explanation for the two statements, the second appears almost identical to the unsigned statement from "[Person A]" other than the name of the statement maker. The Tribunal anticipated this was simply a spelling error relating to the persons name.

Additional material before the Tribunal

32. The Tribunal had access to the MRT file relating to the review lodged in respect to the cancellation of the student visa issued to the applicant in December 2006. The Tribunal notes the decision on that review ([in] April 2007) made reference to the fact the applicant was being financially supported by her father [name deleted: s.431(2)], and there were difficulties in obtaining foreign currency from Zimbabwe and her course enrolment had not been maintained because of her inability to pay the fees.
33. That decision record also notes the applicant told the MRT she believed it was "*not safe for her to return to Zimbabwe and her family had urged her not to return at the moment.*" There was reference elsewhere in the MRT decision record to her parents having warned her of the situation and violence, but no explanation as to the nature or source of that violence or her parents concern. The MRT file also contained letters said to be from the applicant's father explaining the difficulty in getting funds out of Zimbabwe at that time and attempts he was making to secure an "international company" which was apparently willing to sponsor his daughter to finish her studies.
34. The Tribunal also accessed a website [address deleted: s.431(2)] which shows the applicant's father as pastor of the [Town A] [Church deleted: s.431(2)].

THE TRIBUNAL HEARING

35. The applicant attended the hearing [in] August 2009 and gave evidence to the Tribunal via video link from Perth. She was accompanied by her adviser [name deleted: s.431(2)]. The hearing was conducted in English. At the commencement of the hearing the Tribunal clarified that the statements provided [in] August 2009 were from the same person, and there was an error in the name of the deponent, "[Person A]".
36. The applicant gave her evidence in a confident and, in the Tribunal's opinion, credible fashion. She confirmed many of the details in her application form and submissions and, in particular, her family history. She confirmed her father was a pastor with the [Church deleted: s.431(2)] in [Town A] and she had lived in that area for most of her life. She described the village as being about [distance deleted: s.431(2)] kilometres from Harare and of about 400 people. She believed about 60 of those people were parishioners at her father's church.
37. Her schooling was in that area, other than 4 years high school at boarding school. She said she finished high school in 2002, then did a computer course in Harare where she lived from about March 2003 until October 2003, when she came to Australia.
38. The Tribunal asked her why she came to Australia in October 2003. She said there were basically two reasons. Firstly her father desired her to get a better education and experience different lifestyles. Secondly things were becoming unstable in Zimbabwe

during 2003 in universities and colleges, and she may not have been able to conclude her education in the country. The applicant said she came to Australia on a Student Visa and undertook a Diploma of Commerce at [education provider deleted: s.431(2)], commencing in October 2003 and finishing in 2005. She then continued at [education provider deleted: s.431(2)] undertaking a Bachelor's course in Commerce and Commercial Law from late 2005. She has not finished that course, and has one more semester left to complete, but ceased in 2008 because her sponsor could no longer meet her tuition fees. She also did a shorter course in hospitality, which she finished in March 2009. Whilst in Australia she has worked in various jobs, most recently as a carer in aged care, but has not worked since April 2009 because of immigration limitations on work rights.

39. The Tribunal asked her about her travel out of Australia since she first arrived in 2003. She agreed she left Australia in late November 2007 and went to Zimbabwe where she remained for approximately six weeks, before returning to Australia in January 2008. She said that visit was to reconnect with her family whom she had not seen for some considerable time. The Tribunal asked where she stayed during that time, and she said she stayed approximately one week in her home town before spending the remaining five weeks in Bulawayo, where she and members of her family stayed with an aunt. The Tribunal asked whether or not she had concerns about returning to Zimbabwe at the time, and the applicant said she had concerns, but they were ultimately outweighed by her desire to be with her family, and it was not until she arrived back in Zimbabwe that she realised the extent of the risk. She explained to the Tribunal that the reason she only stayed a short time in her home town and then went to Bulawayo was because of that risk. She said she arrived late and at night, and essentially remained hidden for the week she was at home, and did not make her presence known to other people in the village. She said this was because she was concerned people would learn she had returned and she may have faced harm as a result.
40. The Tribunal asked why she went to Bulawayo. She said the main reason was because it was her parents' idea, and they were concerned about what would happen to her if she remained in her home area. The Tribunal asked her about other members of her immediate family. She said she had a younger brother and two sisters. The brother was in Namibia studying, whilst both her sisters lived in Zimbabwe with the older in boarding school and the younger at a local school in the home area.
41. The applicant said [Town A] was a ZANU-PF dominated area, and her father was suspected of being an MDC supporter because he adopted a policy of non-involvement in politics. She said there had been threats to him because of this and because she had been overseas. She confirmed her father had no political involvement, and there had been a number of occasions on which he had been threatened and, in particular, had stones thrown at the house. She said whilst there were no physical attacks, he had been subject to verbal abuse.
42. She said this sort of treatment of her father had been going on for some time, but had intensified from May 2007 until about June 2009 which was a period during which she described as affected by election campaigns. She said as she had been in Australia she had only limited first-hand knowledge of what was going on, but when she went home in November 2007 she realised how intense the situation had become. It was for this reason that when she arrived, only her immediate family knew she had come back, and she had stayed inside the whole time, and when people came to the house she had

hidden. The Tribunal asked her why she believed there would have been a risk for her at that time. She said there were two reasons. Firstly there was a belief (mistakenly) her father had misused church funds to support her overseas, and people would retaliate against her because of this. The second reason related to the fact ZANU-PF did not like western countries, and her coming to Australia and remaining here would suggest she was affiliated with Australia, which was an opponent of the Mugabe regime.

43. The Tribunal indicated to the applicant in respect to the first issue, that it would seem more likely that if people were concerned about any alleged misuse of church funds, this would not be something that fell within the scope of the Convention. The Tribunal also put to the applicant country information, which suggested that persons who had lived in Western countries were not at risk of serious harm simply because they had studied or lived abroad. The Tribunal also suggested that many Zimbabwean students travel to Australia for study purposes, and a number of those were likely to be associated with ZANU-PF and their supporters. The applicant agreed some people who came to Australia were ZANU-PF related, but as she was not one of them, her motives in being here could be questioned, and it may be this would make it harder for her on return. The Tribunal also indicated to the applicant that if there was risk arising from allegations her father had mismanaged church funds, it might be more likely that any retribution or retaliation would be directed to him or those immediate members of the family still present in Zimbabwe, rather than waiting to target her if and when she returned from overseas. The applicant said to a large extent she agreed it would be a risk for her father who was sending the money overseas, but as the recipient of the benefit of that money she would also be at risk.
44. She also said in relation to her brother, he had been forced to go to Namibia because on a couple of occasions he had been rounded up and forced to sing and engage in ZANU-PF related activities, and the family was worried if he remained he would become more involved in the future. It was therefore important to get him out of that environment.
45. The Tribunal raised with the applicant her visit to Zimbabwe between November 2007 and January 2008 and asked whether there had been any difficulty with her travel on that occasion. She said there had been no direct action against her, but she may be perceived as a “spy” by the government because she had lived overseas. The Tribunal indicated to her it had some difficulty accepting that proposition, given she was able to travel without restriction or incident into the country and, again, out of the country on that occasion. The Tribunal observed if she was regarded in any adverse fashion by authorities because she had lived outside the country, it would expect she would have experienced some difficulty on that occasion. The absence of problems suggested she was not of any adverse interest or profile to Zimbabwean authorities. The Tribunal also indicated most countries, including Zimbabwe, had a fair degree of control over persons who cross their borders, and if she had an adverse profile it would have been likely she would have been identified when she sought to enter or leave the country. The applicant said it may have been because she was on a Student Visa at the time. The Tribunal indicated to her it did not consider the status of her visa would make much difference in those circumstances.
46. The Tribunal asked the applicant about her claim that she would be forced to attend a youth training centre in her area. She said such centres were set up to accommodate youths, and because she had left the country she had not undertaken that training and might now be forced to do so. The Tribunal observed that as she was now 25 years of

age it found it difficult to accept she would be required to undertake youth training, and that country information suggested despite the establishment of youth training camps, many young people did not attend. The applicant said because the area she came from was small, not attending the camp would not have been an option for her.

47. The Tribunal raised the fact her student visa had at one stage been cancelled, resulting in her pursuing an application to the MRT, which set aside the cancellation. The Tribunal referred to the contents of the MRT decision record which noted that in April 2007 she told the MRT she feared return to Zimbabwe because it was dangerous for her to go home. The applicant agreed this was correct. The Tribunal asked her why in that case she decided in November 2007 to return to Zimbabwe. She explained that when she first left home at 19 years of age to come to Australia she missed her family and wanted to reconnect with them. The Tribunal asked her why if she was concerned in April 2007 about returning to Zimbabwe, she had not lodged an application for a Protection Visa at a far earlier stage than she ultimately did. The applicant noted her MRT review, in fact, recorded her concerns about return, but said whilst she was aware of protection visas then, what was important for her was to stay in Australia, and whilst she held a valid Student Visa it didn't seem to her necessary to seek protection. She said if she had not received a positive MRT decision she would have fought to remain in Australia and may have sought protection. Given her MRT success however, she did not see a need to pursue protection at that time.
48. The Tribunal raised with the applicant the letter from her mother's employer (employer deleted: s431(2)) asserting her mother had been assaulted and harassed by ZANU-F supporters. The Tribunal observed the letter appeared undated and without a letterhead, and appeared somewhat self-serving in that it provided specific details which would be seem relevant to her protection application. It observed those factors may go to the weight the Tribunal could give the letter. The applicant said the copy of the letter was one provided to her by her mother in April 2009 when she commenced her Protection application. Whilst the copy she held did not have a letterhead on it, she thought it may be possible for her mother to provide a copy of the original letter from the school file.
49. The applicant, in explanation of the circumstances affecting her mother, said that up until about May 2008 there had been nothing directed against her mother, but because local ZANU-PF people believed she had come home earlier that year, they were cross with her mother, and had assaulted her. The applicant provided details of what she believed had occurred to her mother on two occasions, but confirmed that after the second occasion police had been involved, had identified the culprits, confronted them with the allegations and there had been no more incidents since then.
50. The Tribunal asked the applicant what she did during the five week period she stayed with her aunt in Bulawayo. She said she couldn't travel much or visit friends and stayed mainly in the house. She said she did not know whether it was safe anywhere in Zimbabwe. The Tribunal acknowledged that country information suggested circumstances were poor throughout Zimbabwe, and all citizens were affected in terms of the poor economy and infrastructure. The applicant said ZANU-PF supporters were everywhere and people noticed newcomers and whilst people may think she was just a visitor and ignore her, they may inquire about her to find out more about her in which case they could discover her background circumstances in her home area and react to those circumstances.

51. The Tribunal raised with her the specific issue dealt with in the delegate's decision of relocation to places elsewhere in Zimbabwe. In particular it asked the applicant why she could not live in a place like Harare or Bulawayo, both of which were far larger centres, where she would not be immediately known. The applicant again said that people know when there are newcomers in the area and want to know about them, and may find out that she had been in Australia for some years, which would make it unsafe for her. It was her view that she would not be safe anywhere in Zimbabwe because of her circumstances.
52. The Tribunal indicated to the applicant that if it accepted she was at risk of persecution in her home area for a Convention reason, it would be required to consider if she could reasonably relocate to some area outside her home area and avoid that persecution. The applicant again said that wherever she went, ZANU-PF would be able to make inquiries in her local area and then follow her up. The Tribunal indicated to the applicant that it did not necessarily accept she had a profile or history that would make it likely that such follow up would occur outside her local area.
53. The Tribunal also put to her country information, specifically a report of March 2009 from the "*Institute of War and Peace Reporting*", which suggested Zimbabwe was currently actively seeking to encourage expatriate Zimbabweans to come back to live and work in the country and help its restoration. On that basis, the Tribunal observed such reports suggested the government was formally encouraging people to return. Whilst the applicant agreed this was possible, she said there was no certainty particularly in a small community like hers that she would not be at risk if she returned

Evidence from a witness:

54. The Tribunal took evidence by telephone from [Person A], a friend of the applicant currently based in Namibia. [Person A] had previously provided a written statement, which he confirmed he had signed [in] July 2009.
55. [Person A] gave evidence consistent with the contents of his statement, and the Tribunal considered him a credible witness. He provided a picture of having been approached by ZANU-PF supporters in [Town A] in a visit earlier this year and being questioned by those supporters who discovered he had been absent from the country for some time and accused him of "selling out" his country. He said he was beaten, but ultimately released, and the day after his release he left the country because of concern for his safety. He denied being politically active in any way, and expressed his view the applicant was also not involved in politics at all. He commented that ZANU-PF people in the area where they lived dominated the political scene, and expected everyone to join, and that not joining in was interpreted as being opposed to the government. He indicated his view that the applicant was at risk of harm as she had been away for a long time, and could face the same treatment he had experienced when he returned to Zimbabwe recently.
56. At the conclusion of his evidence the Tribunal invited the applicant and her advisor to add any further information for the Tribunal. The applicant said she did not have anything else to add. The Tribunal raised with her, again, the issue of relocation. She said if it was simply a matter of packing her bags, her parents would have relocated previously, but they could not because of her father's work commitments in the local area. She said she did not think she could relocate away from her family as she had no

references in Zimbabwe or work experience, and while she had stayed with an aunt in Bulawayo, the aunt's situation had changed recently, and she could not now stay with her. The Tribunal observed she had obtained qualifications whilst in Australia, as well as having experience working in this country. She indicated, however, her experience and qualifications were not in Zimbabwe, and her experience in work was in aged care, which was not an industry widely recognised in Zimbabwe. She also said it would be difficult to obtain references from work experience in Australia to provide to potential Zimbabwean based employers, and her qualifications in hospitality were of limited value in Zimbabwe as the tourism industry was almost non-existent. As a result, she did not believe she could relocate from the [Town A] area, or realistically maintain herself away from that area.

57. The Tribunal indicated its primary issue was whether there was a real chance the applicant would face serious harm which amounted to persecution under Australian law if she was to return to her home area for any of the Convention reasons she had raised and would consider whether the subjective fear she had expressed on those reasons amount to persecution, in light of all the material before it. It also indicated if it concluded she did face a real chance of persecution for a Convention reason in her home area, it would then have to consider if she could reasonably relocate to some other area where she would not face such harm. In this context the Tribunal said relocation may be a significant factor.
58. The applicant's adviser indicated existing submissions on the question of relocation were limited, and she would like the opportunity to make further submissions on that issue. The Tribunal indicated it would accept such submissions and not make a decision for at least two weeks to enable this to occur. The Tribunal also suggested that in the intervening period, if the applicant was able to provide further material in relation to the validity of the letter said to have covered the incident involving her mother, it may also be helpful to provide that material. The Tribunal did, however, indicate that based on her evidence, it did not have any real concerns about her credibility generally, or the manner in which she had given her evidence.

Post Hearing Materials and Submission:

59. [In] August 2009 the Tribunal received further documentation from the applicant's adviser. This consisted of a further copy of the faxed letter (dated [in] June 2008) from the [employer deleted: s.431(2)] referring to the assault on the applicant's mother, and a further copy (on letterhead) of that letter.
60. [In] September 2009 the Tribunal received a further submission from the applicant's legal advisers which amongst other things contained submissions about why it was neither possible nor reasonable for the applicant to relocate elsewhere in Zimbabwe. The further submission included a statutory declaration from the applicant dated [in] September 2009 setting out further material on the issue. The Tribunal has taken the submission and declaration into account in reaching its decision.

COUNTRY INFORMATION

General Information

61. The United States Department of State "*Country Reports on Human Rights Practices*" for 2008 (published on 25 February 2009) contains the following overview:

Zimbabwe, with a population of approximately nine 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, the parliamentary elections in March 2005, the harmonized presidential and parliamentary elections in March 2008, and the presidential run-off in June--were not free and fair. In the March 29 elections two factions of the opposition Movement for Democratic Change (MDC) gained a parliamentary majority. Mugabe was declared the winner of the June 27 run-off election after opposing candidate Morgan Tsvangirai withdrew due to ZANU-PF-directed violence that made a free and fair election impossible. Negotiations subsequently took place between ZANU-PF and the two MDC factions aimed at agreement on a power-sharing government. On September 15, all three parties signed a power-sharing agreement under which Mugabe would retain the presidency and Tsvangirai would become prime minister-elect; however, the provisions of the deal had not been implemented by year's end. Although the constitution allows for multiple parties, ZANU-PF, through the use of government and paramilitary forces, intimidated and committed abuses against opposition parties and their supporters and obstructed their activities. The Joint Operation Command (JOC), a group of senior security and civilian authorities, maintained control of the security forces, and often used them to control opposition to ZANU-PF.

The government continued to engage in the pervasive and systematic abuse of human rights, which increased during the year. The ruling party's dominant control and manipulation of the political process through violence, intimidation, and corruption effectively negated the right of citizens to change their government. Unlawful killings and politically motivated abductions increased. State-sanctioned use of excessive force increased, and security forces tortured members of the opposition, student leaders, and civil society activists with impunity. Security forces refused to document cases of political violence committed by ruling party loyalists against members of the opposition. Prison conditions were harsh and life threatening. Security forces, who regularly acted with impunity, arbitrarily arrested and detained the opposition, 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. The government continued to evict citizens and to demolish homes and informal marketplaces. The government continued to use repressive laws to suppress freedoms of speech, press, assembly, association, academic freedom, and movement. Government corruption remained widespread. High-ranking government officials made numerous public threats of violence against demonstrators and members of the opposition. A nearly three-month ban on the activities of nongovernmental organizations (NGOs) exacerbated food insecurity and poverty. After the ban was lifted, security forces, war veteran groups, and provincial governors continued to interfere with NGO operations, hampering food distributions. Tens of thousands of citizens were displaced in the wake of election-related violence and instability, and the government impeded NGOs' efforts to assist them and other vulnerable populations. The following human rights violations also continued: violence and discrimination against women; trafficking of women and children; discrimination against persons with disabilities, ethnic minorities, homosexuals, and persons living with HIV/AIDS; harassment and interference with labor organizations critical of government policies; child labor; and forced labor, including of children.

RESPECT FOR HUMAN RIGHTS

Arbitrary or Unlawful Deprivation of Life

The government or its agents committed politically motivated, arbitrary, and unlawful killings during the year. By year's end over 193 citizens had been killed in political violence that targeted members of the opposition party. The MDC claimed that approximately 200 other members and supporters were missing and presumed dead at year's end. 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. The majority of politically motivated killings occurred between the March 29 harmonized election and the June 27 presidential run-off election. NGOs also estimated security forces killed between 200 and 300 citizens in the Chiadzwa diamond fields in Manicaland Province.

Security forces killed opposition members during the year. For example, on May 14, Tonderai Ndira, MDC Secretary for Security in the party's Youth Assembly, was abducted from his home in a suburb of Harare by suspected security agents. His mutilated body was found on May 21.

On May 22, MDC treasurer in Mashonaland East Shepherd Jani was abducted in Murehwa by four men suspected of being intelligence officers. Jani's mutilated body was found two days later.

Security forces engaged in extralegal killings in connection with illegal diamond mining. According to the press and NGO reports, security forces undertook a major operation to kill illegal diamond miners in the Marange/Chiadzwa area of Manicaland during the year, in order to ensure the diamond sales benefited the Mugabe regime. On December 12, the NGOs Global Witness and Partnership Africa Canada claimed "police reportedly shot and killed as many as 50 informal diamond diggers in November's raid, allegedly termed Operation No Return." According to numerous reports, military forces used a ground attack with dogs and guns as well as an aerial assault to kill indiscriminately persons digging for diamonds. The military allegedly intervened after learning that police in the area were benefiting from illegal diamond mining. Press reports from nearby Mutare, where many of the bodies were taken, indicated dozens of men, women, and children died from gunshot wounds, dog bite wounds, and torture inflicted by soldiers. On December 12, the NGOs called for signatories to the Kimberley Process to prevent Zimbabwean diamonds from entering the global market, noting, "the perpetuation of human rights abuses and indiscriminate extrajudicial killing by governments in pursuit of Kimberley Process objectives is little better than the problem the scheme seeks to end. The Kimberley Process should act to condemn and prevent such violence."

There were killings by paramilitary forces during the year. For example, on April 5, ZANU-PF youths and war veterans killed Tapiwa Mbwanda, MDC organizing secretary for Hurungwe East. According to Human Rights Watch (HRW), four people were arrested in connection with the murder but were released without charge after a local ZANU-PF leader demanded their release.

On April 25, MDC activist Tabitha Marume was shot and killed in Manicaland when a group of war veterans opened fire on a group of MDC supporters. Marume and 21 other MDC supporters had gone to a ZANU-PF-sponsored torture camp to seek the release of 12 MDC members who had been abducted by war veterans on April 23. When they attempted to release their colleagues, several dozen war veterans and ZANU-PF youths, some armed with AK-47 rifles, confronted them. As the MDC supporters attempted to flee, three persons, including Marume, were shot and killed.

There were killings by party supporters during the year. For example, on June 7, a mob of ZANU-PF supporters killed Dadirai Chipiro, the wife of Patson Chipiro, a MDC local chairman in Mhondoro, by cutting off her hand and both feet, dragging her body into the kitchen of their home, setting it on fire, and burning her alive.

On June 16, ZANU-PF supporters attacked the home of Harare's Deputy Mayor and MDC Councilor for Ward 42, Emamuel Chiroto, and took away his wife, Abigail. On June 18, her burned body was found on a nearby farm. HRW reported that police refused to take action to investigate the killing.

On July 26, former police officer Kingsley Muteta died after he was attacked by 12 suspected ZANU-PF youths at his family home in Mudzi. The mob beat Muteta when he arrived at the house, intending to visit his mother, who the group said was a known MDC activist. Police made arrests in the case, but they were subsequently released.

Despite the nearly 200 killings resulting from political violence, there were no prosecutions or convictions in any of the cases. The Zimbabwe Human Rights NGO Forum filed five civil suits in the High Court against perpetrators for wrongful deprivation of life; all were pending at year's end.

62. The March 2009 UK Border Agency "*Operational Guidance Note for Zimbabwe*" made comments on recent developments and the 2008 power sharing arrangement:

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.²⁶

Returnees to Zimbabwe

63. In January 2002 the Australian Department of Foreign Affairs and Trade (“DFAT”) provided the following advice on returnees to Zimbabwe:

A.1 EXCEPT IN THE CASE OF HIGH PROFILE OPPOSITION FIGURES, PARTY

OFFICE-HOLDERS AND ORGANISERS (IF ANY HAVE CLAIMED, UNSUCCESSFULLY, ASYLUM), WE DO NOT CONSIDER RETURNED ASYLUM SEEKERS ARE GENERALLY AT RISK. IN RELATION TO THE TWO RECENTLY RETURNED ZIMBABWEANS WHO WERE THE SUBJECT OF MEDIA REPORTS, OUR INQUIRIES HAVE REVEALED NO EVIDENCE THAT THEY WERE APPREHENDED OR MISTREATED BY THE AUTHORITIES. THEY HAVE "GONE TO GROUND", PRESUMABLY FEARING FOR THEIR SAFETY. COMMERCIAL FARMERS WHO MAY HAVE SUFFERED AT THE HANDS OF LAND SETTLERS, AND BE OPPOSITION SYMPATHISERS, WOULD NOT BE AT RISK ON RETURN.

A.2 HARARE INTERNATIONAL AIRPORT IS NOT HEAVILY POLICED. WHILE THE AUTHORITIES PRESUMABLY HAVE, OR COULD REQUIRE, ACCESS TO PASSENGER LISTS, WE ARE NOT AWARE OF ANY EVIDENCE OF PEOPLE BEING PICKED UP ON RETURN AND TAKEN AWAY BY THE POLICE. THERE IS AN ACTIVE AND WELL-INFORMED NGO COMMUNITY IN ZIMBABWE, WITH LINKS OVERSEAS, AND THEY WOULD BE QUICK TO DRAW ATTENTION TO SUCH CASES, INCLUDING INFORMING FRIENDLY DIPLOMATIC MISSIONS SUCH AS OUR OWN.

HUNDREDS OF ZIMBABWEANS ARE DEPORTED FROM THE UK EACH YEAR. THEY RETURN WITH A DEPORTATION CERTIFICATE WHICH DOES NOT SHOW WHY THEY HAVE BEEN DEPORTED (IE, NO DISTINCTION IS MADE BETWEEN FAILED ASYLUM SEEKERS AND OTHER DEPORTEES). AFTER PASSING THROUGH IMMIGRATION, THEY LEAVE THE AIRPORT. BRITISH AIRWAYS, WHICH FLIES DEPORTEES BACK FROM THE UK, HAS NOT NOTICED ANYTHING UNUSUAL HAPPENING TO ITS DEPORTEE PASSENGERS ON ARRIVAL. THE BRITISH HIGH COMMISSION IS AWARE, FROM MEDIA REPORTS ONLY, OF DIFFICULTIES IN ONLY TWO CASES, BUT HAS BEEN UNABLE TO SUBSTANTIATE THE DETAILS. THE DEPORTEES THEMSELVES HAVE NOT COME FORWARD. (CX61279 DFAT, CIR No. 13/02. Treatment of returnees in Zimbabwe. 18 January 2002)

64. On 15 April 2002 DFAT provided further advice regarding returnees to Zimbabwe:

A.1 WHAT IS THE LIKELY TREATMENT OF ZIMBABWE RETURNEES FOLLOWING THE RESULTS OF THE ELECTIONS?

THE SITUATION REMAINS BASICALLY THE SAME AS IT WAS BEFORE THE ELECTIONS. THE PRE-ELECTION VIOLENCE - POLITICAL INTIMIDATION - HAS TURNED TO POST-ELECTION RETRIBUTION. SUPPORTERS OF THE OPPOSITION MOVEMENT FOR DEMOCRATIC CHANGE (MDC) HAVE BEEN THE MAIN BUT NOT EXCLUSIVE VICTIMS OF THIS VIOLENCE. THE MDC CLAIMS AT LEAST 10 OF ITS SUPPORTERS HAVE BEEN KILLED IN THE FOUR WEEKS SINCE THE PRESIDENTIAL ELECTION. THE MDC CANDIDATE OFFICIALLY RECORDED 42% OF THE VOTE IN A POLL WIDELY BUT NOT UNIVERSALLY REGARDED AS RIGGED. IN REALITY, IT IS LIKELY THE MDC CANDIDATE POLLED MORE THAN 50% OF THE VOTE. WHATEVER THE CASE, THE MDC AND ITS SUPPORTERS ARE NOT A MINORITY GROUPING WITHIN THE COUNTRY. THERE ARE AREAS AND COMMUNITIES, NOTABLY HARARE AND BULAWAYO, WHERE PEOPLE WHO ARE AT RISK OR WHO HAVE BEEN VICTIMS OF VIOLENCE CAN MOVE TO AND LIVE IN RELATIVE SAFETY.

...

OUR CONTACTS WITH THE BRITISH AND SOUTH AFRICAN HIGH COMMISSIONS, AND BRITISH AND SOUTH AFRICAN AIRWAYS WHICH FERRY THE BULK OF DEPORTEES BY AIR BACK INTO 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.

IN THE POST'S VIEW, ZIMBABWEANS BEING RETURNED TO THE COUNTRY DO NOT FACE ANY ADDITIONAL RISK THAN THOSE ALREADY LIVING HERE. THERE ARE INCIDENTS OF POLITICALLY-MOTIVATED VIOLENCE THROUGHOUT THE COUNTRY, MORE PERVASIVE IN SOME AREAS AGAINST MDC SUPPORTERS THAN IN OTHERS. THERE ARE, HOWEVER, AREAS WHERE PEOPLE OF EITHER MAJOR POLITICAL DISPOSITION CAN LIVE RELATIVELY SAFELY.

A.2 HAS THE SITUATION CHANGED AS A RESULT OF THE SUSPENSION OF ZIMBABWE FROM THE COMMONWEALTH?

NO. THE GOVERNMENT REACTED ADVERSELY TO THE DECISION ON 19 MARCH TO SUSPEND ZIMBABWE FROM THE COUNCILS OF THE COMMONWEALTH FOR 12 MONTHS. MOST OF THE IRE, HOWEVER, HAS BEEN DIRECTED AT WHAT ARE PERCEIVED TO BE THE "WHITE" COMMONWEALTH COUNTRIES, INCLUDING AUSTRALIA. THIS ADVERSE REACTION IS A FACTOR MORE RELEVANT TO THE TRAVEL ADVICE TO AUSTRALIANS, LAST AMENDED ON 20 MARCH, THAN TO RETURNING ZIMBABWEANS, INCLUDING THOSE RETURNED FROM AUSTRALIA (CX 63792 - COUNTRY INFORMATION REPORT NO 091/02, 15 April 2002)

65. In October 2007 DFAT updated earlier advices on students studying overseas:

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)

66. 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. (IWPR 19 March 2009).

67. In its 20 July 2009 *“Country of Origin Information Report”* for Zimbabwe, the UK Border Agency indicated there was no recent information identifying any particular problems for returning failed asylum seekers, and noted in recent times both the MDC leader and Prime Minister Morgan Tsvangarai and President Mugabe were reported to be encouraging Zimbabwean expatriates to return to the country. (paragraph 33).
68. Reports in late July 2009 referred to political violence in ZANU PF strongholds, (including Mashonaland East Province, which includes Mutoko) committed by ZANU PF members against persons believed to be opposed to government, and violent activities of youth militia against opponents. Those reports noted an upsurge on violence ahead of the then planned constitutional making process. That report also noted that ZANU PF and youth militia had become “part and parcel of everyday school activities” (See *“Zimbabwe – Political violence growing in rural areas”* Integrated Regional Information Network (IRIN) United Nations, 27 July 2009. CX 230986).
69. A September 2009 article *“Zimbabwe: MDC Activist Murdered in Fresh Political Violence”* contained the following reference to the murder of an MDC activist:

A Movement for Democratic Change (MDC-T) party activist who had gone into exile in the run-up to last year’s bloody June 27 run-off elections was murdered upon his return home over the weekend, police and the legislator for the area, Heya Shoko, confirmed.

Bikita West Member of Parliament (MP) Shoko said Edwin Chingami (32), an ardent MDC supporter who was an election observer for the party at the initial March 29 harmonized elections, was killed at a funeral in Ward eight, Chirove village under chief Nhema over the weekend.

Chingami had fled the country for fear of retributive violence that had hit the country.

"He had come for the funeral wake of his niece when some ZANU PF youths started accusing him of being a sell-out who had fled the country. They started beating him up and witnesses said he fled but was hit by a stone on the head," Shoko said.

Provincial police spokesperson Inspector Phibion Nyambo confirmed the incident, but denied the murder was politically motivated.

"We received a report of murder at a funeral. The suspects were drunk as there was beer at the funeral wake. I have not heard that the victim was killed because of his political affiliation," said Inspector Nyambo.

But MDC-T provincial chairman, Wilstoff Sitemere confirmed that Chingami, a district youth chairperson, was murdered for campaigning for the MDC-T, as well as standing as the party’s elections observer.

"He was the target by ZANU PF youths aligned to former legislator Claudius Makova for vigorously campaigning for the MDC. They had told him that he will die whenever he returns, that’s why it took him so long to come back. But this time around, his relative had died and he had no option but come back. We sadly mourn his death, he is a martyr," Sitemere said.

Contacted for a comment, the Minister of National Healing, John Nkomo, said he was unaware of the incident. Nkomo however said that he would investigate the matter so that the culprits are dealt with harshly.

"As the national healing Ministry, we urge people to throw their political differences so that the country can move forward. We also urge the justice system to deal harshly with the perpetrators of

fresh political violence," said Nkomo (<http://zimbabweonlinepress.com/index.php?news=1175> accessed on 4 September, 2009 (CX232853))

FINDINGS AND REASONS

70. The Tribunal finds the applicant is a citizen of Zimbabwe, and no other country. She was born in Zimbabwe, and holds a passport issued by that country, which she used to legally depart Zimbabwe on at least two occasions and to lawfully enter Australia twice. Her claim to refugee status is assessed on the basis Zimbabwe is her country of nationality.
71. The Tribunal found the applicant to be a credible witness. Similarly it did not have concerns about the credibility of the witness who gave evidence of his experiences in Zimbabwe.
72. The Tribunal notes concerns raised by the delegate about the delay in the applicant lodging her protection application until only days after her previous student visa had expired, and the fact she voluntarily returned to Zimbabwe between November 2007 and January 2008. These were legitimate and proper concerns. The Tribunal has however had the benefit of exploring the situation with her in some detail and has also accessed material relating to her earlier MRT review in mid 2007. The Tribunal notes that in the MRT hearing she did identify to the MRT her safety concerns about returning to her home area, although those concerns were not explored at that hearing, and did not need to be resolved before the MRT. Nevertheless, this Tribunal accepts as plausible her explanation that as her student visa was restored as a result of the positive finding by the MRT, she believed it was unnecessary to pursue protection whilst that visa was in existence, and she was continuing her studies.
73. Whilst the Tribunal notes the applicant was prepared to voluntarily return to Zimbabwe in late 2007 and early 2008, it accepts her claims that she had been away from her family for a lengthy period, and wished to reconnect with them, despite existing concerns she had expressed to the MRT some six months earlier. It also accepts her evidence that her understanding of the state of affairs in Zimbabwe was not as good as is now the case. The Tribunal accepts whilst she did not experience any harm on that occasion, she and her family did not promote the fact she had returned in the local area for fear of adverse reaction, and because of her subjective concerns for her safety she spent a significant proportion of her time away from her home area. Finally the Tribunal notes her return visit occurred prior to the incident in which her mother was threatened and assaulted and prior to the incident referred to by the witness who gave evidence to the Tribunal. The Tribunal therefore does not consider the delay in applying for protection or her willingness to return to Zimbabwe for a visit in late 2007 are factors that are inconsistent with her claimed fear of persecution if she returned to Zimbabwe now or in the reasonably foreseeable future.
74. The applicant raised a number of specific reasons for which she said she feared persecution if she returned to Zimbabwe. These are considered below.

Member of a Particular Social Group (her father's family)

75. The applicant expressed concerns she may face harm on return to Zimbabwe because her father is a Church minister, and may be perceived to be opposed to ZANU PF or the

Mugabe government because he did not actively express support for the government. As such she claimed her father may be imputed to be an MDC supporter, and she as his daughter may be imputed with that same opinion. She also said there were (unfounded) rumours her father may have used church funds to pay for her education in Australia, and as the recipient of that benefit, she could face retribution. Whilst the applicant expressed these views, there is no objective evidence to show there is any perception in her local community that her father is opposed to the government, or that he had misused church funds for her benefit.

76. In respect to the first of those concerns, there is no material before the Tribunal to suggest ministers of religion generally or of the Church to which her father belongs in particular, face harm because they seek to maintain a neutral stand in their church life or because they would be perceived to be opposed to the government. Whilst the applicant referred to an instance where stones were thrown at the home of her father, the Tribunal does not accept that instance can be related to or was a consequence of his apparent neutrality in his church role. It also does not accept that her father has himself experienced past persecution because of his apparent neutrality, which the Tribunal considers would be a more likely outcome if such a risk actually existed. In terms of the second factor (alleged misuse of Church funds) the Tribunal notes if this was the source of a real risk, it would again be expected that persons angry with her father would direct that anger to him in the first instance. The applicant could not identify any objective evidence of such action, and the Tribunal finds there is no evidence before it of such action having occurred. Finally, even if her father had been or was in the future subject to adverse treatment because of a perception he misused Church funds, the Tribunal does not accept such treatment would be for reason of a Convention ground.
77. In light of this, whilst the Tribunal accepts that for the purposes of the Convention, a person's family can constitute a "particular social group", the Tribunal is not satisfied the applicant's membership of her father's family gives rise to a real chance of persecution for a Convention reason if she returned to Zimbabwe now or in the reasonably foreseeable future. As such the Tribunal finds the applicant's fear of harm for reason of her membership of her father's family is not well founded.

Actual or imputed MDC supporter

78. The applicant has never claimed to be a supporter or member of the MDC, nor does she claim her parents are MDC members. Indeed she says her father's religious position requires him to be neutral. As such the Tribunal does not accept the applicant has any actual political profile that would lead to her being perceived to be an MDC supporter or a person with anti government views. It is also satisfied she has never experienced personal harm or been targeted because of her actual or imputed political opinion. In reaching these conclusions the Tribunal accepts the evidence of the applicant herself as to the absence of past political involvement or support for any political party either here or in Zimbabwe, and the absence of any claim of past adverse treatment.
79. The Tribunal also finds the applicant would not, if she returned to Zimbabwe choose to become involved in politics or political matters. In reaching this conclusion it again accepts the statement of the applicant herself on this issue. The Tribunal is therefore not satisfied the applicant would face persecution for reason of her actual political opinion if she returned to Zimbabwe now or in the reasonably foreseeable future. As such the

Tribunal does not accept the applicant's fear of harm for reason of her own political opinion is well founded.

80. There is no evidence before the Tribunal to show the applicant has engaged in any activity in Australia which would lead to her developing any form of adverse profile with authorities in Zimbabwe, and the applicant makes no claim to have been involved in activities likely to create such a profile.

Overseas study and absence from Zimbabwe.

81. The Tribunal rejects the claim that lawfully leaving Zimbabwe as a student and residing in Australia itself would result in the applicant being perceived or regarded as being opposed to the Government of Zimbabwe. It also rejects the assertion that this alone would give rise to a real chance of persecution by the Government of Zimbabwe if she returned to Zimbabwe now or in the reasonably foreseeable future. Similarly the Tribunal does not accept studying in Australia for an extended period of time (in the applicant's case of almost 6 years) itself creates a risk of harm, in the absence of some other risk creating factor. As indicated at the hearing, many Zimbabwean citizens visit Australia for various reasons, including study, and there is no indication they face harm on return to Zimbabwe. In reaching this conclusion the Tribunal accepts country information set out above and raised at the hearing (DFAT information in 2002 and 2007) that returnees including students from Australia and other "western" countries are generally at no greater risk than persons remaining in Zimbabwe. Whilst country information suggests returnees may be scrutinised by authorities on arrival, this of itself is not serious harm as required to constitute persecution. In addition, the Tribunal notes the applicant herself in this case was able to enter and depart Zimbabwe without any difficulty in 2007/08. As such this reinforces the conclusion previously reached that the applicant has no adverse profile with Zimbabwean authorities.
82. The Tribunal considered the recent article ("*Zimbabwe: MDC Activist Murdered in Fresh Political Violence*" referred to above). Whilst that article reinforces a range of other reports of ongoing political violence in Zimbabwe, it related to a politically active MDC activist who had "gone into exile" in the run up to the June 2008 elections, and notes the victim was said to be a "sell out" who fled the country. The Tribunal does not consider this article supports the proposition that persons who simply leave the country to pursue overseas educations are generally at risk of harm on return, but rather supports the proposition that it is the previous political activities, history or profile of the individual victim specifically that creates the risk.
83. Similarly the Tribunal notes recent country information (also raised at the hearing) suggests the Government of Zimbabwe has been actively promoting expatriate Zimbabweans to return and help rebuild the country 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, dated 20 July 2009 set out above). Again, this reinforces the conclusion previously reached by the Tribunal that this applicant has no adverse profile with Zimbabwean authorities, and is not currently and would not be of adverse interest to the Government of Zimbabwe.
84. The Tribunal does however accept that where there are personal factors relating to a particular applicant which profile or draws attention to them, the degree of scrutiny

and attention to which they might be subjected on return to Zimbabwe from both the authorities and other entities may well be increased because they have lived in a country (such as Australia) which is considered by the Government of Zimbabwe or its supporters to be unsympathetic to the Mugabe dominated Zimbabwe government or regime. Such attention does not arise solely from formal government agencies or authorities, but also through informal supporters of the ruling regime or its elements. In particular this includes members of ZANU PF and the youth militias which, according to country information exercise considerable power and act with relative impunity.

85. The United States Department of State "*Country Reports on Human Rights Practices*" for 2008 (above) 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 also noted State-sanctioned use of excessive force increased, and security forces tortured members of the opposition, student leaders, and civil society activists with impunity. Security forces refused 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. In relation to the specific area from which the applicant originates (Mashonaland East) there are credible reports that ZANU PF and youth militia activities against perceived opponents were increasing towards the middle of the current year. (See "*Zimbabwe – Political violence growing in rural areas*" Integrated Regional Information Network (IRIN) United Nations, 27 July 2009 CX 230986 above). This information is consistent with the experience described by the witness who gave evidence to the Tribunal on his recent return to that area.
86. In this case the applicant has given credible evidence, supported by correspondence supplied by her mother of a heightened degree of interest about her situation by local ZANU PF and youth supporters in her home area. That material suggests her mother (an education worker) was assaulted and threatened by such persons ostensibly because of her daughter's presence overseas. The applicant provided a copy of a letter from local education authorities to the regional education authority in Zimbabwe detailing the incident in which her mother was threatened and questioned by local ZANU PF supporters about her daughter in Australia. She was also able to provide evidence from her witness that he experienced similar levels of questioning on his return to Zimbabwe last year by local youth militia or ZANU PF supporters, and was assaulted ostensibly because of his time overseas and a perception by those supporters that he did not actively demonstrate loyalty to the ZANU PF cause. Such activities whilst not conducted by formal State authorities themselves, but were carried out by non state agents, who, according to country information such as the United States Department of State "*Country Reports on Human Rights Practices*" for 2008 (above) enjoy relative immunity from sanction by State authorities.
87. Whilst the Tribunal does not accept there widespread interrogation of or harm to returning students by such non state actors, in this case and in the local area involved, there have been examples of this occurring, with the witness and the applicant herself being the subject of attention by such groups. As such, whilst the Tribunal does not accept there is a general risk to returnees per se for having been in Australia, in this particular case it cannot dismiss as fanciful or remote the possibility this applicant

could attract such attention from local ZANU PF or youth militia members in her area, as did her mother and her friend who gave evidence to the Tribunal.

88. Country information makes it relatively clear that persons attributed with anti-government beliefs or opinions (whether actual or perceived) face very real risks, including death or significant injury from either government supporters such as ZANU PF supporters, youth militia or war veterans. (See the US Department of State “*Country Reports on Human Rights Practices*” for 2008 (above). Such risks clearly amount to “serious harm” as required by s91R(1)(b) of the Act. The Tribunal is also satisfied the reason the applicant would face such persecution is due to a perception she is opposed to the government of President Mugabe, or is not a ZANU PF supporter. This amounts to an imputed political opinion and falls within the scope of the Convention.
89. The Tribunal is also satisfied if the applicant was to face such harm, she would be unable to obtain effective protection from such harm from authorities in Zimbabwe. The harm she fears (and that the Tribunal accepts exists), is from non state agents such as the ZANU PF or Youth militia supporters, who continue to act with impunity, despite the creation earlier this year of a “Unity Government. In reaching this conclusion the Tribunal accepts the UK Border Agency “*Operational Guidance Note*” (above) indicating political intimidation, torture, imprisonment, rape and murder were perpetrated by various groups including ZANU PF, youth militia and war veterans. As such the Tribunal is not satisfied the applicant could realistically gain effective protection from authorities in her home area if targeted by such non state agents.
90. Accordingly, the Tribunal is satisfied there is more than a remote risk the applicant would face serious harm amounting to persecution if returned to Zimbabwe now or in the reasonably foreseeable future for reasons of her imputed political opinion. The Tribunal is therefore satisfied this applicant does face a real chance of persecution if returned to Zimbabwe now or in the reasonably foreseeable future, and finds she has a well founded fear of persecution for that reason.

Third Country protection and relocation

91. There is no evidence the applicant has any legally enforceable right to enter and reside in any other country, and the Tribunal is not satisfied she has such right. The Tribunal therefore finds she is not excluded from Australia’s protection by s36(3) of the Act.
92. The Tribunal is satisfied the harm this applicant fears and the Tribunal finds exists in her local rural area would not be avoided by her simply relocating to another part of Zimbabwe. In reaching this conclusion the Tribunal accepts the submission by the applicant that as a single young woman, relocation to some area lacking in family support would be extremely difficult, as would being able to “blend into” such a new area without attracting adverse interest or attention of ZANU PF and Youth supporters in the new area.
93. Whilst the Tribunal notes the applicant was, on her own evidence, able to stay with an older widowed relative in Bulawayo when she last went to Zimbabwe that option is no longer available as the relative concerned has herself recently moved from that area to the applicant’s home area to be with her immediate family. As such the Tribunal does not consider this particular applicant, given her single female status, her income earning

skills, and lack of family support, could reasonably be expected to relocate to another part of Zimbabwe in order to avoid the identified persecution.

CONCLUSION

94. The Tribunal is satisfied the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

95. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer: PRMHSE