

1007543 [2011] RRTA 330 (3 May 2011)

DECISION RECORD

RRT CASE NUMBER: 1007543
DIAC REFERENCE(S): CLF2010/61105
COUNTRY OF REFERENCE: Zimbabwe
TRIBUNAL MEMBER: Peter Murphy
DATE: 3 May 2011
PLACE OF DECISION: Melbourne

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 and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Zimbabwe, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2006 as the holder of a student visa. She applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] April 2010. The delegate decided to refuse to grant the visa [in] August 2010 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 the applicant did not have a genuine fear of harm and that there was no real chance of persecution. As a result the delegate found the applicant's fear of persecution was not well founded, and that she was not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal [in] September 2010 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 has before it the Department's file relating to the applicant's protection visa, and departmental movement records relating to the applicant's travel to and from Australia. This Tribunal also had regard to material referred to in the delegate's decision, and other material from a range of sources referred to below.

The Protection Visa Application form and departmental file

19. In her protection application signed [in] April 2010, the applicant stated she was born at Harare, Zimbabwe, on [date deleted: s.431(2)], is of the Shona ethnic group and a Christian. She states she had never married, and completed primary and secondary education in Zimbabwe between [years deleted: s.431(2)] before commencing a course at [university deleted: s.431(2)] in 2006 which she was yet to complete. Whilst in Australia she says she worked as a personal care attendant between 2006 and March 2010.
20. Her application stated she first arrived in Australia [in] July 2006, and subsequently returned to Zimbabwe [in] December 2007 to visit her family. She stated she is the holder of a Zimbabwean passport, issued in November 2002 at Harare. That passport remains current until November 2012. She stated she first left Zimbabwe through Harare international airport, as the holder of an Australian student visa which was valid until September 2010. In response to a question at paragraph 50 in the application, she indicated she did not have any difficulty obtaining a travel document (such as her passport) in Zimbabwe.
21. In respect to her family composition, she said she had a mother and brother in Zimbabwe, and had left Zimbabwe to get an education in an environment where she would not have to constantly watch her family being harassed. She also said she needed to get away to make a new life for herself, and to try to recover from psychological damage she had suffered.
22. She stated she feared being tortured and killed and having to endure beatings from government officials, and was not sure she could lead a normal life in Zimbabwe. She stated she believed she would be asked for information she would be expected to know, even though she knew nothing. She said this had occurred when she returned in December 2007. Finally she asserted she would not be able to be protected by authorities because as a member of [Family 1], she was seen as an enemy of the government.
23. Attached to her application was statement in which she asserted:
 - Her mother's uncle was a journalist who worked for the "[journal deleted: s.431(2)]" where he earned the ire of the Zimbabwe Government, and as a result the family was placed on a "hit list" by the CIO who wanted to eliminate them. Her uncle was branded a terrorist.

- This led to all family members in Government work losing their jobs and access to government institutions were closed to members of [Family 1]. This also affected her mother's ability to pay tuition fees on time. CIO constantly visited their house and questioned her mother about the whereabouts of her brother, and she witnessed much harassment when her mother was interrogated. They also threatened her and her brother and sister (now deceased). Her mother would call the police who did nothing.
 - In 2007 she visited Zimbabwe at Christmas. On the first night there the family was attacked by the CIO. 5 armed police stormed and ransacked the house. They turned her suitcase upside down and looked at every paper and her passport. They were taken to a police station for a night and questioned about where her uncle was, and she was beaten. They were released the next day but told they were coming again until her uncle was delivered to them. She had to cut her stay short and come back early.
 - Before returning to Australia she went to South Africa to visit her uncle and other relatives. They did not stay long as the purpose was to discuss the events that had occurred. She was puzzled as she had not informed anyone she was coming, except for her immediate family, and she used a different surname to her mother.
 - In 2008 when the campaign for presidential elections started, her sister [Ms A] was picked up by CIO to assist with the campaign. That was the last time her mother saw her alive. A week later her body was found in a decomposed state and her mother was ordered to bury her without post mortem, and has been unable to get a death certificate. 5 cousins were also murdered and two beaten and left with broken hands during the presidential elections.
 - She had hoped the situation would improve with the government of national unity but this did not happen. Her uncle is known to be an MDC activist and [Family 1] is linked to the MDC, and violence against them has not stopped.
 - Her uncle [Mr B] relocated to South Africa in 2002 where he was granted asylum.
 - Her mother tells her the visits continue, and as a result she has moved houses 15 times and received death threats on her mobile phone and anonymous letters in her letter box. Her family is constantly harassed when authorities expect any "exiled family members" are in the country. They are black listed because of the continued criticism by her uncle of the Mugabe regime. Her life is at risk and authorities suspect she is staying with her uncle in South Africa, and she is also considered an MDC activist.
 - It took her a long time to apply for asylum because she was hoping that by the time she completed her education the situation would have improved.
24. Her application was accompanied by extracts from her Zimbabwean passport issued in 2002, showing, amongst other things, she arrived in Australia initially [in] July 2006, and then departed Australia [in] December 2007, and arrived in Harare the following day. It also shows she later travelled to South Africa [in] January 2008, and left South Africa [in] January 2010, before departing Zimbabwe [in] February 2008.
25. The applicant provided a copy of her birth certificate which identifies her mother, as well as news reports relating to the situation in Zimbabwe, and an article by [Mr B] dated [in] September 2008.

26. The departmental file also contains a copy of a letter dated [in] August 2010 addressed to the departmental case officer, signed by [Mr B], attesting to his relationship to the applicant, along with a copy of the birth certificate of the mother of the applicant.
27. The application was considered by a delegate who after interviewing the applicant concluded she did not have a well-founded fear of persecution, and there was no real chance of persecution if she returned to Zimbabwe. In particular the delegate found the applicant did not have a high political profile that would draw adverse attention from the Zimbabwe CIO or other organisations. The delegate also noted that despite attempts to do so, the applicant had not been able to demonstrate a relationship between herself and [Mr B], which when combined with other anomalies identified by the delegate in the decision record led the delegate to conclude that this “*weakens the applicant’s claims to fear persecution on the basis of a family relationship with [Mr B].*” [In] August 2010 the delegate refused to grant the applicant a protection visa.

The Tribunal Application

28. [In] September 2010 the applicant sought review by the Tribunal. No further supporting material was provided at that time. [On a further date in] September 2010 the Tribunal wrote to her advising it had considered the available material, but was unable to make a favourable decision. It invited her to give evidence to the Tribunal at a hearing [in] November 2010 and [on a date in] September 2010 the applicant advised she would attend the hearing, and requested the Tribunal also take evidence from her husband and her mother. [In] October 2010 the applicant also provided :
 - additional news reports on Zimbabwe,
 - A copy of her recent marriage certificate (dated [in] August 2010),
 - A copy of a photo said to be of her mother, her uncle [Mr B], and his daughter.
 - A letter of support from a Minister of religion expressing personal knowledge of the situation of the applicant and her family, and stating the applicant would face further harassment, interrogation and physical abuse if she returned to Zimbabwe, and
 - Copies of the birth certificates for her mother and [Mr B], and other documents relating to her family.
29. [In] November 2010 the applicant provided the Tribunal a copy of an article entitled “[title deleted: s.431(2)]” written by [Mr B], published in the “[newspaper deleted: s.431(2)] [in] September 2010.

THE TRIBUNAL HEARINGS

30. The applicant initially attended a hearing [in] November 2010 and was accompanied by her husband who also gave evidence to the Tribunal. The hearing was conducted in English,

Evidence of the Applicant ([in] November 2010)

31. At the start of the hearing the applicant confirmed there were no extra documents she wished to provide. In response to Tribunal questioning she said she completed the visa application

form herself, as well as the typed statement which accompanied that application. She said she believed the documents were accurate, although she said she did not remember what she had written in the application, and had not kept a copy.

32. The Tribunal asked if she recalled attending an interview with the Departmental delegate prior to the decision to refuse her application. She said she recalled the interview, and acknowledged she had received a copy of the interview recording, but had not listened to it.
33. At the Tribunal's request she produced her passport, which showed it was issued to her in 2002, and indicated travel to and from Australia on two occasions. She told the Tribunal she had not held a previous passport. The Tribunal noted the passport confirmed her initial travel from Zimbabwe to Australia in 2006, and a return visit to Zimbabwe in 2007, and associated travel to South Africa in early 2008. She agreed this was the case.
34. The applicant said she married a Kenyan national studying in Australia in August 2010, who she met at church shortly after she returned from Zimbabwe in 2008.
35. She confirmed she completed primary and secondary education in Zimbabwe, finishing about 2005. After this she applied to come to Australia as a student, and whilst initially accepted for studies in early 2006 was unable to travel then due to financial considerations. She told the Tribunal her mother was however able to fund her travel to Australia mid-year in 2006, and she was granted a visa in July, and entered Australia the same month. She said she undertook a degree in [subject deleted: s.431(2)], which she completed in July 2010, although she is yet to get her degree because of outstanding fees. In Australia she worked casually as a patient carer, and more recently as a disability support worker.
36. The Tribunal asked about her family in Zimbabwe. She said her father had two older children from another relationship, and her parents were divorced. She said her mother had a daughter ([Ms A]) from a previous relationship, although [Ms A] died in 2008. Her father worked as a [vocation and employer deleted: s.431(2)]. She said her mother is an administrative officer with [organisation deleted: s.431(2)], where she has worked for about eight or nine years. She said her mother continues to reside in Harare, and has been at the same address in the suburb of [suburb deleted: s.431(2)] for about 12 years.
37. The Tribunal asked her why she came to Australia. She said she wanted a Bachelor's Degree, and to study overseas. Her mother supported her in this quest, and she looked at a number of different options before selecting a particular course at a Victorian based university. She said her mother suggested a [degree deleted: s.431(2)], and after speaking to people in her mother's work, she applied for and was granted a place on that course.
38. The Tribunal asked why she sought a protection visa. She said she was afraid she would be raped, tortured or beaten, and held this fear because of past harassment of her mother by government officers and supporters, and a particular incident in 2007 when she returned for a family visit. She said on that occasion she was beaten by officers of the Central Intelligence Organisation (CIO) who forcibly entered her home the day she arrived from Australia.
39. She also said she feared she would be harassed because she would be expected to have a political opinion, and given her age she may now be eligible to vote, and if she went back would be under pressure to vote for the government. She said she was not politically active, but would vote for the opposition as she did not agree with government policies. She said

that rather than improving, the country was getting worse, although she acknowledged there had been a Government of National Unity and a power sharing arrangement for some time.

40. The Tribunal asked her about her understanding of that arrangement. She said she believed whilst there was power sharing, ZANU-PF maintained control over important ministries like defence and other powerful ministries, whilst the other party was held less important agencies. The Tribunal asked her about the “other party” She said it was called the MDC, and was headed by Morgan Tsvangarai. The Tribunal asked what position Mr Tsvangarai occupied in the Government of National Unity, and she said she thought he was President. In response to a question from the Tribunal about what role Mr Mugabe held, she said she thought he was Prime Minister. The Tribunal indicated country information about Zimbabwe indicated Mr Tsvangarai was Prime Minister, and Mr Mugabe was President, and asked whether she thought this was likely to be correct. She said this was probably correct.
41. The applicant told the Tribunal her mother had been repeatedly harassed over some time by the CIO. When asked why her mother was harassed she said “to be honest” at the time she had no idea. She said now, however, when she “put things together”, she realised it was because her uncle, a journalist, had written articles that did not support the government, and criticised it. She said he was jailed and her mother and her sisters supported him, and assisted him to leave the country. She said the CIO wanted to find out where he was, and sought information from family members such as her mother. She indicated her uncle was [Mr B], and that “[Family 1]” was her mother’s maiden name.
42. She said her mother was active in politics, and believed she was a member of the MDC because she had seen a membership card in 2006 before she came to Australia. She told the Tribunal her uncle’s problems started in the 1990s, and he left Zimbabwe in 2002. She said after her parents separated, the CIO harassed and threatened her mother.
43. The Tribunal asked the applicant if she had any difficulty obtaining a passport. She said she did not believe so, other than the fact that initially her father had not wanted her to have one as he thought her mother wanted to remove his children from the country. Ultimately he consented, and she obtained a passport. The Tribunal asked if she had any trouble with government authorities with leaving or re-entering the country. She said on both occasions she had left for Australia, she had flown from Harare International Airport, and re-entered the country at that location in December 2007 when she returned to visit family. She said on that occasion her mother bought the ticket for her and she came back as her sister was not feeling well, and as she hadn’t seen her family for some time, a holiday would be nice.
44. She said on the evening she arrived back whilst the family maid was cooking dinner and they were eating, four CIO officers arrived in a police car. She said they forcibly entered the home, and started going through things, including her bags, and asked her where her uncle was. She said they read her diary, and made a lot of threats, and she was hit when she was unable to identify where her uncle was. She said she told them she did not know where he was, and they ultimately looked at her passport, and realised she had come from Australia. She said she and her family members were then taken to a police station where they were held for the night, and were further beaten and she had to stand on one leg for long periods of time. After her release she went home, and her mother tried to console her. She said she wished to leave the country, but her mother said it was a waste of her travel if she left so soon, and she realised her mother had spent a lot of money on her ticket, so she agreed to stay for three weeks. Initially she said she planned to stay for about a month.

45. She said after that incident, she stayed home and later she and family members flew to Victoria Falls where they holidayed for about four days. When they returned home, she visited other members of her family, and it was decided that family members would go to South Africa to visit her uncle. After that visit they returned to Zimbabwe, and she started looking for an airline ticket to leave the country. She said at that time there was difficulty obtaining a seat, because flights were heavily booked. It was during this time a call was received indicating her sister was in hospital. She and her brother went to visit her. She said her mother did not initially visit her daughter in hospital because she was working.
46. She described her sister as looking like “skin and bone” and said she spoke to her, but she was not communicating well. She said all she could understand from her was that someone had taken her, but she knew no other details. After visiting her sister she said she told her mother about her condition, and her mother decided to visit her on the weekend which was perhaps two days after the time she saw her sister in hospital. The Tribunal indicated it seemed strange her mother would wait so long to visit her daughter given the description of her condition. The applicant said her mother was not on good speaking terms with her daughter, who had been living away from home for about a year.
47. The applicant said when her mother ultimately visited the hospital, she found her daughter had been discharged, and hospital staff were unable to say where she was, or why she was discharged. The applicant said sometime later her sister’s body was found, but she was unable to attend the funeral, as it was the day she was due to leave for Australia. The Tribunal asked if she considered changing her departure date so she could attend the funeral. She said she did not, as so much had happened, and everything was going wrong.
48. The Tribunal referred to the interview the applicant had with a DIAC official prior to the refusal of her protection visa. It indicated its review of that recording suggested she said that after the alleged detention at the police station, she had gone to South Africa to visit her uncle, and later returned to Zimbabwe and holidayed at Victoria Falls. The applicant said this was not correct, and after the incident she stayed at home for about a week before going to Victoria Falls, and later visited South Africa and her uncle. The applicant said she may have been mistaken about the sequence she described to the Departmental officer, and her recollection was the visit to her uncle in South Africa occurred after she and family members holidayed at Victoria Falls.
49. The Tribunal also indicated the Departmental interview suggested she told the delegate her sister died in hospital, whereas her evidence to the Tribunal and in her written statement was that her sister was discharged from hospital and died sometime later. The applicant indicated she wished she had explained the situation to the delegate more clearly.
50. The Tribunal indicated its concern over the evidence about the circumstances surrounding the alleged death of her sister, given there was no death certificate provided, and no other evidence to confirm that death. It also indicated difficulty in connecting the circumstances described for the sister with claims she made to fear persecution if she returned to Zimbabwe. The applicant said she believed her sister was probably killed by authorities because she may speak out about things she knew, and she feared she could be treated the same way.
51. The Tribunal asked the review applicant if she had any association with her uncle. She said she did not now have any knowledge about him, and did not have anything to do with him. The Tribunal put to her country information based on research in relation to the journalist [Mr B]. It noted that information confirmed the existence of a journalist by that name, who

had written a considerable number of articles critical of the Mugabe regime. It also indicated however, that information suggested [Mr B] returned to Zimbabwe in 2010 at the invitation of the United Nations to address a conference. It indicated at that conference, [Mr B] had been welcomed by Morgan Tsvangarai, and assured of his safety, and that a ZANU-PF representative also welcomed him back to Zimbabwe, although acknowledging the party and he did not always see “eye to eye” on all issues. The Tribunal indicated this may suggest whatever the situation might have been years earlier, at the current time the willingness of [Mr B] to re-enter Zimbabwe meant he may have no current fear for his own safety. The applicant said she was unsure about this, but believed it may be because he was only there for a short time, and he may have been guaranteed his safety by the United Nations, and they may have provided security for him. The Tribunal indicated in respect to that aspect that it did not believe the United Nations had security forces in Zimbabwe for that purpose.

52. The Tribunal asked the applicant if she was likely to be politically active if she returned to Zimbabwe. She said there was a possibility she may now be more engaged in politics than she had been in the past. The Tribunal expressed reservations about accepting she had any interest in engaging in politics, given her lack of past involvement and her inability to even correctly identify the President and Prime Minister of her country. In light of this the Tribunal indicated that given she had no past involvement or awareness in politics it seemed unlikely she would now suddenly choose or wish to become politically active.
53. The Tribunal asked why she remained in Zimbabwe after the events she described at the police station in 2007. She said family was important to her, and the family needs were often more important than individuals, and her mother had asked her to stay and she had no money to leave. The Tribunal also expressed concern about why her mother would want her to stay, given what she described had happened to her shortly after her arrival.
54. The applicant confirmed she had no difficulty entering or leaving Zimbabwe. The Tribunal put to her country information from DFAT which indicates the CIO maintains a presence at Harare airport, under the guise of immigration officials, and this suggested if she was a person of any adverse interest to authorities, they would be able to intercept her or affect her ability to enter and leave the country. The fact she was able to travel in and out of the country without restriction or interference suggested to the Tribunal she was not a person of any adverse interest to authorities. The applicant said in response that the CIO did visit her house the day she arrived, and clearly seemed to recognise she had returned to the country, and expressed interest in her because of her supposed knowledge of her uncle and his whereabouts. The Tribunal indicated her own evidence was, however, that they ultimately accepted she did not know anything about his whereabouts, and may therefore have no ongoing interest in her. The applicant indicated she believed if she went back to Zimbabwe, it may be possible they would think she knew more about her uncles’ whereabouts, and would still have an interest in her because of this.
55. The Tribunal asked her whether she had thought about seeking a protection visa after her return from Zimbabwe in February 2008. She said she thought about this, and a group had come to campus and spoken to students about migration matters, and she had explained to one of the volunteers (who she described as a migration agent doing volunteer work) her situation, and it was suggested to her that getting an agent could assist her. She said after speaking to this volunteer, she had been afraid and unsure of what to do, and was afraid if she started applying for protection, it may affect her family at home. The Tribunal asked why she believed this. She said she was unsure who to trust, and that the information about her applying for refugee status may come out back at home.

56. The Tribunal asked her why she ultimately applied for protection at the time she did. She said she had thought the opposition might win the election, and the Government of National Unity may work, but this had not been the case.
57. The Tribunal indicated to her that her application seemed to have been made shortly before the expiration of her student visa and completion of her studies in mid-2010, and asked if the timing of her application was influenced by the fact she would shortly have been without a lawful reason to remain in Australia. It also asked her whether other factors, such as her recent marriage to her husband, lifestyle choices, and economic conditions may be factors that motivated her desire to stay in Australia rather than protection issues. She said this was not the case, and she remained concerned about her situation if she returned to Zimbabwe.
58. The Tribunal raised with her the letter provided in support of her application from a pastor at [Church 1]. She said that pastor was the senior pastor at her mother's church, and provided counselling to her mother, and knew all about her circumstances. She was adamant the letter was written by the pastor, and was authentic.
59. The Tribunal expressed some concern about the authenticity of that letter, based on the language used, which it considered seemed somewhat stilted for an English-speaking author, and the specific detail contained in it. It also expressed some concern that some country information to which it had access suggested that in 2004 the pastor concerned was reported to be a supporter of the government, having made a donation to President Mugabe. The applicant said that in Zimbabwe to get a church running, you needed government support. The Tribunal indicated this appeared inconsistent with the contents of the letter which appeared highly critical of the government. The applicant said this was a private letter not meant to be seen by anyone in public, and was provided to assist her.
60. The Tribunal indicated it may be possible for it to seek DFAT assistance to have that letter verified with the author in Zimbabwe, and asked the applicant whether she was confident that this would be forthcoming. She said she was. The Tribunal indicated it would consider whether to pursue that course of action at the conclusion of the hearing.
61. The Tribunal also asked about her claim that [Family 1] was on a "blacklist" in Zimbabwe because of her uncle's activities. She said this was the case, and she believed it was evidenced by the difficulty her mother had in obtaining a copy of her uncle's birth certificate, as she ultimately had to pay money to someone in the relevant office to obtain it. The Tribunal indicated to her an alternative explanation may simply be that someone in the office saw this as an opportunity to extract money from people seeking documentation, rather than a government policy of not supporting or assisting someone from [Family 1]. It also indicated that if it was, as she claimed, a blacklisted family, it could be more likely that government officials would simply refuse to provide certificates or documentation, rather than seeking payment for supplying such documents.
62. The Tribunal asked the applicant whether there were any other issues she wished to raise. She said she was sorry for any inconsistencies in her application, but said she had been emotional at the time, and it had caused her much concern.

Evidence of a Witness

63. The Tribunal also took evidence from the husband of the applicant. He confirmed they married in August 2010, after meeting at a church in 2008 shortly after the applicant returned

from Zimbabwe. He indicated that during their relationship, his wife told him about what happened when she returned to Zimbabwe, and she was very depressed and sad, particularly at the loss of her sister, and the fact she missed her funeral. He confirmed she was afraid to go home, and it was not safe for her there, and he followed developments in Zimbabwe on the internet. He feared if she returned, authorities would try to get information from her because she had been overseas, and she may know the whereabouts of her uncle. He said he was aware her uncle was a journalist who was highly critical of the government, and had exposed corruption within the regime, and said authorities had tried to silence journalists.

64. The Tribunal noted that information it had suggested the journalist concerned had returned to Zimbabwe recently. The witness said he was aware of this, and had read about this on the internet. He said he thought, however the uncle's return would have only occurred because the United Nations and Morgan Tsvangarai guaranteed him security.
65. The Tribunal asked whether there was anything else he wished to add. He said he knew about the Zimbabwean situation, and it was not a safe place for anyone, the economy and lifestyle was not good, and the country was not politically stable.
66. At the conclusion of the evidence of the witness, the Tribunal put to the applicant country information relating to the current circumstances in Zimbabwe, and in particular the observation in reports such as the United Kingdom's Border Agency Guidance Note in August 2010 that there had been some improvement in the level of political violence since the formation of the Government of National Unity. The applicant said when she was back in the country in 2007/2008 she saw no evidence of such improvement.
67. The Tribunal also put to her country information from DFAT which suggested there was no evidence persons who studied in countries such as Australia or the United Kingdom were harassed or targeted simply because they had studied in those countries. As such it suggested this may indicate students without any political or raised profile were not at risk simply for having studied out of the country. It also raised with her more recent information which suggested both the Prime Minister and the President of Zimbabwe had been actively encouraging persons studying or residing overseas to return to help with reconstruction.
68. In response to Tribunal questioning the applicant also confirmed she had not been engaged in any activities in Australia of a political nature or in Zimbabwean politics.

Attempts to contact the mother of the applicant

69. In the course of the hearing the Tribunal unsuccessfully attempted on several occasions to contact the mother of the applicant in Zimbabwe on the telephone number provided.
70. In the absence of evidence from the mother the Tribunal expressed several concerns about the claims made by the applicant in relation to the circumstances she described on her return to Zimbabwe, including the sequence of events of the holiday and trip to South Africa and the circumstances surrounding the claimed death of her sister. It also indicated concerns resulting from her delay in seeking a protection visa following her return from Zimbabwe, and her willingness to remain in a country after the circumstances she described. It also indicated the other issue was the relationship between the review applicant and the journalist she claims to be her uncle, and the significance any such relationship may now have. Finally the Tribunal indicated it had concerns as to the authenticity of the letter provided by the pastor of the Church said to be associated with her mother. In respect to that issue the Tribunal indicated it

may initiate enquiries about the letter. The applicant confirmed she was confident such enquiries would endorse the authenticity of the letter.

71. The review applicant said she did not have a high political profile of her own, and this may be why she was able to leave the country without difficulty. The Tribunal acknowledged this may be the case, and said it would appear to bring the issue back to the primary question of whether she was related to [Mr B], and if so, whether that relationship was something the Tribunal accepted gave rise to a well-founded fear of persecution.
72. The Tribunal indicated it would adjourn the matter to a date to be fixed to allow for the possibility that the Tribunal would need to raise additional matters with the applicant.
73. Following the first hearing the Tribunal determined it was necessary to resume the hearing and [in] December 2010 wrote to the applicant setting out details of that hearing and [on a further date in] December 2010 the applicant confirmed she would attend that resumed hearing.

The resumed hearing ([in] January 2011)

74. The hearing resumed [in] January 2011, and the applicant attended the hearing in person. At the commencement of the resumed hearing the Tribunal asked her whether there were any further documents or information she wished to provide. She indicated there was not. The Tribunal also asked if there were any aspects of her claims or prior evidence to the Tribunal that she wished to change or clarify, and she indicated there was not.
75. The Tribunal indicated that following the previous hearing, and its expressed concerns about the validity of the letter from the pastor of [Church 1], it had requested the Department of Foreign Affairs and Trade ("DFAT") to clarify the authenticity and veracity of that letter and the affidavit said to have been written by [Pastor A]. It advised that DFAT representatives had since spoken to the Pastor directly, who indicated he had neither written nor signed the letter in question, and that the ID number, address and signature on the affidavit did not belong to him. As a result the Tribunal indicated this created considerable concern as to the authenticity of those documents, and the assertions in the letter, and hence the weight (if any) the Tribunal could place on the contents of that letter. It also indicated it appeared the letter could be a false document designed and submitted to bolster her claim of past persecution of herself and her family, and that this created considerable concern as to her credibility more generally, and in particular her claims that she and members of her family had sustained harm or mistreatment in the past as claimed. It invited the applicant to add anything she wished to say about the authenticity of those documents. The applicant indicated she had simply been given the document by her mother, and had read it and passed it on to the Tribunal, and believed it was written by the Pastor.
76. The Tribunal also indicated there remained aspects of the evidence given by the applicant at the last hearing relating to what she claimed occurred on her return to Zimbabwe, which appeared inconsistent with her statement to the DIAC officer in August 2010. As a result the Tribunal indicated that it was going to formally raise that information with the applicant in the hearing in accordance with s424AA of the Act and invite her comment and response.

Information formally raised with the applicant under s424AA of the Act

77. The Tribunal indicated that in conducting the review, it is required by the Migration Act to invite an applicant to comment on or respond to information which the Tribunal considered would, subject to her comments or response, be the reason, or a part of the reason, for affirming the decision under review. It noted it had before it information from Department records and DFAT enquiries and Tribunal enquiries that fell into that category of information.
78. It explained the particulars of the information were firstly information relating to the documents provided in support which were said to be from [Pastor A] of [Church 1].
79. The Tribunal noted she had provided a letter dated [in] August 2010 said to be written by [Pastor A] and an affidavit said to have been signed by [Pastor A]. It noted that letter set out in detail what purported to be [Pastor A]'s knowledge of her mother and her situation, and past mistreatment of her mother, members of her family, and herself, and that he had been providing counselling to her mother. It noted that letter also asserted her sister [Ms A] was murdered and he had led the burial and viewing service for her body and observed marks of a beating. It claimed he was consulted by her mother as to whether it was safe for the applicant to return for a visit in 2007, and purported to provide his view of the risks the applicant faced if she returned to Zimbabwe.
80. The Tribunal noted that in her evidence, the applicant was asked about that letter, and said her mother was personally known to [Pastor A] who was the senior Pastor at her church, and who had been providing counselling to her and knew all about her circumstances. It also noted she was adamant that letter was written by the Pastor and was authentic.
81. The Tribunal advised that following the first hearing it asked DFAT to verify the authenticity of that letter and its contents. It noted DFAT contacted the Pastor directly, who advised DFAT he had neither written nor signed the letter or the covering affidavit, and that the ID number, address and signature on the affidavit did not belong to him.
82. The Tribunal informed the applicant this information was relevant to the review because the information obtained by DFAT from the Pastor was inconsistent with, and in total contrast to her evidence that the affidavit, the letter and its contents were written by him and were genuine. It indicated that if accepted, that information may lead the Tribunal to find the letter was fabricated by her to support her claims of past experiences and those of her family, and the assertion that she and family members have experienced past harm at the hands of Zimbabwe authorities. It indicated this may lead the Tribunal to give no weight to the contents of the letter and to also conclude she lacked credibility in respect to her claims and that those claims were untrue, and neither she nor any member of her immediate family had experienced past harm or mistreatment because of political opinion, and that her claims of such harm or mistreatment were fabricated. It indicated it may also lead the Tribunal to conclude she lacked credibility generally, and to reject her claim to have a well-founded fear of persecution if returned to Zimbabwe. If so this would be the reason or part of the reason to affirm the decision not to grant her a protection visa.
83. The Tribunal explained the second set of particulars of information it wished to raise with her was information provided by her in her departmental interview [in] August 2010 about her activities following her return to Zimbabwe in December 2007 and the alleged death of her sister.

84. It noted in her protection visa application and supporting materials she said (amongst other things) that after returning to Zimbabwe in December 2008 and being detained and questioned by Zimbabwe authorities about the whereabouts of [Mr B], that she and her family went to Victoria Falls and South Africa. It noted that in her departmental interview [in] August 2010 she said after the incident at her home she went to South Africa to visit her uncle, and returned to Zimbabwe where she remained for a further 21 days. It also noted in that interview she later said she went to Victoria Falls to unwind, and then learned her sister was in hospital. The Tribunal noted this suggested she first went to South Africa then to Victoria Falls and then learned of her sister's hospitalisation. It also noted her assertion in the interview that she visited and spoke to her sister in hospital the day before she died.
85. The Tribunal noted that at the first hearing she claimed that after the incident in her home she stayed home and later she and family members flew to Victoria Falls where they holidayed for about four days. It noted she said when she returned from that trip she visited other family members and it was decided they would go to South Africa to visit her uncle, and it was after that trip she was told her sister was in hospital and she and her brother visited her there. Finally the Tribunal noted her evidence was that about two days later her mother went to visit her sister in hospital, but she had been discharged and her body was later found.
86. The Tribunal indicated the information given by her at the department interview was relevant to the review because it appeared inconsistent with her evidence to the Tribunal as to the sequence of events after her alleged detention and questioning. In the interview she suggested she first went to visit her uncle in South Africa and when she returned, went to Victoria Falls for a holiday. At the hearing however she said she went to Victoria Falls first and then to South Africa before returning to Zimbabwe.
87. The Tribunal also noted the information given at the department interview and at the Tribunal hearing was inconsistent in terms of when she claimed to have become aware of her sister's hospitalisation. In the interview she stated she learned about her being in hospital after returning from Victoria Falls, and visited her and spoke to her the day before she died. At the hearing she said she learned about her sister's hospitalisation after returning from South Africa, visited her and then about two days later her mother attempted to visit, but was told she had been discharged, and some time later her body was found. The Tribunal noted that if accepted, this information may lead the Tribunal to conclude she had provided conflicting evidence at different stages of the protection visa process on these issues which adversely affected her credibility about what happened on her return to Zimbabwe in 2007, and in relation to her sister. It noted that if accepted, the information may lead the Tribunal to reject her claims that she was the subject of police interrogation or detention during that return and to reject as unreliable, her claims that her sister died during that period, or that her death was in any way related to her or any member of her family's political opinion or activity. It noted it may also create doubts as to her credibility more generally, and lead the Tribunal to reject her claims to have experienced past mistreatment and to find she did not have a well-founded fear of persecution, which would be the reason or part of the reason to affirm the decision not to grant her a protection visa.
88. The Tribunal invited the applicant to comment on or respond orally to this information. Prior to her responding however, the Tribunal also informed her she could seek additional time to do so, and if she sought additional time, it would consider whether she reasonably needed additional time, and if necessary would consider whether to adjourn the review for that purpose. The Tribunal then invited the applicant to indicate if she sought additional time in

which to reply. The applicant indicated she did not seek additional time and wished to respond orally at the hearing.

89. The Tribunal then addressed each of the individual aspects of the information with the applicant. In respect to the authenticity and validity of the documents from [Church 1], the applicant said the document was meant to elaborate on the situation so far as her mother was concerned as to assistance she was getting from her church. She said her mother sent her the letter from [Pastor A] initially which she read, but later indicated to her mother it may be useful if she got the Pastor to provide an affidavit, which was later provided. She denied that she created the letter, or wrote it.
90. The Tribunal drew the applicant's attention to the signatures on both the affidavit, and the letter to which the affidavit referred, and noted the signatures looked relatively similar. The applicant indicated she did not know whether they looked alike or not, as she was "not good with signatures" and reiterated the letter had not been written by her.
91. The Tribunal asked whether she could offer any explanation as to why someone would produce a letter like this on her behalf. She said she did not know, but there were counsellors working with [Pastor A] and this may be the explanation. The Tribunal indicated her previous evidence was that [Pastor A] had personally counselled her mother, and she agreed this was the case, but said other people also counselled her mother. The Tribunal invited the applicant to add anything else in respect to the authenticity of those documents, and circumstances under which they were produced, and she indicated there was nothing else she wished to say. The Tribunal then indicated to her that notwithstanding her explanation, it was left with concerns that the documents were fabricated either by her, or on her behalf to bolster her claims and that this went to both the weight the Tribunal placed on those documents and more generally to her credibility and whether it accepted the claims she made. The applicant said she understood this.
92. The Tribunal then raised with her the next issue, which was the sequence of events which occurred on her return to Zimbabwe in 2007. It asked whether she understood the conflict between the evidence which was apparently given to the delegate in August 2010, and what she told the Tribunal about the sequence of events in Zimbabwe at the last hearing. The Tribunal also acknowledged that having re-listened to the DIAC interview, that it was not entirely clear she had said specifically that she first went to South Africa and then to Victoria Falls after returning to Zimbabwe. It indicated this conclusion was more implicit from the sequence of the interview, which suggested the first thing that happened after the incident she described in her home was that she went to South Africa, then returned to Zimbabwe, and then holidayed in Victoria Falls, although it acknowledged again it was not entirely clear. The Tribunal indicated this appeared inconsistent with the sequence of events described by her at the first hearing, which suggested the trip to Victoria Falls preceded travel to South Africa to visit her uncle.
93. The Tribunal invited her to comment on that apparent inconsistency. She indicated she went home to Zimbabwe in 2007 and after the incident at her home she initially went to Victoria Falls, then returned to Harare, before travelling to South Africa to see her uncle, after which time she returned to Harare. She also said she "had to admit" at the Departmental interview, she may have had things "jumbled up".

94. The Tribunal raised the next aspect of the information, which was the timing of the notification of her sister's hospitalisation. The applicant said her recollection was that after she came back from South Africa, they received a message that her sister was in hospital.
95. The Tribunal raised with her the next aspect which was the time between her having seen her sister in hospital, and her alleged death. It noted in the Departmental interview she said she saw her sister the day before she died. At the hearing however she had indicated she saw her sister in hospital, and two days later her mother attempted to visit the hospital but was told her sister had been discharged. The applicant said if she had said at interview that she saw her sister the "day before" she died, she had got it wrong. She said trying to get the timeframe right was difficult, because she had pretty much "lost the plot" when she was trying to explain things to the delegate.
96. She said her sister's death had not really sunk in yet, and she had wanted to return to Zimbabwe at the end of 2008 to see her grave, but did not do so because her mother said it was not safe. She said she had bought a ticket, but ultimately did not use it.
97. The Tribunal queried why she would wish to return to Zimbabwe if things as bad as she described had occurred to her. She said she had grown up in an abusive household, which was why her parents separated, and she needed to see where her sister was buried.
98. She said her mother took photographs of the funeral, which she could not attend as it was on the day she had returned to Australia, but her mother felt it inappropriate to send the photos to her. She then said when her mother visited Australia in about March 2009, she hoped she would bring those photos, but her mother forgot the camera which contained them.
99. The Tribunal indicated she had not previously mentioned that her mother had travelled to Australia. The applicant indicated her mother visited her and spent about six weeks here before returning to Zimbabwe. She said it had been intended for her brother to also travel to Australia at that time, but he was unable to do so because of insufficient funds.
100. The Tribunal observed it found it somewhat unusual given the circumstances that she described about her mother's situation in Zimbabwe and her assertion in her written material that her mother was "on the run" that she would come to Australia and then voluntarily return to Zimbabwe. The applicant said she questioned her mother about this, and suggested she transfer her employment to another country, but her mother said she was restricted because of her son in Zimbabwe. The applicant also said she suggested to her mother that she apply for a student visa in Australia, and believed her mother applied for a place at a regional university in Victoria, but was ultimately offered a place at a university in Perth. She said however her mother was still constrained by her son in Zimbabwe. The Tribunal asked how the son in Zimbabwe was, and the applicant said he was [age deleted: s.431(2)].
101. The Tribunal indicated that a further issue of concern for it was the fact she had asserted that the name "[Family 1]" was blacklisted in Zimbabwe, and if there was any strength in that claim, her mother may have faced difficulty leaving and returning to Zimbabwe, given that was her surname, and that she had chosen to return to Zimbabwe which appeared inconsistent with somebody who held strong fears about her safety in Zimbabwe. It also indicted the fact her mother was able to visit Australia, but did not seek protection or asylum was not consistent with the existence of fear of harm on her part. The applicant said she could not say why her mother did not seek asylum or protection in Australia whilst she was here.

102. The Tribunal asked the applicant further questions about the alleged death of her sister. She said she did not know where her sister died, and did not see her body, and had only seen her once in hospital when she returned to Zimbabwe in 2007. In terms of a death certificate, she said she asked her mother to get a copy, but she had not been able to do so. She also said she spoke to her mother as recently as the morning of the second hearing.
103. The Tribunal again asked her about the time between her last seeing her sister in hospital, and being aware that her body had been discovered. The applicant said she was unable to say how long this was, but indicated it may have been a few days.
104. The Tribunal asked if she had spoken to her uncle [Mr B] in recent times. She said she spoke to him just before Christmas and again on New Year's Day. She said he is still in South Africa, and was aware of her protection application and is still involved in journalism.
105. The Tribunal observed that in respect to the issue raised at the previous hearing about the uncle having returned to Zimbabwe in September 2010 that a review of the file after that hearing indicated she had provided a copy of that newspaper article. The applicant agreed this was the case, and agreed that in November 2010 she provided a copy to the Tribunal.
106. The Tribunal asked whether her uncle offered her any support. She said she had asked him for a copy of his article, which he provided. The Tribunal indicated there were no further questions it wished to ask, but reiterated there were several concerns which went to whether it could accept her claims about what she said happened in Zimbabwe on her return in 2007 and the circumstances surrounding the death of her sister. It indicated there also remained an issue about the relationship between her and [Mr B], and whether being a member of a family of a person such as [Mr B], would be likely to place her at risk of harm if she returned to Zimbabwe now or in the reasonably foreseeable future. It also indicated there were no reports of instances of the families of journalists being targeted in circumstances such as she had described. The Tribunal also indicated however there was evidence that the journalist [Mr B] was a frequent critic of the Mugabe regime, however there was also evidence that he had voluntarily returned to Zimbabwe in 2010 to address a conference, at which he was welcomed by Prime Minister Tsvangirai and a ZANU-PF leader.
107. Finally the Tribunal indicated the new information provided by the applicant as to her mother's ability to leave Zimbabwe and visit Australia before returning to that country created concerns for the Tribunal as to whether it could accept her claim that the name "[Family 1]" was blacklisted, or whether being a member of that family would give rise to a real chance of harm on return to Zimbabwe.
108. The Tribunal indicated it recognised this was an important matter, and it wished to give the applicant every opportunity to raise any more relevant information that related to her case, and invited her to make any further comments or raise any additional issues. The applicant indicated there was nothing further she wished to raise.

COUNTRY INFORMATION

General information

109. The United States Department of State "*Country Reports on Human Rights Practices*" for 2009 (published in March 2010) 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, parliamentary elections in 2005, harmonized presidential and parliamentary elections in March 2008, and the presidential run-off in June 2008--were not free and fair. In the March 2008 elections, two factions of the opposition Movement for Democratic Change (MDC), known as MDC-T to denote Morgan Tsvangirai's faction and MDC-M for the group aligned with Arthur Mutambara, gained a parliamentary majority. Mugabe was declared the winner of the June 2008 run-off election after opposing candidate Tsvangirai withdrew due to ZANU-PF-directed violence that made a free and fair election impossible. Negotiations subsequently took place between ZANU-PF and the two MDC factions on a power-sharing government. In September 2008 the three parties signed the Global Political Agreement (GPA), a power-sharing agreement under which Mugabe would retain the presidency and Tsvangirai would become prime minister-elect. On February 11, Tsvangirai was sworn in as prime minister. On February 13, new cabinet ministers and deputy ministers from MDC-T, MDC-M, and ZANU-PF were sworn in. Although the constitution allows for multiple parties, ZANU-PF, through the use of government and paramilitary forces, continued to intimidate and commit abuses against opposition party members and supporters and obstructed their activities. The Joint Operation Command, a group of senior security and civilian authorities, maintained control of the security forces and often used them to repress opposition to ZANU-PF.

Security forces, the police, and ZANU-PF-dominated elements of the government continued to engage in the pervasive and systematic abuse of human rights. ZANU-PF's dominant control and manipulation of the political process through trumped-up charges and arbitrary arrest, intimidation, and corruption effectively negated the right of citizens to change their government. Politically motivated, arbitrary, and unlawful killings by government agents continued. State-sanctioned use of excessive force continued, and security forces tortured members of the opposition, student leaders, and civil society activists with impunity. Security forces continued to refuse to document cases of political violence committed by ruling party loyalists against members of the opposition. Prison conditions improved but remained 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 use repressive laws to suppress freedom of speech, press, assembly, association, and movement. The government restricted academic freedom. Government corruption remained widespread. High-ranking government officials made numerous public threats of violence against demonstrators and members of the opposition. The government continued to evict citizens and to demolish homes and informal marketplaces. Thousands of citizens were displaced in the wake of increasingly violent farm invasions, and the government impeded nongovernmental organization (NGO) efforts to assist the displaced 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, the lesbian, gay, bisexual, and transgender (LGBT) community, and persons with HIV/AIDS; harassment and interference with labor organizations critical of government policies; child labor; and forced labor, including by children.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. 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 at least 19 citizens had died as a result of injuries sustained from political violence that targeted members of the opposition party in 2008, in addition to the more than 200 who died in 2008. At least three persons were killed as a result of politically motivated violence during the year. The MDC-T continued to claim that approximately 200 other members and supporters were missing and presumed dead in the wake of election-related violence in 2008. 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. NGOs also estimated security forces killed at least 40 persons in the Chiadzwa diamond fields in Manicaland Province during the year.

Security forces killed opposition members during the year. On August 30, MDC-T activist Godknows Dzoro Mtshakazi was beaten to death by four soldiers in Shurugwi, Midlands Province, after being accused along with several other MDC-T members of organizing an MDC-T rally and playing a pro-MDC-T song in a bar. The four soldiers assaulted the group before taking Mtshakazi to a nearby army base, where he was beaten further and killed, according to witnesses. The soldiers subsequently sent word to Mtshakazi's wife to collect her husband's body. There was no further investigation by year's end.

Security forces continued to engage in extralegal killings in connection with illegal diamond mining. For example, on March 30, Takunda Neshumba died as a result of being tortured in police custody. Neshumba was visiting a relative near the Marange diamond fields when he was abducted by soldiers who turned him over to a police officer, who subsequently beat him over the course of several days. According to a post-mortem report, Neshumba died as a result of severe injuries to his feet, wrists, hands, buttocks, and lower back. Neshumba's family requested an investigation by the police station that facilitated the post-mortem exam. No further action had been taken by year's end.

On June 21, 20-year-old Barnabas Makuyana was illegally digging for diamonds in Marange when he and a friend were captured by soldiers. Soldiers beat them for 16 hours until Makuyana died from his injuries. The friend then carried Makuyana's body to a hospital mortuary, where Makuyana's family could only identify his disfigured body from his clothing. Police refused to issue a post-mortem report to the family. No further action had been taken by year's end.

On September 5, soldiers captured and beat Moreblessing Tirivangani at a military base in Chiadzwa; Tirivangani died from his injuries. Police transported Tirivangani's body to a morgue and reported that he was captured while attempting to disarm a soldier in the diamond fields in Marange. However, witnesses reported the soldiers seized Tirivangani when they found him in the mining area after an army-imposed curfew. There were no further developments in the case.

In late 2008 security forces undertook a major operation to kill illegal diamond miners in the Marange/Chiadzwa area of Manicaland to ensure the government retained the proceeds from diamond sales. According to a July report by the international NGO Human Rights Watch (HRW) entitled *Diamonds in the Rough: Human Rights Abuses in the Diamond Fields of Marange*, at least 214 informal diggers were killed in the operation, known as Operation Hakudzokwi, meaning "you will not return."

There were killings by political party supporters during the year. For example, on July 30, 16-year-old Arnold Mosterd died after being beaten by ZANU-PF supporters in Macheke, Mashonaland East. Mosterd was reportedly killed after he asked for outstanding wages from a local ZANU-PF chairman, Harry Munetsi. According to villagers, seven suspects who had previously accused Mosterd of supporting the MDC, tied Mosterd, cut his chin with a knife, and pierced his stomach with hot iron bars before carrying his dead body in a wheelbarrow to the road. The suspects were arrested, but Minister of State in the President's Office Didymus Mutasa reportedly ordered the release of the suspects on bail three days later. Mutasa also allegedly told villagers to "deal with" strangers who visited the area inquiring about the killing, as they would be MDC supporters. No further action was taken by year's end.

Despite the more than 200 killings resulting from political violence in 2008, there were no prosecutions or convictions in any of the cases. The Zimbabwe Human Rights NGO Forum filed 400 civil suits in the High Court against perpetrators for wrongful deprivation of life; all were pending at year's end.

There were no other developments in previously reported killings from 2007 or 2008.

110. In March 2009 the UK Border Agency ("Operational Guidance Note for Zimbabwe") made these observations on developments since the power sharing agreement in 2008:

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

3.6.3 There was a dramatic increase in political violence and repression in March and April 2007 with hundreds of activists arrested and detained without charge following protests that culminated in Harare

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

3.6.4 By 22 August 2008, the FCO was reporting that levels of political violence and intimidation had fallen relative to the peak period of electoral violence, with the groups of ZANU-PF youth previously prevalent in the wealthier northern suburbs of Harare having dispersed.²² However, by the end of September there were reports that violence had flared up in the Mbare suburb of Harare when MDC supporters sought to reoccupy properties they had been evicted from during the height of the violence. According to the FCO, the situation also remained tense in parts of Mashonaland and Manicaland, where the ZANU-PF leadership is exceptionally vicious. Access to the rural areas continued to be restricted by roadblocks, with groups of ZANU-PF youth still present in those areas and the main bases still in place. Attacks, abductions and arrests of perceived MDC activists were still occurring around the country, but at a lower level than April - June. The FCO concluded that while there was a downward trend in violence, the situation remained unpredictable and incidents of violence across the country continued, noting that it could deteriorate further without warning.²³

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

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

3.6.7 From early 2009 there were increasing reports of retributory violence perpetrated by MDC supporters on ZANU-PF supporters who had allegedly been responsible for human rights abuses around the time of the presidential elections and of attempts by these MDC supporters to reclaim their looted property. As a result, more than 160 MDC supporters from around the country were arrested, detained and charged. February and March 2009 have also seen the arrest of the new Deputy Minister for Agriculture, Roy Bennett, an intensification of the campaign against white farmers, with arrests and farm invasions on the increase, some involving violence. Reports of political violence have continued, if not on the scale of April – June 2008, and suppression of peaceful protests is still the normal pattern. Teachers have experienced intimidation and harassment on attempting to return to work.²⁶

Returnees to Zimbabwe

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

Q.1 ARE YOU AWARE OF ANY INFORMATION WHICH MAY SUBSTANTIATE THE CLAIMS OF THE MEDIA REPORT ('ROW OVER ASYLUM SEEKERS IN BRITAIN - HOBART MERCURY 15/01/2002) THAT RETURNED FAILED ASYLUM SEEKERS ARE

AT RISK?

Q.2 IF AT RISK, WHAT IS THE NATURE AND EXTENT OF THE RISK PARTICULARLY TO WHAT EXTENT IS ANY FEARED VIOLENCE LIKELY TO BE RANDOM OR SPECIFICALLY TARGETTED AGAINST CLASSES OF RETURNEES?

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 UNTOWARD 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.

THERE IS, NEVERTHELESS, A CLIMATE OF FEAR PREVALENT IN THE COMMUNITY, PARTICULARLY AMONG OPPOSITION AND NGO FIGURES WHO HAVE A PROFILE. THIS FEAR IS GENERATED NOT SO MUCH BY ACTS OF VIOLENCE AS BY THREATS OF VIOLENCE. ATTACKS ON THESE AND OTHER PEOPLE IS DOCUMENTED IN NGO REPORTS SUCH AS THE ZIMBABWE HUMAN RIGHTS NGO FORUM, THE MOST RECENT REPORT (DECEMBER 2001) WHICH YOU HAVE. THERE IS WIDESPREAD, SPORADIC LOW-INTENSITY POLITICAL VIOLENCE IN RURAL TOWNSHIPS AND HIGH-DENSITY SUBURBS. THERE IS ALSO SPORADIC VIOLENCE ON COMMERCIAL FARMS THAT ARE TARGETTED BY LAND SETTLERS, USUALLY WITH GOVERNMENT SUPPORT. THE WORKFORCE SUFFERS THE MOST FROM THESE ATTACKS. THE COMMERCIAL FARMERS THEMSELVES (USUALLY "WHITE") ARE RARELY SERIOUSLY INJURED OR KILLED, AND THIS IS PROBABLY THE RESULT OF UNWRITTEN GOVERNMENT POLICY. (CX61279 DFAT, CIR No. 13/02. Treatment of returnees in Zimbabwe. 18 January 2002)

112. 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)

113. In October 2007 DFAT updated its 2002 advice about students studying overseas as follows:

A. 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)

114. In March 2009 the Institute for War and Peace reporting (IWPR) in an article entitled "*ZIMBABWE: Exiles Start to Return*" reported:

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

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

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

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

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

...

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

David Coltart, of the Mutambara faction of the Movement for Democratic Change, MDC-M, and minister of education, sports, arts and culture, told IWPR the noticeable influx of teachers had been influenced by the new government's relaxation of conditions for those seeking re-admission.

"Our offices are inundated with people seeking readmission. We have made it easier to be readmitted than before, hence the influx," Coltart said. (IWPR 19 March 2009).

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

116. A September 2010 report from the UK Home Office based on a fact finding mission in August 2010 noted the following:

Political environment

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

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

Political violence

All organisations reported that current levels of violence were down on that experienced during 2008. However, all organisations reported that low-level violence, or the threat of violence, continued, particularly

in some rural areas, and that this had increased with discussions about the new constitution. Although, a couple of organisations suggested that recent reports of violence may be exaggerated.

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

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

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

Non-Government Organisation (NGO) activity

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

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

Internal relocation

It was reported that there were no legal requirements or restrictions for those wishing to re-settle in other parts of Zimbabwe. While in theory resettlement to any part of the country was possible, in practice, resettlement to rural areas was reported to be difficult, especially for those considered to be opposed to ZANU-PF. However, most organisations stated that relocation to the country's main urban centres posed relatively few problems – the main constraint being economic.

Returnees to Zimbabwe

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

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

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

Forum considers that the abolition of hate speech against asylum seekers returning from the UK is central to creating a more conducive environment.

FINDINGS AND REASONS

118. 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 several times, and to lawfully enter Australia twice. Her claim to refugee status is therefore assessed on the basis that Zimbabwe is her country of nationality.
119. In reaching its findings (below) as to the claims of the applicant, the Tribunal has considered the verbal evidence of her husband at the first hearing as to his understanding of the circumstances of the applicant, and the situation in Zimbabwe generally. Both he and the applicant gave evidence that they only met and commenced their relationship after her return from Zimbabwe in 2008, which is therefore after the period to which her claims largely relate. In light of this, and the fact her husband is not a citizen of Zimbabwe and makes no claim of first-hand experience of the situation in that country, the Tribunal gives little weight to his evidence, and notes his evidence did not resolve significant concerns of the Tribunal as to the reliability and credibility of the applicant in respect to her claims.
120. The Tribunal did not find the applicant to be a credible witness in terms of critical aspects of her claims. It does not accept her claim that she fled Zimbabwe in July 2006 because of past mistreatment of herself or members of her family, and finds she simply left Zimbabwe to pursue educational opportunities in Australia and better future economic prospects. In reaching this conclusion the Tribunal notes the applicant obtained her current Zimbabwe passport in 2002, and at hearing described how she had considered and selected a suitable and appropriate degree course in Australia after discussion with people at her mother's work. Had she experienced past harm and had a well-founded fear of future harm such as rape and torture at the hands of Government agents or supporters, the Tribunal considers she would have taken the opportunity to use her passport and leave at a far earlier stage than she actually did. The fact she did not do so suggests that rather than escaping Zimbabwe because of past experiences or future fear, she was simply taking up an appropriate educational opportunity.
121. The Tribunal also finds her willingness to return to Zimbabwe about 18 months after she first arrived in Australia for what she described as a family reunion and holiday, to be inconsistent with the actions of a person who had a genuine fear of mistreatment in her own country. Finally the Tribunal notes that in the second hearing she revealed for the first time she had planned to return again to Zimbabwe in late 2008 and had even purchased an airline ticket for this purpose. Her willingness to do so is, in the Tribunal's view again not consistent with the actions of a person who expresses fear of rape and torture at the hands of Government agents or supporters, or who has a well-founded fear of persecution in their own country, or who claims to have experienced mistreatment of the type she claimed occurred to her on her return visit in 2007. It is however more consistent with the action of a person who lacks such fear and who did not experience such mistreatment.
122. In terms of her return to Zimbabwe in late 2007, the Tribunal does not accept the house of her family was invaded by CIO officers as claimed, or that she was detained and mistreated at a police station during that visit. The applicant claimed that following these alleged events, she and her family flew to and holidayed at Victoria Falls and then went to South Africa to see her uncle, before returning to Zimbabwe and discovering her sister was in hospital. Whilst there remains some potential inconsistency between the varying explanations provided by the

applicant as to the sequence in which these events occurred, the Tribunal considers such inconsistency to be insignificant, and possibly capable of being explained by the confusion of the applicant at the departmental interview. It therefore places no weight on such possible inconsistency. What it does however find highly relevant, and not affected by any potential inconsistency about the sequence in which those events occurred, is the fact the applicant and her family “holidayed” in Zimbabwe and in South Africa before returning to Zimbabwe.

123. The Tribunal considers it implausible that if the applicant and her family were subjected to the treatment of the type claimed at the hands of Zimbabwe officials, that she would holiday in Zimbabwe and at some later time leave the country to go to South Africa and then return to Zimbabwe where the alleged assaults and detention occurred. What is far more likely in the Tribunal’s view, is that if such events had occurred and she was able to leave Zimbabwe (as she clearly was when she went to South Africa) that she would not return voluntarily. The Tribunal also finds the fact she did return as an indication that she did not have any well-founded fear of harm on return to Zimbabwe, because she had not experienced a house invasion by government agents, detention or assault following her return to Zimbabwe. In reaching this conclusion the Tribunal has considered, but rejects the explanation offered by the applicant at hearing that she did not leave Zimbabwe earlier because she did not have the money to leave Zimbabwe. There was clearly on her own evidence money for her and her family to fly to Victoria Falls, then to South Africa, and for her to fly from Zimbabwe to Australia some weeks later.

Her own political and imputed political opinion

124. The applicant did not claim to have personally been politically active prior to her initial departure from Zimbabwe, and specifically denied involvement in politically related matters whilst in Australia. Based on those assertions, the Tribunal finds she was never personally involved in political activity which would give rise to an adverse profile within Zimbabwe, and that she does not have any adverse personal political profile in that country. In reaching this conclusion the Tribunal notes her own evidence that she was able to get a passport in 2002, leave Zimbabwe in July 2006, return in December 2007 and depart again in January 2008 without any difficulty through Harare airport. Had she had any adverse personal political profile, the Tribunal considers she would have been unable to do so with the apparent ease that she did. It also accepts country information above (DFAT Report No 717, 23 October 2007) that Zimbabwe CIO officers maintain a presence at Harare airport. The fact the applicant was not delayed or questioned on any of the occasions she travelled through that airport suggests she was of no adverse interest whatsoever to Zimbabwean authorities.
125. The Tribunal notes the applicant makes no claim to have been involved in any form of political activity in Australia. The Tribunal is unable to identify any basis on which the applicant would be imputed to have a political opinion arising from her activities since arriving in Australia which would result in her having any adverse profile in Zimbabwe. As such the Tribunal does not consider the past activities of the applicant in either Zimbabwe or Australia would give rise to a real chance of persecution if she was to return to Zimbabwe now or in the reasonably foreseeable future.
126. Whilst the applicant makes no claim to have experienced personal harm or mistreatment because of her own or any imputed political opinion, she does claim to fear persecution and to have experienced past mistreatment because of her uncle and his claimed opposition to the Zimbabwe government, and because she may be considered to be an MDC activist. She also says she believed her mother was a member of the MDC, and claimed to have seen a

membership card in her name. There is no other evidence to suggest her mother was a member or supporter of the MDC, and the Tribunal did not find the applicant to be a credible witness. It therefore rejects her assertion her mother was an MDC member, or that she or her mother experienced mistreatment because of her mother's support for, or membership of that organisation. The Tribunal is therefore not satisfied the applicant would be imputed to have a political opinion opposed to the Government of Zimbabwe because of the political beliefs or associations of her mother.

127. The applicant also claimed that she feared persecution on return to Zimbabwe because she herself may be considered to be an MDC activist. There is no claim by the applicant that she was involved in political activity or with the MDC in particular, nor is there any evidence to suggest she has been connected with or thought to be connected with the MDC or any other group opposed to the current Zimbabwe government. The Tribunal is therefore not satisfied the applicant would be imputed to be or considered to be an MDC activist, or that she would face any form of harm because she would be expected to have a political opinion opposed to that of the current government of Zimbabwe.
128. The Tribunal also considered whether the applicant if she returned to Zimbabwe was likely to become politically active or involved in activities that would draw adverse attention of the government or its supporters to her. She has no history or involvement in political matters in Zimbabwe, or for that matter during her almost five years in Australia. When asked at hearing about political developments in Zimbabwe, she was able to display only a very superficial and general understanding of developments such as the formation of a Government of National Unity, but was unable to correctly identify either the President or Prime Minister of Zimbabwe. As such the Tribunal does not accept she has any real interest in political matters, or interest in engaging in political or antigovernment activity if she was to return to Zimbabwe. Accordingly the Tribunal is not satisfied there is a real chance the applicant would face persecution if she returned to Zimbabwe now or in the reasonably foreseeable future for reason of her own or her imputed political opinion.
129. The applicant claimed her sister was murdered either because of her own political beliefs or because she was thought to know something adverse to the government of Zimbabwe or its supporters. There is no evidence on which the Tribunal could safely rely beyond the claims of the applicant herself to show her sister [Ms A] was politically active, had a political opinion, was murdered, or is even dead. The only direct reference apart from the statements of the applicant herself concerning the alleged death of her sister is that contained in the letter allegedly written by [Pastor A] of [Church 1]. The Tribunal however gives that letter and its contents no weight whatsoever, as enquires with the Pastor directly resulted in him denying having written or signed the letter or associated affidavit. The Tribunal finds that letter and affidavit were fabricated by or on behalf of the applicant to create the appearance of support for her claims.
130. Accordingly the Tribunal is not satisfied the sister of the applicant is in fact deceased as claimed, and specifically rejects the assertion that the sister was picked up by CIO or other supporters of the Zimbabwe government, or harmed by such persons. In reaching this conclusion the Tribunal does not accept as credible the claims made by the applicant, and notes she provided varying versions of circumstances associated with the alleged death of her sister throughout the visa process. In the departmental interview, (which was the subject of a s424AA request for comment and response at the second hearing) she suggested she saw her sister in hospital the day before she died, whereas at hearing she stated she visited her sister in hospital, and that when her mother attempted to visit her sister two days later, was told she

had been discharged, and that some time later her body was found. There was also reference in the letter allegedly written by [Pastor A], concerning the alleged death of the sister, however for the reasons set out above, the Tribunal gives no weight to that letter.

131. The applicant claimed in her supporting statement with her protection visa application that five of her cousins were murdered, and two others were beaten and left with broken bones during the Presidential elections of 2008. There was no other evidence beyond the applicant's own assertion that this was factually correct, nor was there any explanation as to the circumstances under which such deaths and assaults were said to have occurred. The Tribunal did not find the applicant to be a credible witness, and considers her own willingness to return to Zimbabwe in 2007 and her evidence at the second hearing that she planned to again return to Zimbabwe in 2009 and had a ticket to fly back, to be inconsistent with such events having occurred.
132. Finally in respect to her own actual or imputed political opinion, the Tribunal is not satisfied on the material before it that the applicant would be imputed to have a political opinion opposed to the government of Zimbabwe simply because she is the niece of a person who is a well-known critic of the government. In reaching this conclusion the Tribunal notes the uncle himself was prepared to return to Zimbabwe in 2009, and did so without harm, and there is no country information available to the Tribunal to suggest that such imputation of a political opinion occurs in respect to extended family members of opponents of the Government.

Membership of a particular social group (the family of [Mr B]) and black listing of [Family I].

133. It is well established that under the Refugees Convention, a person's "family" can constitute a "particular social group" The applicant claims to fear persecution on return to Zimbabwe because she is the niece of a prominent antigovernment journalist ([Mr B]). She also claimed that as a result of this she experienced past adverse treatment and assault by Government (CIO) agents in 2007 when she returned to Zimbabwe because they believed she knew the whereabouts of her uncle, and that she would again face such harm on return because government agents would believe she knew something about the uncle.
134. Despite its conclusions as to the credibility of the applicant generally, the Tribunal is, on the basis of the material currently before it, prepared to accept she is the niece of [Mr B]. In reaching this conclusion the Tribunal is prepared to accept the birth certificates provided by the applicant for her mother and [Mr B], the letter apparently written by [Mr B], and the photographic evidence said to show [Mr B] with her mother.
135. There is also sufficient general country information available, (including that provided by the applicant) to demonstrate that [Mr B] has for many years written openly critical articles about President Mugabe and his regime. There was also information to show that this journalist fled Zimbabwe in about 2002. Whilst the Tribunal accepts that in the past this person may have had genuine concerns about his own safety, he has himself been prepared to return to Zimbabwe to speak publicly at a conference involving senior ZANU PF and MDC officials. This suggests that whatever may have been the case previously, the journalist concerned was more recently been prepared to re-enter Zimbabwe in a public manner. As such, the Tribunal does not accept that there is a real chance that the applicant would be the target of adverse attention of Zimbabwe authorities or supporters because of her relationship to her uncle, now or in the reasonably foreseeable future, or that such persons would seek to harm her in order to obtain information about her uncle or his whereabouts.

136. As was also raised at the hearing, the Tribunal was unable to identify any country information that suggests members of the extended family of journalists have been targeted or mistreated because of their relationship to journalists or to learn the whereabouts of those journalists.
137. Apart from the claims of the applicant herself, the only other material before the Tribunal that suggests mistreatment because of her relationship with her uncle is the letter written by [Pastor A]. For the reasons set out above however, the Tribunal places absolutely no weight on the contents of that letter, which it considers was fabricated by or on behalf of the applicant to bolster her claims for protection. The Tribunal has also found that in terms of her claims of past mistreatment, the applicant was an unreliable witness who lacked credibility. The Tribunal therefore finds that neither the applicant nor other members of her immediate family have experienced past harm because of her own or her family's relationship to [Mr B].
138. Whilst the applicant does not need to have experienced past harm to face a real chance of future persecution, the Tribunal is satisfied the absence of such past harm means she has not been identified or targeted as an opponent because of her uncle's antigovernment writing. The Tribunal is satisfied that if she returned to Zimbabwe now or in the reasonably foreseeable future, she would also not face harm for this reason. In reaching this conclusion the Tribunal notes that country information provided by the applicant herself indicates her uncle returned to Zimbabwe voluntarily in 2010 ("[article title, newspaper and date deleted: s.431(2)]") to participate in a UN sponsored conference. As such, the Tribunal considers that whatever the situation for her uncle may have been when he fled Zimbabwe around 2002, it appears he is now less concerned about risks to his safety on return than previously.
139. In reaching this conclusion the Tribunal has considered, but rejects the assertion at hearing by the applicant that her uncle may have returned because his security had been guaranteed by some non-government source such as the United Nations. There is no evidence this was the case, or that there was any force (such as the United Nations) able to offer specific security to him. As was pointed out at hearing, there is no evidence the United Nations has security forces in Zimbabwe which would be able to offer that service. The Tribunal considers there is less than a real chance the applicant as the niece of [Mr B] would be of any interest to Zimbabwe authorities or supporters because of her membership of his family. As such the Tribunal is not satisfied she faces a real chance of persecution if returned to Zimbabwe now or in the reasonably foreseeable future for reason of her membership of a particular social group being the family of her uncle.
140. The applicant claimed that despite having returned to Australia after her visit to Zimbabwe in 2007/08, members of her family such as her mother continued to be harassed and if she returned she would face similar harassment because of her relationship to uncle, and because authorities in Zimbabwe may believe she was staying with her uncle in South Africa.
141. The Tribunal is not satisfied the applicant would be of any interest to Zimbabwe authorities or supporters of the government now or in the reasonably foreseeable future simply because they might believe she was living with her uncle. Even superficial questioning about her living arrangements over the past five years and examination of her passport would demonstrate she has been living in Australia for virtually all of that time she has been outside of Zimbabwe.
142. The Tribunal does not accept [Family 1] is blacklisted, or that persons with that name face harm because it is the name of her uncle, or that members of that family have lost their jobs or access to Government institutions because they were members of that family. In reaching

this conclusion the Tribunal notes the applicant was not credible in terms of her claims of past harm and mistreatment of herself and her family and there is no other evidence on which it could safely rely to accept those assertions. The Tribunal also relies on the fact the applicant's mother was able to travel out of Zimbabwe, as an indicator that [Family 1] (her surname) is not blacklisted. In reaching this conclusion the Tribunal again accepts country information above (DFAT Report No 717, 23 October 2007) that Zimbabwe CIO officers maintain a presence at Harare airport. Had [Family 1] been blacklisted the Tribunal considers the mother of the applicant who bears that name would not have been able to leave the country. The fact she was able to do so suggests neither she nor her name were of any adverse interest to Zimbabwean authorities.

143. The Tribunal also considers that if the mother of the applicant had experienced the type of past mistreatment and harm described, and was the target of mistreatment and harassment as claimed because of her brother, or because she had any adverse profile of her own, she would have had some difficulty leaving Zimbabwe. There was however no claim that this was the case. Similarly, had she experienced the type of treatment claimed, and been able to leave Zimbabwe, (as she did when she apparently travelled to South Africa in 2007/08 and to Australia in 2009) the Tribunal does not accept she would simply return to Zimbabwe and face the prospect of further harm. In reaching this conclusion does not accept the explanation offered by the applicant that her mother had to return from Australia because of her adult son. It considers if she had experienced the type of treatment claimed, this would not lead to her voluntary return to the very environment where such harm was allegedly being perpetrated against her. The Tribunal also rejects the associated claim by the applicant that her mother has been "on the run" in Zimbabwe and had "moved 15 times" because of harassment and threats due to her relationship to her brother. This claim is itself inconsistent with the evidence of the applicant at the first hearing that her mother had lived at the same address for about 12 years.
144. The Tribunal therefore finds that the applicant does not face a real chance of persecution if she was to return to Zimbabwe now or in the reasonably foreseeable future for reason of her membership of [Family 1], or because of her relationship to [Mr B].

Her overseas study, absence from Zimbabwe, and her presence in Australia

145. The Tribunal has already rejected as lacking credibility the applicant's primary claims that she and members of her family experienced past harm in Zimbabwe, and that she fled Zimbabwe because of a well-founded fear of persecution for a Convention reason. It must also however consider whether her absence from Zimbabwe and presence in Australia itself may create a real chance of persecution if she was to return to Zimbabwe now or in the reasonably foreseeable future.
146. The Tribunal does not accept that lawfully leaving Zimbabwe as a student and residing in Australia itself results in the applicant being perceived or regarded as opposed to the Government of Zimbabwe. It also rejects any suggestion that this alone would give rise to a real chance of persecution by the Government of Zimbabwe or its supporters if she returned to Zimbabwe now or in the reasonably foreseeable future. Similarly the Tribunal does not accept simply having studied or lived in Australia for a period of just under 5 years itself creates a real chance of persecution, in the absence of some other risk creating factor. The Tribunal notes many Zimbabwean citizens visit Australia for study, and there is no indication they face harm on return to Zimbabwe simply for having studied or lived here. In reaching this conclusion the Tribunal accepts country information above and raised at the hearing

(DFAT information from 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 that information accepts returnees may be scrutinised or questioned by authorities on arrival, this of itself does not amount to the serious harm required to constitute persecution. In addition, the Tribunal notes the applicant voluntarily returned to Zimbabwe without difficulty in late 2007, and was able to leave without any impediment to her movements, or any questioning or scrutiny about her presence in Australia. This reinforces the conclusion previously reached by the Tribunal that this applicant has no adverse profile whatsoever with Zimbabwean authorities because of her presence or study in Australia.

147. The Tribunal also accepts country information (“*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 and 30 September 2010, above) which suggests both factions of the Unity Government of Zimbabwe have recently actively promoted and encouraged expatriate Zimbabweans to return to help rebuild the country and its public services. Finally the Tribunal accepts the even more recent information in the UK Border Security Agency (“*Report of Fact Finding Mission to Zimbabwe, Harare 9 – 17 August 2010*” - (published 1 September 2010; reissued on 27 October 2010) which noted an absence of problems for persons on return to Zimbabwe from the UK. The Tribunal considers this reinforces the observations in the earlier DFAT reports of the absence of risk for returnees, and as such does not consider that simply studying in Australia or residing here would give rise to any real chance of persecution if the applicant was to return to Zimbabwe now or in the reasonably foreseeable future.
148. Finally the Tribunal does not accept the applicant would face a real chance of persecution if returned to Zimbabwe now or in the reasonably foreseeable future because she has claimed or sought refugee status in Australia. In reaching this conclusion the Tribunal does not accept that the fact she has done so would be known within Zimbabwe. In the unlikely event that it was known, the Tribunal also notes and accepts country information referred to above (The UK Border Agency 20 July 2009 “*Country of Origin Information Report*” for Zimbabwe, the UK Border Agency “*Report of Fact Finding Mission to Zimbabwe Harare 9 – 17 August 2010*” and earlier DFAT reports) which does not indicate failed asylum seekers have experienced serious harm amounting to persecution on return to Zimbabwe simply because they had sought asylum in some other country.

The timing of and delay in lodging her protection visa

149. Whilst the applicant first arrived in Australia in 2006, she did not lodge a protection visa application until 2010. The Tribunal considers the delay of the applicant in seeking protection for almost four years after she first arrived indicates a lack of any well-founded fear of persecution on her part at the time of her first arrival in this country. It also reinforces the finding of the Tribunal that she had not experienced the past harm and mistreatment in Zimbabwe as claimed. In addition after returning to Zimbabwe in 2007/08 to visit her family and holiday, she again failed to make an application at that time. If she had experienced the type of treatment she claimed occurred shortly after her arrival in Zimbabwe in December 2007, the Tribunal considers she would actively seek protection on return to Australia. The fact she does not reinforces the Tribunal’s conclusion she did not experience mistreatment at the hands of Zimbabwe authorities or supporters as claimed during that return trip.
150. Furthermore, the fact she did not lodge a protection visa application for more than two years after she returned from that visit to Zimbabwe indicates she continued to lack a well-founded

fear of persecution for a Convention reason following her return to Australia. The applicant presented as an intelligent and educated individual, and the Tribunal considers if she had experienced any of the mistreatment she claimed, or genuinely held a well-founded fear for her own safety, she would have actively sought protection in Australia at a far earlier stage. In reaching this conclusion the Tribunal has considered, but rejects as lacking credibility, her explanation at hearing that she had spoken to a migration agent doing volunteer work at her university about protection visas, but had been afraid and unsure who to trust. The Tribunal has also considered, but rejects as lacking credibility her explanation that she thought things in Zimbabwe may have improved by the time she had finished her education, and this was a reason she delayed lodging her protection visa application. The Tribunal considers that had the applicant experienced the type of harassment and mistreatment she claimed had been directed to her and her immediate family, and in particular her mother and sister, she would have lodged her visa application far sooner. Her failure to have done so, in the Tribunal's view is consistent with a lack of a genuine subjective belief on her own part that she faced persecution because of a Convention related reason if returned to Zimbabwe now or in the reasonably foreseeable future.

151. The Tribunal also considers a far more likely explanation is that she is married to a person who is neither an Australian citizen nor a Zimbabwe citizen, and has a more comfortable life in an economic sense here than she may have in Zimbabwe, and that her student visa was about to end as far more likely to account for the timing of her application for protection, than any genuine well-founded fear of persecution.

CONCLUSIONS

152. Having considered the applicant's claims both individually and cumulatively, the Tribunal is not satisfied the applicant faces a real chance of persecution because of a Convention related reason if returned to Zimbabwe now or in the reasonably foreseeable future. As such the Tribunal is not satisfied she is a person to whom Australia has protection obligations under the Refugees Convention.
153. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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