

1109461 [2012] RRTA 148 (2 March 2012)

DECISION RECORD

RRT CASE NUMBER:	1109461
DIAC REFERENCE(S):	CLF2011/41216
COUNTRY OF REFERENCE:	Zimbabwe
TRIBUNAL MEMBER:	Peter Murphy
DATE:	2 March 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Zimbabwe last arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2006 and applied to the Department of Immigration and Citizenship for the visas [in] March 2011. The delegate decided to refuse to grant the visas [in] August 2011 and notified the applicants of the decisions.
3. The delegate refused the visas on the basis that the first named applicant was not a person to whom Australia has protection obligations under the Refugees Convention. He also refused the second named applicant a visa on the basis that he was a member of the family unit of the first applicant, who had not made claims for protection in his own right.
4. The applicants applied to the Tribunal [in] September 2011 for review of the delegate's decisions. 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 applicants have 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 (the Regulations) for the purposes of the definition. The expression is defined in r.1.12 of the Regulations.
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Regulations.

Definition of ‘refugee’

9. 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.
10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
18. 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

19. The Tribunal had before its departmental file relating to the applicant’s protection visas. The Tribunal also had regard to material referred to in the delegate’s decision and other material from a range of sources which are referred to below.
20. The applicants are brothers. At the time of application in March 2011 the first applicant was [age deleted: s.431(2)] whilst the second applicant was [age deleted: s.431(2)]. Only the first applicant made specific claims for protection, and the second applicant relied on his membership of the family group of the first applicant.

Background information

21. In his protection visa application, the first applicant states he was born in Harare, Zimbabwe, in [date deleted: s.431(2)], was of “African” ethnicity, and a Christian. He stated he was never married or in a defacto relationship, and had no children. In terms of education, he did not disclose details of education before arriving in Australia in 2005, but said he had studied in Australia from 2005, and at the time of application was studying at [University 1]. He described his occupation as a student, and did not disclose any employment since arriving in Australia.
22. He states he arrived in Australia [in] September 2005 using a Zimbabwean passport issued in 2000. He also stated he now held a replacement Zimbabwe passport current until 2020. He stated he legally departed Zimbabwe through Harare International Airport [and] entered Australia on a student visa. Since arriving in 2005 he states he returned to Zimbabwe for about 7 days because of the death of a relative. He indicated he had previously travelled to South Africa (2003/2004) and had previously visited Australia in 2003.

The second applicant

23. In his protection application, the second applicant states he was born in Harare, Zimbabwe, in [date deleted: s.431(2)], was of “African” ethnicity, a Christian and never married or in a defacto relationship. He stated the passport he entered Australia on was issued in 2000, and he was a student.
24. In respect to family composition, the applicants indicated their mother lived in Zimbabwe but did not disclose a place of residence for their father. They also indicated they had a sister in Australia who was not included in the application.

Claims by the first applicant

25. The first applicant stated he left Zimbabwe to pursue higher education that could not be offered in Zimbabwe, and indicated his sister had graduated from studies in Australia. He claimed that just before he left Zimbabwe his father was targeted by the ZANU PF, and as a result his family’s assets and property were seized, and anyone related to his father lost their jobs. He claimed the Zimbabwe government started a “political manhunt” which meant his father had to go into “political exile” and had not returned to Zimbabwe. This directly affected them financially and emotionally, and as a result he and his brother had only been able to partially complete their studies in Australia.
26. In terms of why he feared return to Zimbabwe, the first applicant said as his father was still in exile, they would face similar difficulties from the ruling party. Before they left they had been questioned about their father’s whereabouts, and their name was blacklisted, which would make it extremely hard for them to find future employment. He said despite the formation of a coalition government, there remained a risk to them going back.
27. He said the government had made a point of scandalising his father by making false allegations against him, and their assets remain seized, making it extremely difficult for them to start again. He did not believe he would be able to get protection in Zimbabwe and the ZANU PF has started a tough campaign against anyone considered to support the opposition.
28. Attached to the applications were several documents including news reports referring to the father of the applicants and the situation in Zimbabwe. The department file also contained copies of pages from the current passports of each of the applicants, which indicate those passports were issued in [years deleted: s.431(2)].

The delegate’s decision

29. The visa applications were considered by a delegate, who after interviewing both the applicants [in] July 2011, concluded Australia did not owe the first applicant protection obligations because he did not have a genuine fear of harm, and there was no real chance of persecution occurring, and that his fear was not well founded.
30. The delegate noted the primary basis of the claim for protection was that the father of the applicants was a high profile [details deleted: s.431(2)] who had been politically targeted by the ZANU PF government as he was perceived by authorities to be supportive of the MDC. The delegate set out a history of events which the applicants said had occurred since 1997, but concluded the first applicant did not have a well-founded fear of persecution for a Convention reason. As a result the delegate refused the first applicant a protection visa, and

also refused the second applicant a protection visa on the basis he was a member of the family of the first applicant.

The Tribunal Application

31. [In] September 2011 the applicants sought review by the Tribunal of the decision to refuse them protection visas. The Tribunal file contains a submission by the first applicant setting out a number of articles about the situation in Zimbabwe and his father. That submission also addressed aspects of the delegate's decision.
32. Also accompanying that submission was a copy of an email said to be sent [in] July 2011 by the mother of the applicants, and the response by the applicants to that email. In that email, the mother asserts there had been recent threats to her and family members seeking the whereabouts of their father, and that their sister [Ms A] was detained by police and had been threatened if she did not co-operate.
33. [In] December 2011 the Tribunal wrote to the applicants advising it had considered the information available, but was unable to make a favourable decision on that information alone. The Tribunal also invited them to appear before the Tribunal to give evidence and present arguments relating to their application. [In] December 2011 the applicants indicated they would attend the hearing.

THE TRIBUNAL HEARING

34. The applicants appeared before the Tribunal [in] January 2012. The hearing was conducted in the English language.
35. At the commencement of the hearing the Tribunal indicated whilst the application forms had been completed on the basis only the first applicant was making claims for protection, it appeared both applicants were in effect expressing concerns that they each faced the same risk on return to Zimbabwe. It indicated this suggested the issues raised by the first applicant as a basis for his claim to fear persecution would be equally applicable to the second applicant, who was also an adult, and not dependent on the first applicant. Both applicants agreed this was the case.
36. As a result the Tribunal indicated that it intended to proceed on the basis each of them were making claims to fear persecution if they were returned to Zimbabwe now or in the reasonably foreseeable future. The Tribunal then took evidence from each of the applicants in the presence of the other.

Evidence of the first applicant

37. The Tribunal asked the first applicant what he feared if he returned to Zimbabwe now or in the reasonably foreseeable future. He said it was mainly due to family issues, and his mother was being harassed and questioned about their father. He also said the fact he had been out of the country for a long time may result in he and his brother being questioned about their whereabouts on return. He also said his father had recently been arrested in [Country 2] but subsequently went to [Country 3] after being released, and then travelled to Zimbabwe [details deleted: s.431(2)]. The Tribunal indicated it had read recent news reports about these events, and accepted their father [details deleted: s.431(2)].

38. The first applicant told the Tribunal he was [age deleted: s.431(2)] and had [four siblings]. His brother is the other applicant. His three [other siblings] are aged [ages deleted: s.431(2)] the eldest of which lives in Australia whilst the other two live in Zimbabwe with their mother.
39. The Tribunal asked about his mother. He identified her name, said she lived in [place deleted: s.431(2)], in the same property that had been his home prior to him coming to Australia. In addition to his mother and two [siblings], he said there were two staff members living at that property.
40. The Tribunal asked the applicant about his mother's work. He said she worked [details of employment deleted: s.431(2)], and had done so for about 20 years. In response to questions from the Tribunal, he said he was not sure of the name of the friend, nor was he sure of the name of the business, other than it was [details of business deleted: s.431(2)].
41. The first applicant said his mother's full name was [Ms B], and that [name deleted: s.431(2)] was not a common name in Zimbabwe. The Tribunal indicated its research had shown a woman named [Ms B] was currently [details of government employment deleted: s.431(2)]. It asked the first applicant whether this person was in fact his mother. He then said this was his mother.
42. The Tribunal indicated its concern that when asked previously about the nature of his mother's work, he had said she worked for a friend in a business, whereas she appeared to [work in a government department]. The applicant said she worked for a friend in that office. The Tribunal asked how long she had held that position. He said he was not sure but when pressed, agreed she was in that position prior to him leaving for Australia in 2005. The Tribunal observed it appeared to be a [details of government employment deleted: s.431(2)]. He said this was the case. The Tribunal asked about the assertion in documents provided to it that his mother [details of government employment deleted: s.431(2)]. He agreed it was.
43. The Tribunal observed the fact his mother was able to maintain long-term government based [employment] appeared inconsistent with his claim to fear he would be prejudiced in employment, or blacklisted, because of his family name. The second applicant responded at that point, saying as their mother had been there for a long time, this may have been why she was able to continue her employment. The second applicant also indicated his mother's wage in the government position was very low, and whilst it might sound like it was a "big position", it was not, and her remuneration was not good.
44. The Tribunal asked the first applicant about his sister [Ms A]. He said she was [age deleted: s.431(2)] and had [studied] in [Country 4], and then worked in [Country 5], but returned to Zimbabwe because her mother was by herself. He said she obtained a [job] in Zimbabwe, but as the position had not paid well, she left it some 6-8 months ago and was currently not working. He said he spoke to her a while ago, and she had talked about going to [Country 5] to work, and to get away from Zimbabwe. He said she currently lives with their mother in the family home, and as she was not working, he assumed her costs were met by his mother from her income.
45. The Tribunal asked the first applicant about his own education. He said he did his primary and secondary education to Form 4 level in schools in Harare, and between the ages of about 16 and 22, had not studied. He said after arriving in Australia in 2005, he initially studied a Certificate IV, and then commenced a [Diploma] before relocating to [University 1] in 2009

where he enrolled in [a degree]. He said, however, he had not studied since 2010 because of the difficulties meeting tuition fees.

46. The Tribunal asked if he was currently working. He said he was, and worked in [details deleted: s.431(2)] through an organisation called [Business 6] which was owned by a friend of his. He denied having any interest in that business other than as an employee, and said his brother also worked in that business. He said in terms of finances, he and his brother used to get money from their father, but now derived their funds from [Business 6] and on average got about \$500 a week from that source. He said this was used to pay their rent and living costs, in a unit they occupied with a couple of other friends.
47. The Tribunal asked him about his Australian based sister. He said she lived [in] a different suburb, and sometimes she provides them some money. He said while his sister worked, he was not sure what she did.
48. The Tribunal asked why he feared returning to Zimbabwe. He said firstly it was because his family had been harassed because of his father's issues, and he himself had been harassed in the past. In particular, he said there was one occasion when his mother and himself were detained and questioned. The Tribunal asked him about his father. He said his father left the country in about [details deleted: s.431(2)]. The Tribunal observed that material available to it suggested Interpol had been asked by the Zimbabwean government to enforce a warrant of arrest. He agreed this was the case. He said when the government started attacking his father, they did so because they perceived him to be a supporter of the MDC, and along with a number of other prominent [details deleted: s.431(2)], his father was targeted. He said his father was [arrested] in [Country 2] but was released and went to [Country 3] for 2-3 months before voluntarily returning to Zimbabwe.
49. The Tribunal referred to a [report] of [date deleted: s.431(2)] which indicated his father had [details deleted: s.431(2)] after being arrested in [Country 2]. The Tribunal indicated this and other newspaper reports, suggested his father had been extradited to Zimbabwe rather than having been released and voluntarily returning to the country. The applicant said he did not agree that was the case, and believed his father had been living freely in [Country 3] for some months after his [Country 2] arrest, and had not been extradited, but had voluntarily returned to Zimbabwe. He said he had done so against advice of his family, who begged him not to return, but his father had said he wanted to sort things out, and was angry about the harassment of his family.
50. The Tribunal asked the first applicant whether his father was ever a member or supporter of the MDC. He said his father was not a member, but was a supporter because of what he had said in an interview with a [reporter]. He said that whilst he also supported the MDC, he was not a member, nor was he aware of any other family members who were.
51. He said the harassment of his family started soon after his father's [interview] and culminated in his father having [details deleted: s.431(2)].
52. The Tribunal asked him about his own travel to Australia. He said he came here as a student [in] 2005 and his brother was already here as a student as well. The Tribunal asked why he left Zimbabwe. He said it was due to education factors and the need to get away because of constant harassment he experienced at home. He said his mother had suggested both boys leave the country and continue study, and hopefully things would improve.

53. The Tribunal asked when he returned to Zimbabwe. He said did so at the end of 2005, a couple of months after first arriving. He said he returned on that occasion because of his mother and sister, and stayed about a week. He said his brother also returned and travelled at the same time. The Tribunal expressed concern that he would return to Zimbabwe so soon after he left, given that part of the reason he gave for leaving Zimbabwe was to avoid harassment. The first applicant said he thought it would not have been an issue for him because at that stage his father had not started taking further legal action, and that things got worse after he commenced that action.
54. The Tribunal observed part of the reason why the first applicant claimed to fear harassment was because of questioning about the whereabouts of his father. It observed that now his father had [details deleted: s.431(2)], those whereabouts were no longer in doubt, and asked why he would now expect to face harassment. The first applicant said his family was still there and was being harassed recently, and if he returned, authorities may wish to know where he had been and what he had been doing all these years. He said the ZANU PF make a point of saying that people who go to Australia, the United Kingdom or the USA support the MDC and that people who study in countries like this are thought to be MDC supporters.
55. The Tribunal referred to country information from a number of sources which suggested that simply living or studying in a country like Australia did not of itself give rise to persons being targeted on their return. It noted that information did suggest that if a person had an adverse profile or was a political activist, they may face further scrutiny on return, but it would be because of that profile or their activism, not because they had studied in Australia or lived here. Both the applicants responded and agreed that this was probably correct.
56. The Tribunal asked the first applicant about his knowledge of his father's current circumstances. He said he last spoke with his father about two weeks ago, and he was still fighting to clear his name and was going back to court. He said he currently lives in the family home.
57. The Tribunal observed that circumstances relating to his father had changed in recent times and asked what problems he now anticipated if he returned to Zimbabwe. The first applicant said his father had not stopped pursuing matters through the courts, and this scared the family back home and they feared [details deleted: s.431(2)]. He said his mother had suffered for so long because of these issues, and neither she nor he wished to go through those things again.
58. He said his mother had told him the situation was bad and she wanted to leave the country, but it was not easy for her to do so. The Tribunal asked what he meant by this. He said it would mean leaving everything at home and other family. The Tribunal asked why his mother and sister could not leave if they wished to do so. He said it was not easy because it would mean leaving everything there.
59. The Tribunal asked the first applicant whether he had any difficulties leaving Zimbabwe or returning to it. He said there was none at the time he left the country, but said that in the past, there had been an incident when he was driving a car and the brakes failed shortly after it had been serviced, and that a similar event happened to his father. He believed these were attempts to get at his father.
60. The Tribunal observed that the first applicant and his brother appeared to have a settled lifestyle in Australia, which appeared far more positive in an economic sense than life in Zimbabwe. It asked whether this was the motivation for them wanting to remain here. The

first applicant said this was not the case, and things had been good in Zimbabwe in the past, and if they were good again he would want to be there.

Evidence of the Second Applicant

61. The Tribunal also took evidence from the second applicant. Having heard the evidence of his brother, the Tribunal asked whether there was anything his brother had said with which he disagreed. The second applicant said he agreed with what his brother had said. He said he himself came to Australia [in] 2005 as a student, and subsequently completed a certificate, then a diploma, and was currently one semester short of completing his Bachelor [degree] at [University 1]. He said he had deferred that study, however, at the end of 2010 because of financial issues and difficulties studying.
62. The Tribunal asked about his mother's occupation, and he confirmed she worked [in a government department in] the Zimbabwean government body identified by the Tribunal.
63. The Tribunal asked the second applicant whether he had experienced any past harm, mistreatment or harassment. He said he had, because he was in the car driven by his brother when the brakes failed. He said motor accidents in Zimbabwe are often the excuse for incidents designed to get rid of people, and indicated even the Prime Minister had been in an accident in which his wife had died, and which was attributed to political factors.
64. He said his own and his brother's fear is that if they returned to Zimbabwe, they would be in danger because of their father's pursuit of his [legal case]. He said it would not be safe, particularly with an election coming up some time in the current year.
65. He denied he was an MDC member and said no other members in his family were, to his knowledge, MDC members.
66. He said he returned to Zimbabwe in the 2005/2006 Christmas/ New Year period, and had thought everything was fine. He said at that point, the government had done everything they wished to do to his family, and things were quiet. He said things heated up again when his father started legal action. He said he believed the government would have actually known where his father was before then, but had no interest in him until he started legal action.
67. The Tribunal asked the second applicant about his Australian based sister. He said whilst he knew she worked, he was not sure what she did, as he hadn't gone into detail with her about her job. The Tribunal observed that it appeared unusual he would not know the basics of her work situation, and he said he knew it "seemed silly", but that was the way it was.
68. The Tribunal asked what he believed would happen if he returned to Zimbabwe. He said he may be questioned and interrogated about where he had been, and he was basically uncertain about what would happen. He said there would be occasions when he would not feel safe, and if he lived with his family and his father was targeted, he would also be targeted.
69. In terms of his return travel and departure from Zimbabwe, he said he had no difficulties leaving or coming back to the country, and it was not really an issue at the airport, although people may report his travel after it had occurred.
70. The Tribunal indicated to the applicants it had some difficulty accepting their arguments that they would be blacklisted or their employment opportunities would be diminished because they bore the name [deleted: s.431(2)]. In making that statement, the Tribunal referred to the

fact they had now conceded their mother was the holder of [government employment], and that their sister had also worked prior to voluntarily resigning from her position.

71. The second applicant responded to this saying he thought his sister had obtained a job through a friend of his mother, but had not earned good money which was why she stopped work. The first applicant said his sister had recently told him that although she had been looking for a job, she hadn't been able to find one for 8 months. The Tribunal asked whether he believed this was because of poor economic conditions in Zimbabwe or for some other reason. He said he believed it was because she [had the surname "[name deleted: s.431(2)]"]. He said she had a good education and should be able to get a reasonable job.
72. The Tribunal asked about the assertion in the email from their mother that their sister [Ms A] had been harassed shortly prior to July 2011. The second applicant answered saying there was not much detail, but he believed she was picked up at a road block and asked questions about who she was, and they had spoken roughly to her. He also said he himself had been held up and "roughed up" in the past by authorities. The Tribunal asked what he meant by this. He said they had been rude to him, and had tried to provoke him. He denied, however, that he was subjected to any physical mistreatment.
73. The first named applicant also said that on the occasion he and his mother had been detained, they were taken to a police station and asked about his father and his whereabouts, and it was said that they were MDC supporters. He said he thought this was to intimidate them and make them afraid. He said this lasted for about 3 hours.
74. The Tribunal asked the second applicant about his involvement with [Business 6]. He said his situation was the same as his brother in that he helped [details deleted: s.431(2)], and had no financial interest in the business other than as an employee.
75. The Tribunal indicated it had some difficulty establishing a nexus between their claimed fear of harm on return to Zimbabwe and a Convention reason, and whether it could accept there was a real chance they would face persecution because of their relationship to their father, or because of an imputed political opinion due to their relationship to their father.
76. The first applicant said he believed when his father returned to Zimbabwe, he had been questioned about his sons' whereabouts and what they were doing. This gave him further concern for what would happen if they were now to return.
77. The Tribunal asked both applicants whether they had been involved in any activities in Australia of a political nature or with anything that could give rise to a perception they were opposed to the Zimbabwean government. Both said they were not involved in such activities.
78. Finally, the Tribunal raised with both applicants the delay in their protection visas, in that whilst they arrived in Australia in 2005, they had not lodged their protection applications until 2011. The second named applicant said essentially they had hoped things would improve during their absence, and that some [details deleted: s.431(2)] like his father had been able to get their assets returned and they were hopeful that in the elections, the ZANU PF would lose and the MDC would be elected. The first named applicant agreed with those explanations as to why the application had been delayed. He said he hoped things would improve if the MDC won the elections, but this had not occurred.

79. The Tribunal invited both applicants to indicate if there was anything else they wished the Tribunal to consider. Neither raised any new information.
80. The Tribunal indicated it had concerns about whether or not it could accept they had a well founded fear of persecution for a Convention reason if they returned to Zimbabwe now or in the reasonably foreseeable future, and in particular about whether they would be black listed or targeted because of their name, or association with their father. In that regard, it pointed to the continuing employment of their mother in a [government position].
81. It indicated it may need to formally put to each of them information for their comment and response, but rather than doing this at hearing, said if necessary, it would write to them setting out that information and inviting them to comment and respond.
82. In response to a question from the second applicant about whether further information could be provided to the Tribunal, the Tribunal indicated it would consider any further information provided up to the point where a decision was made.

Post Hearing Action

83. Following the hearing, the Tribunal wrote to each of the applicants pursuant to Section 424A of the Act setting out information which, if accepted, would be the reason or part of the reason for affirming the decision not to grant them protection visas. In relation to the first applicant, this invitation was in the following terms:

The particulars of the information are:

- 1. Information relating to your mother and your sister [Ms A], and your claim that persons with the name [surname] are blacklisted in Zimbabwe because of their association with your father [Mr C], and that you would be deprived of employment if you returned to Zimbabwe for reason of an imputed political opinion or because of your relationship to your father**

In the interview with the departmental delegate [in] July 2011 you and your brother said:

- Your mother was [working] for a medium sized company, although neither of you were able to identify the name of the company.
- Anyone with the name [surname] will be in trouble and the name had been destroyed.
- Your sister [Ms A] was working in Zimbabwe in a [business] owned by [a sportsperson].

At the hearing on [date] January 2012 you initially said that your mother was [profession] and had worked for a friend for about 20 years, but you were not aware of the name of the friend, or the name of the business, other than it was just [profession] business. You said your mother's full name was [Ms B] and that [surname] was not a common name in Zimbabwe.

The Tribunal noted at hearing that the email address for your mother on the email you submitted as part of your material to the Tribunal was [Ms B] and indicated information it found on [an] internet page for a woman named [Ms B] indicated that person was [details deleted: s.431(2)] which is a Zimbabwe Government Agency. The Tribunal also indicated other information it accessed on the internet suggested that same woman was [details in relation to employment deleted: s.431(2)].

When this information was raised with you at hearing, you then told the Tribunal that the woman it referred to was your mother and that she had worked for the same Government department for a long time, and had certainly worked there prior to you coming to Australia in 2005. Your [brother], in his evidence to the Tribunal later confirmed that your mother held the position referred to with the [department].

In your evidence to the Tribunal, you said that your sister [Ms A] studied [subject] in [Country 4] and later worked in the [Country 5] before returning to Zimbabwe to be with your mother about two years ago. You said that she had then been working in [vocation] in Harare, but gave up that job because it

did not pay enough, and had been out of work for about 6-8 months since then. Your [brother] in his evidence to the Tribunal agreed with your assertions on this issue.

Why this information is relevant to the review

You have provided inconsistent information to the Department and the Tribunal about the nature of your mother's employment, and her employer and failed to mention until confronted with information obtained by the Tribunal, that she holds a long term [position] in a Zimbabwean Government Agency and appears to have held that position throughout the period you claim your family was the subject of harassment by Zimbabwe government and its supporters.

The information in the internet articles concerning your mother and your concession that it was correct is inconsistent and in total contrast to your initial evidence to the Tribunal and information provided to the department, that your mother was [profession] working for a friend in a small business. If accepted, that information may lead the Tribunal to conclude you and your brother lack credibility on this aspect specifically, and sought to conceal the fact your mother has maintained [government] employment despite your claims that family members have been targeted and harassed by government authorities because of their relationship to your father. It may lead the Tribunal to doubt your credibility and that of your brother more generally and in particular your claims to have a well-founded fear of persecution if returned to Zimbabwe now or in the reasonably foreseeable future. It may also lead the Tribunal to conclude that as your mother has held a [Government] position throughout the period you claim people associated with your father have been harassed and targeted and have lost their jobs, that your claims and those of your brother that persons associated with your father's family and those with the [surname "[name]"] are blacklisted, and that you would be denied employment because of your name or affiliation with your father's family are not well founded. It may also lead the Tribunal to reject your claim that you would be imputed to have a political opinion opposed to the government, or that you were perceived to support the MDC simply because of your relationship to your father.

Your own assertion, and the agreement by your [brother] that your sister [Ms A] returned from overseas after the time you claim your family was the target of harassment and threats and found employment in her chosen industry until she resigned may also lead the Tribunal to conclude your claims and those of your brother that persons associated with your father's family and those with the name [surname] are blacklisted and denied employment and that you would be denied employment because of your name or affiliation with the family of your father are not well founded It may also lead the Tribunal to reject your claim that you would be imputed to have a political opinion opposed to the government or that you were perceived to support the MDC simply because of your relationship to your father.

This may lead the Tribunal to find that you do not have a well-founded fear of persecution for reason of an imputed political opinion or membership of your father's family, which would be the reason or part of the reason to affirm the decision not to grant you a protection visa.

2 Information relating [to] your father

The Tribunal has information from several internet reports (including the attached report from [report deleted: s.431(2)] that suggest your father [Mr C] was the subject of an Interpol arrest warrant issued in [year] and was initially arrested on that warrant in [Country 2] in [date]. Those reports suggest he was extradited to Zimbabwe and [details deleted: s.431(2)].

In your submissions and evidence to the Tribunal you said that authorities in Zimbabwe had threatened and harassed members of your family in the past in an attempt to determine the whereabouts of your father. Your [brother], in his evidence to the Tribunal agreed with your assertions on this issue.

Why this information is relevant to the review

This information, if accepted may lead the Tribunal to conclude any interest of Zimbabwe authorities in your father is simply related to the pursuit of outstanding criminal charges from [year], and not due to his political opinion (actual or imputed). It may also lead the Tribunal to conclude that any interest

authorities in Zimbabwe may have shown in you or members of your family since [year] was related to determining the whereabouts of your father, and that now he has been returned to Zimbabwe [details deleted: s.431(2)], any such interest in you or other members of the family has ceased. As a result, the information may lead the Tribunal to find that you and other members of your family are of no adverse interest to authorities or their supporters in Zimbabwe, and that your claimed fear of persecution is not well-founded. If so, this would be the reason or part of the reason to affirm the decision not to grant you a protection visa.

84. In relation to the second applicant, the invitation was in the following terms:

The particulars of the information are:

1. Information relating to your mother and your sister [Ms A], and your claim that persons with the name [surname] are blacklisted in Zimbabwe because of their association with your father [Mr C], and that you would be deprived of employment if you returned to Zimbabwe for reason of an imputed political opinion or because of your relationship to your father

In the interview with the departmental delegate [in] July 2011 you and your brother said:

- Your mother was [profession] and that she worked for a medium sized company, although neither of you were able to identify the name of the company.
- Anyone with the name [surname] will be in trouble and the name had been destroyed.
- Your sister [Ms A] was working in Zimbabwe in a [business] owned by [a sportsperson].

At the hearing [in] January 2012, your [brother] in his evidence initially said that your mother was [profession] and had worked for a friend for about 20 years, but he was not aware of the name of the friend, or the name of the business, other than it was just an [profession] business. He said your mother's full name was [Ms B] and that [surname] was not a common name in Zimbabwe.

The Tribunal noted at hearing that the email address for your mother on the email you submitted as part of your material to the Tribunal was [Ms B] and indicated information it found on [an] internet page for a woman named [Ms B] indicated that person was [details deleted: s.431(2)] which is a Zimbabwe Government Agency. The Tribunal also indicated other information it accessed on the internet suggested that same woman was [details in relation to employment deleted: s.431(2)].

When this information was raised with your brother at hearing, he then told the Tribunal that the woman it referred to was your mother and that she had worked for the same Government department for a long time, and had certainly worked there prior to him coming to Australia in 2005. In your evidence to the Tribunal, you later confirmed that your mother held the position referred to with the [government agency].

In his evidence to the Tribunal your [brother] said that your sister [Ms A] studied [subject] in [Country 4] and later worked in the [Country 5] before returning to Zimbabwe to be with your mother about two years ago. He said she had then been working in [vocation] in Harare, but gave up that job because it did not pay enough, and had been out of work for about 6-8 months since then. In your evidence to the Tribunal you agreed with your brother's assertions on this issue.

Why this information is relevant to the review

You and your brother have provided inconsistent information to the Department and the Tribunal about the nature of your mother's employment, and her employer and failed to mention until confronted with information obtained by the Tribunal, that she holds a [position] in a Zimbabwean Government Agency and appears to have held that position throughout the period you claim your family was the subject of harassment by Zimbabwe government and its supporters.

The information in the internet articles concerning your mother and your agreement that it was correct is inconsistent and in total contrast to information provided to the department, and the evidence initially provided by your brother to the Tribunal that your mother was [profession] working for a friend in a small business. If accepted, that information may lead the Tribunal to conclude that you and your brother lack credibility on this aspect specifically and sought to conceal the fact that your mother has maintained [government] employment despite your claims that family members have been targeted and harassed by government authorities because of their relationship to your father. It may lead the Tribunal to doubt your credibility and that of your brother more generally and in particular your claim to have a well-founded fear

of persecution if returned to Zimbabwe now or in the reasonably foreseeable future. It may also lead the Tribunal to conclude that as your mother has held a [Government] position throughout the period you claim people associated with your father have been harassed and targeted and have lost their jobs, that your claims and those of your brother that persons associated with your father's family and those with the name [surname] are blacklisted, and that you would be denied employment because of your name or affiliation with your father's family are not well founded. It may also lead the Tribunal to reject your claim that you would be imputed to have a political opinion opposed to the government, or that you were perceived to support the MDC simply because of your relationship to your father.

The evidence of your [brother] (and your agreement with the accuracy of that evidence) that your sister [Ms A] returned from overseas after the time you claim your family was the target of harassment and threats and found employment in her chosen industry until she resigned may also lead the Tribunal to conclude your claims and those of your brother that persons associated with your father's family and those with the name [B] are blacklisted and denied employment and that you would be denied employment because of your name or affiliation with the family of your father are not well founded. It may also lead the Tribunal to reject your claim that you would be imputed to have a political opinion opposed to the government or that you were perceived to support the MDC simply because of your relationship to your father.

This may lead the Tribunal to find that you do not have a well-founded fear of persecution for reason of an imputed political opinion or membership of your father's family, which would be the reason or part of the reason to affirm the decision not to grant you a protection visa.

2 Information relating [to] your father

The Tribunal has information from several internet reports (including the attached report from [report deleted] that suggest your father [Mr C] was the subject of an Interpol arrest warrant issued in [year] and was initially arrested on that warrant in [Country 2]. Those reports suggest he was extradited to Zimbabwe and [details deleted: s.431(2)].

In your submissions and evidence to the Tribunal you said authorities in Zimbabwe had threatened and harassed members of your family in the past in an attempt to determine the whereabouts of your father. Your [brother] in his evidence to the Tribunal also made similar assertions on this issue.

Why this information is relevant to the review

This information, if accepted may lead the Tribunal to conclude that any interest of Zimbabwe authorities in your father is simply related to the pursuit of outstanding criminal charges from [year], and not due to his political opinion (actual or imputed). It may also lead the Tribunal to conclude that any interest authorities in Zimbabwe may have shown in you or members of your family since [year] was related to determining the whereabouts of your father, and that now he has been returned to Zimbabwe [details deleted: s.431(2)], any such interest in you or other members of the family has ceased. As a result, the information may lead the Tribunal to find that you and other members of your family are of no adverse interest to authorities or their supporters in Zimbabwe, and that your claimed fear of persecution is not well-founded. If so, this would be the reason or part of the reason to affirm the decision not to grant you a protection visa..

85. [In] January 2012, the Tribunal received a post hearing submission from the applicants, attached to which was a news report relating to political developments in Zimbabwe. The Tribunal confirmed with the applicants that this submission was not a response to the s.424A invitations set out above.
86. [In] February 2012, the Tribunal received a written response from the applicants to the s.424A invitation, in which they state:
 - Their mother's job "was not big hence she got paid a low wage ("it's just an agency that provides services for the government") and they did not think they had to explain in depth about her job until the Tribunal raised the matter at the hearing.

- Their mother started out as [profession deleted: s.431(2)] and then moved to [profession deleted: s.431(2)].
- They always considered her job a small position and their father provided for the family, and when he left it was hard for their mother to support them due to her low salary.
- Their mother had been able to keep her job as she developed a good relationship with her superior who was able to influence senior management to help her secure her employment and provide for the family.
- During the “witch hunt” surrounding their father over the years, their mother had developed “a strong network in the company” which allowed her to retain her employment. Despite this there had been threats to the security of her job, and she may be let go any day, and may not be able to find a job elsewhere.
- Their sister was out of work and unable to find another job. She got her first job through a friend but left because it was not paying well. She had tried for numerous other jobs but has not been successful. She is well qualified but a lot of companies in Zimbabwe are being indigenised with the Government taking some controlling percentages and this has “*no doubt cast a political shadow over their hiring processes.*” Many of her friends who came back from studying overseas have been employed “*without too many problems.*”
- A further reason why their sister is unable to get a job is because a lot of companies are now owned by the Government and run by members of government who have their own interests and give positions to family and people not perceived to be part of a different political group. As their surname is not common in Zimbabwe, anyone with that name is perceived to be related to their father, and people make it hard for family members to get jobs and also took over their fathers companies.
- Many relatives lost their jobs because of their father and have had to leave the country to get jobs.
- Even though their mother “works for the company” this did not stop police harassing her.
- In relation to their father, his problems were not related simply [details deleted: s.431(2)]. His legal issues are politically motivated. An extract from a statement by an MDC leader [name deleted: s.431(2)] was referred to.
- Even before [year deleted: s.431(2)] when false allegations were made against their father, there had been incidents involving their cars, when they could have been killed. In addition, there had been threats from ZANU PF whilst their father was still in the country. As such regardless of their father’s whereabouts, because he is back in Zimbabwe, there remains a threat to him and his family.
- Their father was also falsely accused in 1997 and charges against him were dropped, but after his interview in 2002 “they” pushed harder to destroy the family name, and the family was unfairly treated.
- If the family had not been threatened and treated unfairly they would not have a problem returning to Zimbabwe. They both fear for the safety of the family.

COUNTRY INFORMATION

General information

87. The 2010 United States Department of State “*Country Reports on Human Rights Practices*” (published in April 2011) contains the following overview on Zimbabwe:

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

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

88. In October 2010 the UK Border Agency in its “*Operational Guidance Note for Zimbabwe*” made the following observations on treatment of MDC supporters and other perceived opponents of ZANU-PF, and developments since the 2008 power sharing agreement:

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.

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, although 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 180 people, mostly those perceived to be MDC supporters, were killed, at least 9,000 injured from torture, beatings and other violations 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.

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.³ 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 was 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.

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.

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. However, by mid 2009 all political prisoners had been released although some are only on bail. 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.

3.6.7 From early 2009 there were increasing reports of retributory violence perpetrated by MDC supporters on ZANU-PF members. MDC supporters in Mashonaland Central province, a strong area of support for Mugabe and one of the areas that suffered the worst election-related violence, went on the rampage kidnapping alleged members of ZANU-PF and beating them. However the scope of this violence did not bear comparison to the widespread state sponsored violence seen during 2008.

3.6.8 The Zimbabwe Human Rights NGO Forum (ZHRF) reported that during the period of 1 January 2009 to 30 June 2009 there were a total of 1,096 human rights violations of which 282 instances were due to political intimidation and victimisation, 240 instances were for unlawful arrest and detention and 203 instances were for a restriction in freedom of expression/movement (for a full breakdown

please see link below).⁸ For the same period in 2008, at the height of the election violence, there were 8,558 recorded human rights violations. The 2009 figures are also markedly lower than during the same period in 2007 when there were 5,307 recorded human rights violations. However, it should be noted that on 14 October 2009 the ZHRF announced that it was suspending the production of the *Monthly Political Violence Reports* because it continued to receive new cases from 2008 that were previously unrecorded. The Forum has therefore resolved to resume such production once the statistics have been reconciled.

3.6.9 There are many reports that suggest that violence is periodically on the increase in Zimbabwe but there is no evidence to suggest that the violence has reached the scale of that witnessed after the 2008 election. The recent violence has also been directed at MDC and human rights activists and is not of the widespread random nature of previous years. There have, however, also been reports that show that MDC rallies are taking place in Zimbabwe without any intimidation or harassment from those associated with ZANU-PF or the police. Furthermore, high profile MDC or human rights activists have been acquitted recently in the courts (Roy Bennett, Jestina Mukoko) or are now in government (Hebson Makuvise renounced his refugee status in the UK to become Zimbabwe's ambassador to Germany).

3.6.10 A recent UK Fact Finding-Mission (FFM) found that:

“...political violence or the threat of violence continued, though levels of violence were (relatively) low and less widespread (when compared to peaks, such as during elections). A representative of a large international NGO noted that a lack of reliable information made it difficult to gauge actual levels of violence and added that reports of violence may have been overstated. A major NGO stated that it was not aware of widespread violence and the Catholic Commission for Justice and Peace (Zimbabwe) (CCJPZ) observed that there was little political violence but both added that this might be because people feared further violence.

3.6.11 “The FFM went on to say:

“...There were a number of views expressed about the profile of those at risk of violence. The Counselling Services Unit stated that violence was targeted at those with a political profile, not necessarily of a high level, but there would be no interest in MDC supporters who were not active. An international NGO considered risk depended on the standing of the individual in society in addition to political activity. In rural areas those considered influential (such as teachers, business people and professionals) might be at risk even for relatively low level political activity. The Bulawayo Agenda reported that ordinary people were not threatened but there had been some threats made against “activists”. The Research Advocacy Unit listed those it considered at risk included MDC activists, those suspected of being MDC members and members of NGOs. A couple of organisations stated that individuals who failed to identify with a political party were viewed with suspicion.”

3.6.12 The FFM stated that:

“...Rural areas, specifically those provinces considered by ZANU-PF to be its heartlands (Mashonaland (Central, East, and West), Manicaland, Masvingo, and Midlands) were considered to be less open politically and more prone to violence than the main cities and towns.

“...Urban areas, specifically Bulawayo and Harare, were considered by most organisations to be relatively safe from violence, especially for ordinary MDC supporters. A major NGO noted that urban areas benefited from higher levels of scrutiny by the media, civil society and international organisation. However, several organisations noted that small urban centres such as Bindura, Chiredzi, and Buhera, along with some peri-urban areas, such as Epworth (south Harare), were also subject to the risk of sporadic violence.”

Returnees to Zimbabwe

89. 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 UNUSUAL HAPPENING TO ITS DEPORTEE PASSENGERS ON ARRIVAL. THE BRITISH HIGH COMMISSION IS AWARE, FROM MEDIA REPORTS ONLY, OF DIFFICULTIES IN ONLY TWO CASES, BUT HAS BEEN UNABLE TO SUBSTANTIATE THE DETAILS. THE DEPORTEES THEMSELVES HAVE NOT COME FORWARD.

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)

90. 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)

91. 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).

92. Further advice from DFAT in August 2009 indicated "*MDC supporters can live safely, that is free from politically-motivated violence, in Harare and other major population centres in Zimbabwe. The only exception might be the squatter district of Epworth on the fringe of Harare, where community violence is not uncommon*". (DIAC Country Information Service 2009, Country Information Report No. 09/63 – CRS Request No. ZWE9736: Update of country information post February 2009, (sourced from DFAT advice of 31 August 2009),

93. A more recent (May 2011) DFAT report to the Tribunal provided an update on the issue of returnees to Zimbabwe who had studied in Australia:

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

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

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

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

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

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

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

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

...

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

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).

95. 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, noting in recent times both MDC leader and Prime Minister Morgan Tsvangirai and President Mugabe were reported to be encouraging Zimbabwean expatriates to return (see para 33). In its most recent “*Country of Origin Information Report*” (September 2010) the UK Border Agency repeated this assessment, noting:

31.02 Reliefweb reported on 19 March 2009 that during February 2009 over 80,000 Zimbabweans returned to the country from South Africa with most of them holding South African asylum permits. It further noted that: “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 ... to return to Zimbabwe to help rebuild the country.” [22a]

31.03 On 8th May 2009 Prime Minister Morgan Tsvangirai, encouraged exiled Zimbabweans at a meeting in South Africa, to move beyond political divisions and help in the rebuilding of the country. Mr Tsvangirai stated that while Mugabe and ZANU-PF had been part of the problem, they were also part of the solution and asked Zimbabweans in exile to be prepared to reconcile their differences so that the country could be rebuilt.

96. The “executive summary” in the October 2010 UK Border Agency “REPORT OF FACT FINDING MISSION TO ZIMBABWE, HARARE 9 – 17 AUGUST 2010” contained the following general observations:

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.

97. The same Fact Finding Mission interviewed seven returnees from the UK, and reported:

None of the returnees reported any significant problems upon arrival at Harare airport. Three returnees were either questioned and/or had their bags searched.

One returnee (interview number 4) was required to pay a US\$20 bribe to security staff at Harare airport. While one returnee (3) stated that he was concerned that he would face problems at Harare airport, these concerns proved unfounded.

Another returnee (5) believed that airport staff would think that he was a failed asylum seeker because he was travelling under an ETD. However, the returnee stated that apart from being questioned about why he was travelling on the ETD no significant problems were encountered.

Most returnees reported that they were aware of others who had returned to Zimbabwe (sometimes on the same flight) without any problems. While most were unable to comment in detail, a couple of returnees noted that they were still in contact with a small number of returnees who appear to be free of harassment from state officials.

Most returnees stated that they had received assistance from the International Organisation for Migration (IOM) on arrival in Zimbabwe.

All returnees stated that they had re-settled either in Harare (4 returnees), or Bulawayo (3 returnees), and that they had not experienced any problems since resettling in the country. All returnees stated that they had not experienced any problems in obtaining accommodation. (UK Border Agency: Country of Origin Information Service, published 21 September 2010; reissued on 27 October 2010).

98. The 2010 UK Border Agency "Fact Finding Report" also noted the Zimbabwe Human Rights NGO Forum was unaware of mistreatment of any returnees, stating:

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.

99. A 2011 article [article in relation to the applicants' father deleted: s.431(2)]:

FINDINGS AND REASONS

100. The Tribunal finds both applicants are citizens of Zimbabwe and no other country. In reaching this finding the Tribunal relies on details of their Zimbabwe passports which they used to lawfully enter Australia on at least two occasions. Their claims to refugee status are therefore assessed on the basis Zimbabwe is their country of nationality.
101. The Tribunal finds the applicants are the sons of [Mr C]. In reaching this conclusion the Tribunal accepts the evidence of the applicants themselves, and material on the departmental file.
102. The Tribunal finds their father was the subject of an arrest warrant, issued in [year deleted: s.431(2)] and referred to Interpol, in respect to criminal [charges] against him by Zimbabwe authorities. The Tribunal also finds the applicants' father was [arrested] by authorities in [Country 2] through Interpol. In reaching this conclusion the Tribunal accepts the evidence of the applicants themselves, which on this issue was consistent with contents of newspaper reports accessed by the Tribunal, including the report from [article deleted: s.431(2)] which was raised at the hearing and subsequently provided to each of the applicants as part of the post hearing s.424A invitation to comment and respond.
103. The Tribunal also finds the applicant's father returned to Zimbabwe in [date and further details deleted: s.431(2)]. In reaching this conclusion the Tribunal again accepts the evidence of the applicants, and the media report referred to above.
104. The Tribunal did not find the applicants credible witnesses in respect to the information they provided about the employment of their mother. They each indicated in the departmental interview in which they participated that their mother worked for a friend in a company in Zimbabwe. At hearing the first applicant specifically repeated that assertion. The Tribunal finds their mother is employed as [details deleted: s.431(2)] and that this office is an agency of the Government of Zimbabwe. It also finds she has worked in that agency since before the applicants first came to Australia in 2005. In reaching these conclusions the Tribunal relies on the contents of documents which it accessed prior to the hearing, which were raised with the applicants at hearing and in the post hearing s.424A invitation. It also relies on the evidence of the applicants at hearing, who, when confronted with that information conceded their mother held the position identified by the Tribunal. Finally the Tribunal relies on their s.424A response which did not deny employment of their mother in that agency.
105. The Tribunal does not accept the assertion by the applicants, at hearing and in their s.424A response, that they had in some way misunderstood the significance of their mother's

employment, or that they considered she had been employed by 'a friend' because her superior in her government position was a friend. The Tribunal considers both applicants are intelligent, educated and articulate individuals and does not accept there was any misunderstanding. It finds the applicants sought to conceal the fact their mother has for many years occupied a [position] in a Government agency, because this was adverse to their claim that persons with their surname, or members of their family are blacklisted or denied employment or face harm in Zimbabwe because of their connection with their father.

106. The applicants essentially claim that because of their father's high profile and his perceived opposition to the Mugabe regime, they will face persecution on return to Zimbabwe. They claim this is because they will be imputed with a political opinion opposed to the regime because of their relationship to their father, because of their membership of their fathers family, and because their family name is "blacklisted" in Zimbabwe, and as a result will not be able to find work or maintain themselves.

Their political opinions

107. Neither applicant claimed to have been personally involved in political activities, either in Zimbabwe or in Australia, nor is there evidence before the Tribunal to suggest they were. Similarly neither applicant claimed to have experienced past harm or adverse treatment because of their own political opinions. The Tribunal finds neither applicant was of any personal adverse interest to authorities in Zimbabwe at the time they first came to Australia in 2005, and finds they both lawfully departed Zimbabwe on passports issued in their own names. It also finds they voluntarily returned to Zimbabwe for family reasons shortly after they arrived here, and that they experienced no adverse attention or treatment in the course of entering or leaving the country. In reaching these findings the Tribunal relies on the evidence of the applicants themselves. The Tribunal considers that had either of them been of any adverse interest to authorities, they would not have been able to leave the country or return to it without scrutiny or interference by Government of Zimbabwe authorities. In reaching this conclusion, the Tribunal accepts country information above that suggests Zimbabwean authorities maintain close control of persons entering and leaving the country.
108. The Tribunal finds the reason the applicants came to Australia was entirely related to study opportunities, and that they did not flee the country because of any fear of harm or of adverse treatment in Zimbabwe. In reaching this conclusion the Tribunal accepts the contents of the visa application and aspects of the evidence of the applicants that they came to Australia for study purposes. It does not accept assertions at hearing that they left to avoid harm or harassment. In reaching this conclusion notes they each voluntarily returned to Zimbabwe within a year of arriving here. Had they had any fear or harm or harassment from authorities, the Tribunal considers they would not willingly return so soon after they arrived. The fact they did return suggests an absence of concern on their part of any such harm or harassment.
109. The Tribunal is satisfied neither applicant has engaged in any activity in Australia that would result in them having any adverse personal profile with authorities in Zimbabwe. It is also satisfied they have not engaged in any activity in Australia that would lead to them being perceived to be opponents of the government of Zimbabwe, or supporters of the opposition.
110. The Tribunal is therefore satisfied neither applicant has any personal political profile that would lead to a real chance of persecution if they returned to Zimbabwe now or in the reasonably foreseeable future because of their actual or perceived political opinions.

Blacklisted surname

111. The Tribunal does not accept the claim by the applicants that their surname is 'blacklisted' and as a result they would be unable to derive an income if they return to Zimbabwe. In reaching this conclusion the Tribunal has found the mother of the applicants, who also bears the same surname, is a long-term and [employee] of a Zimbabwean government authority, and has maintained her position despite the fact her husband was, until recently a [fugitive], listed with Interpol. In reaching this conclusion about the employment of the applicant's mother, the Tribunal relies on information contained in the internet sites accessed by the Tribunal prior to the hearing, and the evidence of the applicants themselves at hearing. This was also the subject of a section 424A invitation, to which the applicants responded.
112. The Tribunal also finds the sister of the applicants, who shares the same surname, had studied and been working overseas but voluntarily returned to Zimbabwe in the last few years, and took up employment in that country until she resigned that position several months prior to the hearing. The Tribunal considers her willingness to return to Zimbabwe and her ability to obtain employment when she did, is inconsistent with the assertion that a person with the surname of the applicants, or who was related to their father would face harassment or restrictions on employment or limitations on their ability to earn an income. In reaching this conclusion the Tribunal also accepts the evidence of the applicants that the reason their sister left her employment in Zimbabwe was because it did not pay enough. The Tribunal does not accept her lack of employment is related to her surname or her relationship to her father.
113. The applicants assert that many relatives lost their jobs when the Government took over businesses operated by their father. The Tribunal accepts there is evidence to show their father was a high profile [details deleted: s.431(2)]. It accepts this occurred around the time criminal [charges] were leveled against him. That information also demonstrates that as a result an arrest warrant was issued and registered with Interpol for their father, and that he was subsequently arrested on that [warrant] in [Country 2].
114. Whilst the Tribunal cannot discount the possibility that many persons, including family members who may have been employed by business entities seized by the government lost their employment after the seizure, it does not accept there is evidence of ongoing discrimination against members of the [family]. It does accept the economic climate in Zimbabwe remains negative, and that this may account for any ongoing unemployment amongst relatives of the applicants, and any difficulty their sister may have following her resignation from employment in 2011. The ability of the mother of the applicants to maintain a [government position] throughout the period her husband was the subject of a criminal arrest warrant also indicates there has been no general discrimination against family members of her husband simply because they are related to him or share his surname. Similarly the ability of the sister of the applicants to initially find work on her return to Zimbabwe also indicates an absence of discrimination.
115. The Tribunal therefore rejects the assertion by the applicants that the name [deleted: s.431(2)] is blacklisted, and that because they bear that name they would face significant restrictions on employment or the ability to derive an income if they were to return to Zimbabwe now or in the reasonably foreseeable future.

Membership of a Particular social group - the family of their father, and imputed political opinion because of their relationship to their father

116. It is well established that under the Refugees Convention, a person's "family" can constitute a "particular social group" The applicants claim to fear persecution on return to Zimbabwe because they are the sons of a high profile person who they claim was targeted by the government, and wrongly accused of significant criminal [charges]. The Tribunal accepts they are members of the family of a person who has been the subject of a significant amount of publicity within Zimbabwe, and who was a high profile [details deleted: s.431(2)] prior to being the subject of criminal charges and an arrest warrant.
117. It does not however accept they face a real chance of persecution because of membership of their father's family. It is also not satisfied they would be imputed to have a political opinion opposed to the government merely because they are members of that family.
118. The applicants claim that prior to their departure from Zimbabwe there were two separate incidents in which vehicles being driven by the first applicant on one occasion and their father on another, experienced mechanical failure. They assert that those failures were the result of persons tampering with the vehicles to get to their father, and if they returned, similar attempts could be made on their lives. Apart from their own speculation about the cause of these incidents, there is no reliable evidence the incidents resulted from tampering with the cars by persons seeking to harm their father or them. The Tribunal considers these assertions to be purely speculative in nature, and does not accept there have been attempts on the life of their father, or the applicants as claimed.
119. The first applicant claimed there was an instance prior to his coming to Australia in 2005 when he and his mother were detained and questioned by police about the whereabouts of their father. The Tribunal cannot discount the possibility that such events occurred, however it notes the first applicant also conceded he and his mother were subsequently released and were not physically harmed, although they felt intimidated and harassed. The Tribunal considers treatment of this nature falls well short of the "serious harm" required to constitute persecution under s. 91R of the Act. The Tribunal notes the first applicant indicated the purpose of that questioning was to try to find out the whereabouts of his father, which was at a time when he was still a fugitive. As the father of the applicants is now [in] Zimbabwe, the Tribunal is not satisfied there remains any interest in interrogating family members to ascertain his whereabouts.
120. The applicants claimed that since their father left Zimbabwe, their mother and their sister had been the subject of harassment by authorities, who sought to ascertain the whereabouts of their father. In particular they assert this occurred shortly prior to the July 2011 email sent to the applicants by their mother. The Tribunal cannot discount the possibility that authorities in Zimbabwe may have questioned their mother and sister during the time their father was [out of the country]. In reaching this conclusion, the Tribunal notes an enquiry on these lines would not be unusual for policing agencies in any country seeking to locate a wanted person. There is however no assertion that the mother or sister of the applicants were physically mistreated or harmed in the course of any such questioning that may have occurred, and the Tribunal again considers any such detention for questioning falls short of the level of harm required to amount to "serious harm" under s.91R. In reaching this conclusion, the Tribunal again notes the fact the mother of the applicants has, throughout the entire period her husband has been wanted, maintained a [position] in a government agency which leads it to conclude that she has not been the subject of any serious harm or adverse attention by authorities Had

the family of the applicants, or their mother in particular been the target of government intimidation or harm to convince her to reveal the whereabouts of her husband, the Tribunal considers she would not have maintained that employment. The fact she did so, and continues to do so, in the Tribunal's view indicates an absence of targeting of family members by authorities in Zimbabwe.

121. In the hearing the second applicant claimed that he had been "roughed up" by authorities in Zimbabwe prior to his first travel to Australia. On questioning he conceded that this did not involve physical violence, but that authorities had been rude to him and tried to provoke him. Whilst the Tribunal cannot discount the possibility such rudeness may have occurred, it considers treatment of that nature falls well short of the serious harm required to amount to persecution. The Tribunal also considers the fact the second applicant chose to return to Zimbabwe after arriving in Australia in 2005 also indicates that he himself did not consider his past treatment was such that it gave rise to any well-founded fear of persecution on return.
122. The Tribunal also finds that as the father of the applicants has been [details deleted: s.431(2)], any interest authorities in Zimbabwe may have had in questioning family members about his whereabouts has now ended. The Tribunal is not satisfied on the material before it, that there would be any reason for authorities in Zimbabwe to now seek to harass or question family members, including the applicants if they were to return to Zimbabwe. The Tribunal is therefore not satisfied the applicants face a real chance of persecution if returned to Zimbabwe now or in the reasonably foreseeable future because of any interest by authorities in having them reveal the whereabouts of their father.
123. The Tribunal notes assertions by the applicants that their father has been the subject of ongoing political harassment and targeting because he is perceived to be opposed to the Mugabe regime in Zimbabwe. Whilst the Tribunal cannot discount the possibility the father of the applicants may have been targeted by the government, it also cannot discount the possibility that the official interest in him is, as evidenced by the warrant for his arrest, simply to bring him before the courts to face criminal charges relating to [details deleted: s.431(2)]. The Tribunal is not, on the material before it, satisfied that any interest authorities in Zimbabwe may show in the applicants father would result in the applicants or members of his family being of adverse interest, or being targeting by those authorities.
124. In reaching this conclusion the Tribunal has had regard to the various news articles provided by the applicants, including the article quoting [a] Minister [name deleted: s.431(2)], who is also a senior MDC official. The Tribunal is not however satisfied any interest which may be generated by any possible political motivations in relation to the father of the applicants, would result in the applicants themselves being imputed to be opponents of the government. The Tribunal is therefore not satisfied the applicants face a real chance of persecution if returned to Zimbabwe now or in the reasonably foreseeable future because of any imputed political opinion because of their relationship to their father, or their membership of a particular social group, being his family.
125. The applicants also claim their father is now taking [action] against the government of Zimbabwe through the courts. As a result they claim this will cause the government to target him and his family (including the applicants) to intimidate him into ceasing that action. On the material before it, the Tribunal does not accept that assertion. There is no evidence as to the nature of that action, or when it was commenced, and the Tribunal considers this issue was raised by the applicants because their initial argument that they would be harassed and intimidated to reveal the whereabouts of their father lost all significance once he [details

deleted: s.431(2)]. There is also no reliable evidence before the Tribunal that such intimidation is, or will occur against family members such as the applicants. The Tribunal is therefore not satisfied the applicants face a real chance of persecution because their father is planning to pursue or already pursuing such legal action against the government.

126. The Tribunal does not accept the assertion by the applicants that their father was the subject of a “political manhunt” or that he went into “political exile” prior to the time they left the country. It does except that in [year deleted: s.431(2)] their father was the subject of a criminal investigation, in respect to [details deleted: s.431(2)]. In reaching this conclusion the Tribunal relies on the evidence of the applicants at hearing. The Tribunal concludes that rather than their father going into political exile after the issue of that warrant, he was simply avoiding returning to Zimbabwe where he would face arrest.
127. The Tribunal also does not accept the broad claim by the applicants that “anyone related to his father” lost their jobs. In reaching this conclusion the Tribunal notes its previous finding that the mother of the applicants had, prior to their departure from Zimbabwe, been employed by the government and continues to hold a [position] in a government department and that her employment has not been adversely affected by her husband’s situation.
128. The applicants claim the reason they will be targeted by the government and its supporters is because their father is the victim of government action which included [details deleted: s.431(2)], the Tribunal does not accept this would result in the applicants, as members of their father’s family facing a real chance of serious harm sufficient to amount to persecution if they returned to Zimbabwe now or in the reasonably foreseeable future.

The presence of the applicants as students in Australia and their status as returnees from Australia

129. In addition to their claims to face persecution on return to Zimbabwe because of their father and their relationship to him, the applicants claimed to face persecution on return because they may be imputed to be anti-government or pro MDC because they have lived or studied in Australia. The Tribunal must therefore also consider if their absence from Zimbabwe and presence in Australia itself creates a real chance of persecution if they were to return to Zimbabwe now or in the reasonably foreseeable future.
130. The Tribunal finds the applicants lawfully departed Zimbabwe in 2005 to study in Australia using passports issued to them in their own names. It does not accept that lawfully leaving Zimbabwe as students and coming to Australia itself results in them being perceived or regarded as opposed to the Government of Zimbabwe. It also rejects the assertion this alone would give rise to a real chance of persecution by the Government of Zimbabwe or its supporters if they returned to Zimbabwe now or in the reasonably foreseeable future. Similarly the Tribunal does not accept simply having studied and lived in Australia for a period of over 5 years creates a real chance of persecution, The Tribunal notes many Zimbabwean citizens visit Australia and study here, and there is no indication they face harm on return to Zimbabwe simply for having studied or lived here. In reaching these findings, the Tribunal accepts country information (above) which was raised at the hearing (several DFAT reports from 2002 to 2011) that consistently indicates returnees, including students from Australia and other “Western” countries are generally at no greater risk than persons remaining in Zimbabwe. Whilst that information does concede returnees may be scrutinised or even questioned by authorities on arrival, the Tribunal does not accept such questioning or scrutiny alone amounts to the “serious harm” required to constitute persecution under s.91R.

131. 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 actively promoted and encouraged expatriate Zimbabweans to return to help rebuild the country and its public services. It also accepts the 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 and reissued on 27 October 2010) which noted an absence of problems for persons on return to Zimbabwe from the UK. This view was repeated in the most recent (May 2011) DFAT advice that there was no strong risk a person returning from studying abroad would be imputed with anti-ZANU-PF beliefs in the absence of other factors like prior political activism, and that most Zimbabweans of all political persuasions have close family and friends abroad and many children of those who have attained wealth through their association with ZANU-PF seek to study abroad in countries like the UK, USA and Australia. The Tribunal considers the totality of this information reinforces its conclusion that simply studying in Australia or residing here does not give rise to a real chance of persecution if the applicants were to return to Zimbabwe now or in the reasonably foreseeable future.
132. Finally the Tribunal has considered, but does not accept the applicants face a real chance of persecution if returned to Zimbabwe now or in the reasonably foreseeable future because they have applied for, or been refused refugee status in Australia. In reaching this conclusion the Tribunal does not accept the fact they have done so would be known within Zimbabwe beyond perhaps their own family. In the unlikely event it was to be known however, the Tribunal 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 indicates failed asylum seekers have not experienced serious harm amounting to persecution on return to Zimbabwe simply because they had sought asylum overseas. In reaching this conclusion the Tribunal has also had regard to the circumstances of their father, and their relationship to him, but is not satisfied that such circumstances or relationship exacerbates the chance of the applicants facing harm as a result of being persons who have claimed or been refused refugee status on Australia.
133. Finally the Tribunal notes the applicants asserted at hearing that their father had recently told them Zimbabwean authorities had asked him about their whereabouts. Whilst the Tribunal has reservations as to the accuracy of those claims, it cannot discount the possibility their father was asked about their whereabouts. Even if this was to have occurred however, the Tribunal does not consider such questioning in itself indicates any real chance that the applicants would face any harm or harassment on return to Zimbabwe now or in the reasonably foreseeable future.

CONCLUSIONS

Having considered the applicants claims both individually and cumulatively, the Tribunal is not satisfied either applicant is a person to whom Australia has protection obligations under the Refugees Convention. Neither applicant therefore satisfies the criterion set out in s.36(2)(a) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

134. The Tribunal affirms the decisions not to grant the applicants Protection (Class XA) visas.