



**Upper Tribunal  
(Immigration and Asylum Chamber)**

NN (Teachers: Matabeleland/Bulawayo: risk) Zimbabwe CG [2013] UKUT 00198(IAC)

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 13 March 2013**

**Determination Promulgated**

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**Before**

**Upper Tribunal Judge Southern  
Upper Tribunal Judge Coker**

**Between**

**NN**

**and**

**Appellant**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr T. Hussain instructed by Parker Rhodes Hickmotts.

For the Respondent: Mr J. Wardle, Home Office Presenting Officer

*The “geographical filter” identified in EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98(IAC) and confirmed more recently in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC) is equally applicable to teachers. Thus, a teacher will generally not face a heightened risk on return to Zimbabwe, on account of his or her occupation or former occupation alone, if his or her destination of return is (a) rural Matabeleland North or*

*Matabeleland South, where a returnee will in general not face a real risk of harm from Zanu-PF elements, including the security forces, even if he or she is a MDC member or supporter; or (b) Bulawayo, where the returnee will in general not face such a risk, even if he or she has a significant MDC profile*

## **DETERMINATION AND REASONS**

1. The main issue arising in this appeal is whether former teachers returning to Zimbabwe as failed asylum seekers after a period living in the United Kingdom face an enhanced risk on return on that account throughout Zimbabwe or whether the “geographical filter” identified in *EM and Others (Returnees) Zimbabwe* CG [2011] UKUT 98 (IAC) and re-stated recently in *CM (EM country guidance; disclosure) Zimbabwe* CG [2013] UKUT 00059 (IAC) should now inform the assessment of risk where return is to one of the areas where being identified as a supporter or member of or activist on behalf of the MDC is not something that attracts any real difficulty.
2. We have, to assist us in addressing that question, a report prepared recently by a country expert, Dr Laurel Birch Aguilar. Although, as we shall see, there is reason to find that report to be problematic in respect of its conclusions specific to this particular appellant, it is accompanied by a collection of news reports about difficulties experienced by teachers in Zimbabwe. As this appeal was previously adjourned specifically for that expert report to be compiled, it is reasonable to assume that this bundle of news reports, assembled by Dr Aguilar to accompany her report, represents a reasonably comprehensive picture of the level of harassment or persecution to which teachers and former teachers are being subjected in Zimbabwe.
3. In addressing us upon the historic reasons why teachers in Zimbabwe have for some time been recognised to fall within a category of enhanced risk, Mr Hussein identified the following:
  - a. Teachers are seen as “opinion formers” in society and, given the nature of their work they have an unmatched opportunity to influence the views of children and young people;
  - b. Zanu-PF, and the government it has controlled since the days of independence, has always regarded one of its strengths to lie in harnessing the support of young people, hence the emergence and deployment of the “green bombers” and other youth militia used as instruments of the ruling party and the regime of President Mugabe, particularly at the time of elections;
  - c. Teachers are perceived, generally, to be more likely to support the aims of the MDC than of Zanu-PF, whether that is the fact or not. In part, this arises from the relative strength of the trade union associations representing teachers;

- d. Teachers have been used as polling officers and so are in a position to “influence” the voting process, to the disadvantage of Zanu-PF, hence the intimidation, threats and violence meted out to teachers to ensure compliance with the will of Zanu PF.
4. Thus the risk, it would appear, is predicated upon the imputed profile of a teacher being someone who would support the MDC, to seek to influence others, especially young people, to that point of view, and seek to thwart the electoral ambitions of Zanu-PF.
5. The appellant, who was born on 16<sup>th</sup> June 1972, is a citizen of Zimbabwe. She arrived in the United Kingdom on 2<sup>nd</sup> May 2008, and claimed asylum. She claimed that she would be at risk on return to Zimbabwe on account of her political opinion as a supporter or member of the MDC. She and her husband had both worked as teachers in Zimbabwe in a place called Nkayi, which is in Matabeleland North, about three hours drive from Bulawayo. In interview she said that her husband “taught agriculture” and she herself worked part time as a teacher at primary school level. She explained that in 2008 soldiers came to the school and accused her husband of teaching MDC politics to the boys. They were both beaten and her husband was taken away.
6. The appellant said she went to stay at the family home in Bulawayo and a few days later discovered her husband’s body at the morgue. Soon after that she was visited by the men who she presumed were responsible for her husband’s death. As a consequence of the demands they made of her she left for South Africa where, about two months later, she secured the services of an agent who arranged her flight to the United Kingdom.
7. The appellant’s appeal against the immigration decision (refusal of leave to enter) that accompanied refusal of her asylum claim came before Immigration Judge Birkby on 16<sup>th</sup> September 2008. It might be observed before reflecting further upon that determination that the country guidance provided by *RN (Returnees) Zimbabwe* [2008] UKAIT 83 did not become available until after the date of that hearing, it being added to the list of published country guidance decisions about two months later, on 19<sup>th</sup> November 2008.
8. The judge dismissed the appeal because he did not accept to be true any part of the appellant’s account of being a member or supporter of the MDC or of having attracted any adverse attention from soldiers or anyone else before choosing to leave Zimbabwe and travel to the United Kingdom. Having identified significant inconsistencies and contradictions in the appellant’s evidence he concluded that it had been “fabricated”.
9. Specifically, the judge did not accept that the appellant or her late husband were ever involved with the MDC or that he, that is her husband, was “singled out” at

school for adverse attention. The judge found also that there had been no unwelcome visitors to the family home, and concluded that:

“I do not find therefore that the Appellant left Zimbabwe in fear of persecution or any form of ill-treatment.”

10. The judge did, though, accept two aspects of the appellant’s evidence. He said:

“I accept that she may well have been a schoolteacher in Zimbabwe...”

and he said nothing to suggest that he rejected the appellant’s evidence that her late husband also worked as a schoolteacher.

11. The judge looked at the country evidence about the position of schoolteachers and, noting reports of recent agreement having been reached between the MDC and President Mugabe, presumably as to the power sharing arrangements that resulted, said this:

“... it is not possible at this stage to assess whether the political and human rights situation is going to improve in the short or medium term. Therefore I accept from the background documentation that there is substantial evidence of human rights abuses, in particular ill-treatment of political opponents of the Robert Mugabe regime and within the groups who have been persecuted schoolteachers.”

Notwithstanding that, he concluded that this particular former schoolteacher would not be at risk on return:

“That situation still presents risks for certain Zimbabweans on return. I do not however consider that the evidence given by the appellant as to her history of persecution in Zimbabwe and that of her husband is credible. I do not consider her to be at risk on return. Her evidence was at times inconsistent and implausible.”

12. It seems from what is said in the determination that the judge excluded the risk of ill-treatment on return simply on the basis that he had rejected her account of past persecution, without considering the likely reception this appellant, with no history of past persecution, would experience as a former teacher returning from the United Kingdom after a relatively brief absence.

13. On 11<sup>th</sup> March 2009 Hickinbottom J granted an order for reconsideration of that decision because he found that the issue of the risk of persecution faced by the appellant as a teacher might need to be reviewed in the light of *RN (Returnees) Zimbabwe* [2008] UKAIT 83. Although *RN* was not before the judge, a good deal of the evidence that was to be considered, and accepted, by the Tribunal in *RN* was before the judge, including a report from the country expert, Professor Ranger, who gave evidence before the Tribunal in *RN*.

14. At the first stage reconsideration hearing a Senior Immigration Judge found that the Immigration Judge had indeed erred in law in failing to carry out an adequate assessment of the risk on return to the appellant as a teacher, in the light of that part of the evidence reviewed in *RN* that had also been available before him. That re-assessment was carried out by Immigration Judge Kelly before whom the hearing was listed on 14<sup>th</sup> September 2009. He found that the risk faced by teachers had diminished since the country guidance in *RN* was published and so dismissed the appeal.

15. The appellant was granted permission to appeal to the Court of Appeal. On 10<sup>th</sup> June 2010 Sullivan LJ ordered, with consent of the parties, that the appeal be remitted to the Upper Tribunal:

“... for rehearing of the issue of the risk of persecution faced by the appellant, as a teacher returning from the United Kingdom, in the light of (i) the credibility findings made by the first Immigration Judge, (ii) *RN (Returnees) Zimbabwe* [2008] UKAIT 83, and (iii) any further objective evidence relevant to this issue.

The finding that the appellant is a teacher is preserved.”

16. And so the matter now comes before us.

17. Before moving on to deal with the review of the country evidence offered by the parties that now must be undertaken, something might be said about the delay in the listing of this appeal which was, as we have said, remitted to the Upper Tribunal as long ago as 10<sup>th</sup> June 2010.

18. It was well known in the late summer of 2010 that there was to be a new Zimbabwe country guidance case to be heard. The hearing of that country guidance case, which was to be published as *EM and Others (Returnees) Zimbabwe* CG [2011] UKUT 98 (IAC), commenced on 18<sup>th</sup> October 2010 although the hearing was subsequently adjourned and was not completed until 14<sup>th</sup> January 2011.

19. It may be that the file in the present case simply lost its way in the Tribunal’s listing process and, as neither party made any enquiry as to when the appeal might be listed, the file did not come to receive any attention. But, in case it may be thought that listing was delayed in the hope and expectation that the fresh country guidance would be available to inform the re-making of the decision in this appeal, we address that approach also. After all, the panel in *RN* plainly contemplated that country conditions were likely to change as time moved on after the elections that had just taken place.

20. But, any expectation that there may be a change in, or a challenge to, the current country guidance should not, in general, lead to any need to delay the determination of an appeal, and we are satisfied that was not the case here, especially given the application made by the appellant at the last hearing for a lengthy adjournment so that a report could be commissioned from a country expert.

21. Country guidance stands until it has been replaced or unless it has been found by the higher courts to be legally flawed. That much has always been clearly established: see, for example, *OM (AA(1) wrong in law) Zimbabwe* CG [2006] UKAIT 00077. The fact that there may be a pending country guidance case or that permission to appeal to the Court of Appeal has been granted in respect of existing country guidance is not, of itself and in the absence of any other reason to do otherwise, reason to delay the determination of current appeals. That position was authoritatively re-stated recently in respect of the latter proposition by the Court of Appeal in *SG & another v SSHD* [2012] EWCA Civ 940. Upholding the view previously expressed below, Stanley Burnton LJ said, at paragraph 71 of *SG*:

“In relation to evidence other than that considered by the Tribunal, and in particular evidence of subsequent events, I would endorse the test formulated by Irwin J. The Court should not stay removal pending the decision of the Court of Appeal unless the claimant has adduced a clear and coherent body of evidence that the findings of the Tribunal were in error.”

22. In respect of the first proposition, that determination of an appeal should not be stayed where fresh country guidance is expected to be published in the reasonably near future, the position is no different. True it is that recently, a panel of the Upper Tribunal comprising Wilkie J and Upper Tribunal Judge Gleeson granted a stay on removal in the context of an application by a Sri Lankan claimant in fresh claim judicial review proceedings on the basis that removal was not appropriate until fresh country guidance in respect of Sri Lanka was published. But, as Wilkie J made clear in his judgment<sup>1</sup>, the circumstances in that case were “truly unique”. That was because, in opening submissions before the Tribunal hearing the country guidance case, which is presently part-heard, counsel for the respondent conceded that there would have to be an *extension* of the risk categories.

23. That meant that it was accepted by the Secretary of State that some categories of claimant not falling within currently identified risk categories would do so under updated country guidance, although the precise details would not be known until the fresh country guidance was published.

24. Country guidance is a starting point from which the judge is entitled to depart if the evidence the parties choose to put forward justifies such departure. Absent that, like cases should be treated alike, informed by the country guidance, as is made clear by the Senior President’s Practice Direction:

12.2 A reported determination of the Tribunal, the AIT or the IAT bearing the letters “CG” shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by

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<sup>1</sup> The citation is not presently available but will be added to this footnote as soon as it is.

any later “CG” determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:-

- (a) relates to the country guidance issue in question; and
- (b) depends upon the same or similar evidence.

12.3 ...

12.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law.

25. Thus, we return to address the question posed at the beginning of this determination. Is it the position, currently, that a teacher faces a heightened or enhanced level or risk wherever he or she is located in Zimbabwe? Or is there a “geographical filter” so that the fact that a person is known to be, or to have been, a teacher, will not give rise to an enhanced risk, in certain areas of Zimbabwe?
26. The answer to that question will inform our assessment of the risk faced by this appellant on return to Bulawayo, her home area in Zimbabwe, on the basis that she worked as a teacher before her departure in May 2008 but otherwise had no particular profile or history of previous persecution or harassment.
27. It might be added that when she left Zimbabwe in 2008 she left her two young children with relatives in Bulawayo.
28. Time and country guidance have moved on since the date of the remittal by the Court of Appeal. As we have observed, the country guidance in *EM* has been reinstated by the publication in January 2013 of *CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC)*, which we examine in some detail below. This had the effect of replacing (and displacing) the country guidance in *RN*, making clear not just that the country guidance in *EM* was re-established but bringing that guidance up to date to the extent that the scope of that hearing permitted.
29. In making that final observation we recognise that, in that latter respect, *CM* has not been designated in its entirety as a country guidance case. But what *CM* has to say about the position in Zimbabwe as at October 2012, though not comprehensive and not authoritative country guidance, is worthy of note, particularly since that position was found not to have materially altered since the period under consideration in *EM*.
30. Current country guidance represents the starting point for the assessment, once the facts are settled, as they are here. The Tribunal will then look at any fresh evidence offered by the parties and will depart from the country guidance only if the fresh evidence makes it appropriate to do so. For that to be appropriate, there will be a

need for evidence that can properly be regarded as cogent. As was conformed by Davis LJ in *SS* at paragraph 24:

“... decision makers and tribunal judges should follow applicable country guidance determination unless "very strong grounds supported by cogent evidence" were adduced to justify not doing so.”

31. Generally, it will not be necessary to look back at earlier country guidance, where the more recent guidance is stated specifically to replace, it rather than to supplement it.
32. But in the present case it is helpful to examine the development of the guidance relating to teachers in Zimbabwe as country conditions generally have changed for the better or for the worse. We shall then look at the current country evidence in the public domain and the fresh evidence upon which the appellant relies in this appeal.

*SM and Others (MDC – internal flight – risk categories) Zimbabwe CG [2005] UKIAT 00100*

33. In *SM* the Tribunal considered a report by Professor Ranger, who has given evidence in subsequent country guidance cases concerning Zimbabwe. That report was dated February 2005. The Tribunal summarised his evidence as follows:

“There had been a falling away of threats to teachers in 2003 and early 2004. However, two processes have been going on which once again exposed teachers to threat. The first was the process of increasing state and party presence within schools. A number of those trained in youth militia camps were now teaching in schools. A new union, the Teachers Union of Zimbabwe had been established which was openly committed to ZANU-PF. Teachers were under pressure to join it. The second process related to the approach of the March general elections. The Zimbabwe Human Rights NGO Forum reports have again begun to report violence against teachers. On 9 January 2005 the Standard reported that scores of teachers were converging on the Education Ministry Office in Mutare seeking transfers because they wanted to get out of the rural areas before the March elections were held

...

There would be special difficulties for people who wished to return to previous employment. Teachers had to undergo a period in which enquiries were made by the Ministry about their past activities.

...

Teachers and civil servants were assumed to have influenced the votes and there would be a period of post-election retribution.

...

The disturbing feature was an increasing network of informers amongst teachers and lecturers.

...



Teachers and trade unionists probably would have a CIO file.

...

There was a heightened risk for returnees at present in the light of the assertions by the Zimbabwe government that the decision to return Zimbabweans could be a cover to deploy elements trained in sabotage and to de-stabilise the country before and during the elections. There was evidence that those returned would be interrogated. There was a particular risk for teachers. There was evidence that all deportees were handed over to the authorities for questioning."

34. On the basis of this evidence the Tribunal concluded that:

"There does continue to be a risk for teachers with an actual or perceived political profile of support for the MDC."

*HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094*

35. *HS* was silent as to the plight of teachers in Zimbabwe in 2007 but that case was focused upon the risk on return on arrival at the airport and it was not suggested that teachers, as a class of returnees, faced any such enhanced risk at that stage.

*RN (Returnees) Zimbabwe CG [2008] UKAIT 00083*

36. *RN* considered country conditions in Zimbabwe at the very height of the violence blighting that country as the election cycle ground to its dreadful climax. At paragraph 95:

95. Professor Ranger gives a similar account as does W66 of the elections in March. It was because the votes were posted outside each polling station that large scale vote rigging was very difficult. The best that could be achieved, after weeks of delay, was to deprive the MDC of the outright victory they claimed to be entitled to in the Presidential elections so that there would have to be a run off vote:

"But these locally posted results allowed militia gangs, soldiers and CIO to identify targets. By early May many press reports were appearing of retaliations. On May 8, (a news report) described how the worst violence in Zimbabwe's recent political history had taken place in Mapondera village. There the posted result showed that 70 people had voted for the MDC and only 10 for ZANU/PF. Militia attacked at night, telling people that "you made us lose and you have to pay for it ... They pulled out husbands and wives, separated them and killed them on the spot; then they proceeded to the school where they killed four teachers.

...

Another vivid and disturbing report had been filed earlier... This described how nurses and patients were dragged out of Louis Guidotti hospital in Mutoko. They were addressed by armed men with the

same message: "This is your last chance. You messed up when you voted. Next time you must get it right or you die."

96. Asked to address the position of teachers in Zimbabwe, the professor explained that, once again, they have become targets. This is because many had acted as polling officers and were accused of favouring the MDC. A report in the state sponsored Herald newspaper asserted that many teachers who had rigged the poll had fled the country to escape "the long arm of the law". The evidence indicates that 2,700 teachers had fled, dozens of schools had closed and 123 teachers were charged with election fraud offences. On April 30<sup>th</sup> 2008 the Institute for War and Peace Studies published a report entitled "Zimbabwe: Teachers fall victim to rural violence" in which an account was given of teachers being subjected to "hate speech" and assaults.

37. And at paragraph 130 of *RN*:

A Zimbabwe Crisis report in May 2008 said that hundreds of rural schools had been closed because "most teachers have fled local violence":

"War veterans and militias have reportedly unleashed a reign of terror in the countryside, and although many victims are said to be opposition supporters, ordinary teachers have also borne the brunt.

...

Teachers have long been regarded as community leaders and opinion formers, particularly in the rural areas, and often they have found themselves the target of militias loyal to the governing party."

38. It can be seen from these extracts that even in 2005 there was a perceptible difference in the level of risks to teachers depending upon whether they were based in a rural area, although that was articulated on the basis that such teachers were "particularly" at risk rather than there being an absence of risk in a non-rural area. This evidence, and more, led the Tribunal in *RN* to reach the following conclusion in respect of teachers:

"There is clear evidence also that teachers in Zimbabwe have, once again, become targets for persecution in Zimbabwe. This is confirmed by the evidence of Professor Ranger considered at paragraph 96 of this determination and reinforced by the news reports, examples of which are given at paragraphs 130 and 148. As many teachers have fled to avoid retribution, the fact of being a teacher or having been a teacher in the past again is capable of raising an enhanced risk, whether or not a person was a polling officer, because when encountered it will not be known what a particular teacher did or did not do in another area."

39. All of this is to be considered in the context of the politically motivated violence being experienced across the country generally. At paragraph 215 and 216 of *RN* the Tribunal said this:

"What is clear, however, is that it has been established by overwhelming evidence that in deploying these militias the regime unleashed against its own citizens a

vicious campaign of violence, murder, destruction, rape and displacement designed to ensure that there remains of the MDC nothing capable of mounting a challenge to the continued authority of the ruling party.

This campaign has been rolled out across the country not by disciplined state forces but by the loose collection of undisciplined militias who have delivered a quite astonishingly brutal wave of violence to whole communities thought to bear responsibility for the "wrong" outcome of the March 2008 poll. It is precisely because of that that any attempt to target specifically those who have chosen to involve themselves with the MDC has been abandoned. In our view there can be no doubt at all from the evidence now before the Tribunal that those at risk are not simply those who are seen to be supporters of the MDC but anyone who cannot demonstrate positive support for Zanu-PF or alignment with the regime."

40. Thus, as we have observed, the factors that led to the enhanced risk for teachers, above and beyond the risk to any citizen of Zimbabwe unable, if called upon to do so, to demonstrate loyalty to the regime, were threefold. First, teachers were perceived to be "opinion formers", occupying a position in society such as to provide them with an opportunity to influence the thinking of young people; second, they were perceived as more likely to be supporters of the MDC than of Zanu-PF; and third, many acted as polling officers, sometimes being required to discharge that role as schools were used as polling stations, so that they were suspected of seeking to influence the process of voting itself to the disadvantage of the ruling party.
41. It is important to bear in mind, also, that the enhanced risk to teachers was associated with the tensions and violence associated with the election cycle in Zimbabwe which, by the time of *EM*, varied significantly from area to area.
42. It is clear that there was a significant change in country conditions subsequent to the peak of the violence in the lead up to and in the run-off from the 2008 elections. The power sharing agreement between Zanu-PF and the MDC was very far from perfect but it brought to the country a degree of stability.
43. That change in country conditions, recognised to be significant, was reflected in the country guidance provided by *EM*. It is not necessary to examine in detail the country guidance, found in *EM*. That is because that guidance has been subsumed within the updated guidance of *CM*, having been amended to take account of *RT (Zimbabwe) v SSHD* [2012] UKSC 38.
44. With regard to the link between elections and violence in Zimbabwe, the panel in *CM* agreed with what was said in *EM* to the effect that it should not be assumed that there would be a repetition in future elections of the violence that was seen in 2008. At paragraph 98, having looked at what was offered to support a contrary view, the Tribunal said this:

"None of these new materials detracts from the overall thrust of the evidence as a whole, including that before the Tribunal in *EM*, that both SADC and South Africa

were anxious to ensure, not only that there would be no repeat of the 2008 election violence in Zimbabwe, but also that future elections would be regarded internationally as legitimate...”

45. This is how that restatement of the *EM* country guidance was expressed in the head note:

*The only change to the EM Country Guidance that it is necessary to make as regards the position **as at the end of January 2011** arises from the judgments in RT (Zimbabwe) [2012] UKSC 38. The EM Country Guidance is, accordingly, re-stated as follows (with the change underlined in paragraph (5) below):*

- (1) *As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.*
- (2) *The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).*
- (3) *The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.*
- (4) *In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.*
- (5) *A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a “loyalty test”), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.*
- (6) *A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.*

- (7) *The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.*
- (8) *Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.*
- (9) *The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid, there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.*
- (10) *As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.*
- (11) *In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN ... and remains valid.*

46. The Tribunal in CM then went on consider whether the post January 2011 evidence of country conditions, which was before it, required a departure from the EM country guidance, and to make some observations about that more recent evidence:

*In the course of deciding CM's appeal, the present Tribunal has made an assessment of certain general matters regarding Zimbabwe as at **October 2012**. As a result, the following country information may be of assistance to decision-makers and judges. It is, however, **not** Country Guidance within the scope of Practice Direction 12 and is based on evidence which neither party claimed to be comprehensive:*

- (a) *The picture presented by the fresh evidence as to the general position of politically motivated violence in Zimbabwe as at October 2012 does not differ in any material respect from the Country Guidance in EM.*
- (b) *Elections are due to be held in 2013; but it is unclear when.*
- (c) *In the light of the evidence regarding the activities of Chipangano, judicial-fact finders may need to pay particular regard to whether a person, who is reasonably likely to go to Mbare or a neighbouring high density area of Harare, will come to the adverse attention of that group;*

*in particular, if he or she is reasonably likely to have to find employment of a kind that Chipangano seeks to control or otherwise exploit for economic, rather than political, reasons.*

(d) *The fresh evidence regarding the position at the point of return does not indicate any increase in risk since the Country Guidance was given in HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094. On the contrary, the available evidence as to the treatment of those who have been returned to Harare Airport since 2007 and the absence of any reliable evidence of risk there means that there is no justification for extending the scope of who might be regarded by the CIO as an MDC activist.*

47. The question that presents itself is why the Tribunal in *EM* concluded that there was no adverse consequence of being perceived as a supporter of or even an activist on behalf of the MDC in certain areas, including Bulawayo, which is the city with which we are concerned in this appeal as that is the appellant's home area, yet still expressed the risk for teachers to be a heightened one generally, with no geographical based qualification. The answer may be found in the fact that the question of whether there was any real risk for an individual on the basis of him or her being or having been a teacher was to be assessed on a case by case basis. That means, of course, that all the circumstances are to be taken into account and that would include the intended destination for return.

48. It is also relevant that, in finding a heightened risk for teachers, the Tribunal in *EM* was not invited to carry out a geographically based analysis of the evidence of harassment and persecution, recording that:

*"In the present appeals, the respondent acknowledges that teachers remain in a category where there is a heightened or enhanced risk. That is plainly right. Various news reports submitted by the appellants demonstrate the fact that teachers can face problems from ZANU-PF."*

The Tribunal went on to examine a number of examples of such difficulties experienced by teachers, none of which were said specifically to have taken place in the areas where the Tribunal found that being active in support of the MDC would be unproblematic and concluded that:

*"Being in a heightened risk category is not, however, to be equated without more as being at real risk of persecution. There needs to be an individual assessment of the circumstances (TM (Zimbabwe) [2010] EWCA Civ 916)."*

49. We now turn to consider the more recent evidence relied upon by Mr Hussein in support of his submission that teachers are at heightened risk throughout Zimbabwe and not just in those areas where being perceived to be a supporter of the MDC or, more acutely, where being perceived simply as someone who is not a supporter of or otherwise aligned to Zanu-PF or the regime controlled by the party is something that attracts adverse treatment.

50. That evidence is found in a bundle prepared by his instructing solicitors specifically for the hearing which, it will be recalled, was focussed on this narrow issue of the risk to teachers in Zimbabwe today.
51. We start our consideration of this material by looking at Dr Aguilar's report.
52. As we have observed, this appellant has family connections in Bulawayo and it was to the family home in Bulawayo that she returned immediately before her departure from Zimbabwe. It is reasonable to proceed on the basis that she would return there now and so we assess the level of risk she may face on that basis. Her evidence to us was that the family home is presently unoccupied but there is nothing to indicate that it does not remain available.
53. In the light of the current country guidance, if it were not for the fact that some years ago this appellant worked as a part time primary school teacher in a rural area in Matabeleland North about three hours drive away from Bulawayo, any assertion of risk would be unarguable. But Mr Hussein submits that, as a teacher, the level of risk is enhanced and needs to be assessed on the specific basis of her individual profile.
54. The analysis of that risk must be informed by the reasons why teachers have attracted an enhanced level of risk. For example, if the risk is enhanced because being a teacher brings with it a perception that a person is likely to be a supporter of the MDC then, if no consequence flows from such perception, there is no heightened level of risk on that account.
55. It is plain from *CM* that in Bulawayo no real risk generally attaches to demonstrating overt support for the MDC, even for someone with a "significant profile" in that respect. Similarly, if, as the Tribunal in *CM* were satisfied is the case, Zanu-PF and its supporters have significantly less purchase in Bulawayo, then it is hard to see how the perception, entirely erroneous in this particular case, that as a teacher the appellant might have sought to influence young people to support the MDC when working as a primary school teacher some years ago, can give rise to any real risk.
56. Support for that view may be found in the fact that, although this appeal was remitted for reconsideration specifically upon the issue of risk on return as a failed asylum seeker who former worked as a teacher in Zimbabwe and was identified as potentially suitable for giving country guidance on the position of teachers, it is striking that there is no evidence at all of any recent difficulty experienced by any teacher, even those presently working as such, in the Bulawayo area.
57. Dr Aguilar sets out her academic and career history at the beginning of the report and it is sufficient to say that she has a long-standing interest in Zimbabwean affairs, although it is not clear when she last visited the country. She has written many reports and is qualified to offer an expert opinion.

58. Having said that, there are real difficulties with her report, not least that it is based upon an unqualified acceptance of the appellant's factual account of being associated with the MDC in Zimbabwe and of having been attacked by soldiers at the school where she and her husband worked before her husband was taken away and killed by the authorities. All of that, as we have seen, was rejected by the judge as untrue and those findings have been preserved by the Court of Appeal in remitting the appeal to the Upper Tribunal. Yet Dr Aguilar has written her report on the basis that this account is true.
59. That much might not, though, be such as to detract from the real purpose of commissioning a report from this expert because that was to do with the general risk to teachers, so that an incorrect approach to the credibility of this particular appellant would not, in itself, undermine any sound expert view expressed concerning teachers generally.
60. Having made the general observation about teachers, true in Zimbabwe as anywhere else, that as individuals they will be well known within their communities, Dr Aguilar says that in Zimbabwe, as public servants, there is an expectation that teachers will serve the government, so that speaking against the government or the ruling party – Zanu-PF – means that the teacher will be “accused of imputed political beliefs in opposition to the Zanu PF”. She continues:

“Once a teacher is believed to be opposed to the Zanu-PF government that teacher is likely to suffer persecution such as harassment, being monitored and spied upon by Zanu-PF supporters, forced to demonstrate support for Zanu-PF such as marching, chanting or attending rallies. Some have been arrested and thousands have fled in fear of persecution.”

That may well have been the case at the height of the violence in 2008, but it takes no account at all of the views expressed by the Tribunal in *EM* and *CM* or the significant improvement in that regard to the country conditions so far as they relate to the risk in certain areas of the country, including Bulawayo, on account of professed support for or association with the MDC.

61. Much of Dr Aguilar's conclusions specific to this particular appellant must be discounted because they are predicated upon the appellant having a profile that she has been found not to possess. Thus, Dr Aguilar asserts that the appellant may be detained at the airport for questioning by the CIO as her name may be linked with that of her late husband who would be known to be an MDC activist. That is simply not sustainable. There is no reason at all to suppose that the appellant would attract any adverse interest as she passes through the airport on return to Zimbabwe, either because of any perceived personal profile or because she may be travelling on documents other than a passport.
62. Similarly, the assertion by Dr Aguilar that the appellant would then be “contacted again by Zanu-PF in her home area after arrival” is one that takes no account at all



of the country guidance to the effect that, in Bulawayo, that is not something that is generally likely to happen.

63. At paragraph 5.2 of her report Dr Aguilar says this:

“In the present situation in Zimbabwe there is ample recent evidence, as recent as February 2013, that teachers continue to be persecuted. In addition there is recent evidence in 2013 that there is real fear of violence with fresh elections suggested as soon as July 2013”

64. Some of the material offered by Dr Aguilar in support of her view is very old, some as old as 2002. The following postdates the publication of *EM* in March 2011:

- a. A printout from the website of the Putz teachers’ union website on 17<sup>th</sup> February 2013 described a “raid” by two “overzealous police officers” on the PTUZ offices in Manicaland. There were no arrests reported.
- b. A news report dated 7<sup>th</sup> February 2013 concerning concerns expressed by Education minister David Coltard about poor pass rates in examinations being achieved by schools that were suffering from underfunding and a lack of qualified teachers, many of whom “had left the country for greener pastures due to poor salaries”.
- c. A news report dated 7<sup>th</sup> January 2013 about threatened strike action by teachers in Zimbabwe because of poor salaries, union leaders making confident assertions as to the government having resources from the diamond mines to fund significant increases in teachers’ pay.
- d. A News Day report dated 12<sup>th</sup> December 2012. This makes two points after referring to the violence that had led to 70,000 teachers having left Zimbabwe since 2000. First it is said that:

“... the education sector was under siege as violence was rearing its ugly head again ahead of possible elections sometime next year.”

But that evidence of violence is not identified or expanded upon with no examples offered. Second:

“Their involvement as polling officers during elections was also cited as another factor that contributed to their victimisation.”

But it is noticeable that, although offering that, Dr Aguilar does not make any reference to the news reports also available, confirming that the Education Minister has banned teachers from acting as polling officers, either in the imminent referendum vote or in the forthcoming elections. This was said to be linked to his concern as to falling standards in schools and the need to avoid anything that would “disturb the learning process”.

- e. Next, there is an Education International report dated 7<sup>th</sup> January 2013 concerned only with the issue of the level of teachers’ salaries and the threat of strike action.

- f. Complaints that flea market stall holders in Chitungwiza in Mashonaland might lose their stalls to Zanu-PF supporters as elections approach, reported in the Zimbabwean Standard in February 2013, do not really illuminate the assessment of risk for teachers in areas like Bulawayo.
- g. Nor do reports in January of this year that in Midlands and Mashonaland Central districts there have been incidents of corruption involving officials demanding bribes in exchange for allocation of teaching jobs.
- h. Next is an extract from a report from UHHCR dated "August 2012". This looks back at the pre 2008 violence and appears to draw on an OGN from August 2012 in stating:

"... since President Robert Mugabe announced elections would take place in 2011 teachers, especially in rural areas, have been the victims of political violence and extortion by war veterans and Zanu-PF supporters...", although the very few examples of that given are, indeed, all in rural areas."

- i. Similarly, a report said to be a "Relief Web reprint of 18 December 2012 report from "the Zimbabwean" speaks of the "resurfacing of youth militia bases in some rural schools".
- j. Next, there is an unattributed report entitled "Zimbabwe: Zanu-PF Re-Calls Green Bombers". This reports that each of the 10 provincial governors had been tasked with recruiting 200 youths to work in the prison service and it was feared that those jobs would go to Zanu-PF supporters.
- k. Finally, there is a lengthy report from Freedom House in 2012 which notes that:

"since 2009, Zimbabwe has experienced a period of relative calm which may prove to be but a brief respite for the country"

because of forthcoming elections. But the report offers nothing to contradict or cast doubt upon the conclusions reached in CM concerning the geographical context of risk arising from political profile or perceived profile.

- 65. Having set out the historical context of difficulties for teachers, Dr Aguilar asserts that the forthcoming elections, expected in the summer of 2013, are bringing with them fresh evidence of violence against teachers. But there is no evidence of such violence occurring in areas where an open display of support for the MDC does not bring to those involved the ill-treatment or harassment experienced elsewhere at the hands of Zanu-PF supporters or the other instruments of that party.
- 66. For those reasons we are satisfied that Dr Aguilar's report provides no support for the assertion that there is a heightened risk for teachers in an area where, in general, no adverse consequence flows from actual or imputed support for the MDC.
- 67. Next in the appellant's bundle is The Operational Guidance Note issued by UKBA recently, in February 2013. The position of teachers in Zimbabwe is considered at

the section commencing at paragraph 3.7. Importantly, the OGN, reflecting the current country guidance, recognised that assessment of risk on return, generally, “will very much depend upon the place to which he or she would return”:

“In general, those returning to MDC dominated rural areas of Matabeleland North or Matabeleland South would generally be highly unlikely to face significant difficulty from Zanu-PF elements, including the security forces”.

Recognising that the same could not be said of other rural areas, the OGN asserts also that, even for those faced with such a primary destination, internal relocation to Harare or Bulawayo was possible and should not be unduly harsh. The section of the OGN dealing specifically with teachers recites details of difficulties experienced by teachers that are either now historic, predating the current country guidance or which relate to incidents in rural areas outside the scope of the focus of this determination. The conclusion in respect of what has been previously accepted to be a generally heightened risk for teachers is set out at paragraph 3.7.10:

... The heightened risks associated with being a teacher should be considered alongside the individual circumstances of each case, including their previous employment, any adverse interest by the authorities and an assessment of the risk to them on return to Zimbabwe whether or not they seek to resume their career as a teacher...”

We would add that “individual circumstances” include inescapably and importantly the destination on return. Thus, there is nothing in the OGN that provides support for any claimed heightened risk in the particular areas with which we are concerned where open support for the MDC does not attract adverse consequences.

68. The same can be said of the other reports contained within the bundle, a detailed examination of which explains why Mr Hussein was unable to refer us to anything that provided support for the general assertion that teachers will experience an enhanced risk of coming to harm irrespective of location.
69. Drawing all of this together, we are satisfied that an examination of all the evidence relating to risks faced by teachers that the parties have been able to put before us, considered in the light of the current country guidance provided by *CM*, leads to only one rational conclusion: The “geographical filter” identified in *EM* and confirmed more recently in *CM* is equally applicable to teachers. Thus, a teacher will not face a heightened risk on return to Zimbabwe, on account of his or her occupation or former occupation alone, if his or her destination of return is (a) rural Matabeleland North or Matabeleland South, where a returnee will in general not face a real risk of harm from Zanu-PF elements, including the security forces, even if he or she is a MDC member or supporter; or (b) Bulawayo, where the returnee will in general not face such a risk, even if he or she has a significant MDC profile

70. That is sufficient to dispose of the protection claim. There is no reason at all to suppose, given her present circumstances, that the appellant will seek to re-establish herself anywhere other than in Bulawayo. The appellant also pursues a claim under article 8 of the ECHR, although that can be dealt with quite briefly. As Mr Hussein conceded at the beginning of the hearing, the appellant “does not wish to pursue the article 8 claim with any vigour”.
71. It is not hard to see why the appellant takes that view, nor why Mr Hussein, quite realistically, does not suggest that the article 8 claim discloses any real cogency. We accept that the appellant has a child, born in the United Kingdom on 10<sup>th</sup> June 2010 and so aged 2 years and 10 months. But we reject her late assertion that this child may be a British Citizen. The father, who lives in a different city than does the appellant, has contributed nothing at all in support of the appellant’s account of the child and we simply do not accept that what she says is true. The appellant has had the benefit of experienced solicitors throughout and it is simply not credible that, if the child were indeed a British citizen in regular or even sporadic contact with a British father who was intent on maintaining contact or even wished to commence contact, that there would be nothing to support the appellant’s bare assertion to that effect.
72. Thus the best interests of this very young child are to be with her mother, and her mother’s place is in her country of nationality where we are satisfied she will be able to live in the family home in Bulawayo with her other two children from whom she has been separated since 2008.
73. There is no continuing relationship with the father of her child and so there will be no interference with family life. Nor is there any evidence of any significant private life in the United Kingdom. Therefore, on the evidence presented, there is no engagement of article 8, even recognising that the threshold of engagement is not a particularly high one.
74. The appellant told us that she would not work again as a teacher because it had been too long since she had done so and she would need to retrain. But she has also worked in Zimbabwe in a shop and will have access to the informal economy in Zimbabwe in common with many others. She is plainly a resourceful woman who does have family assistance to call upon, even if the family has become geographically dislocated. Although she will, like many citizens of Zimbabwe, find life challenging, we do not accept that she will face destitution on return or be otherwise unable to provide for her children, nor that whatever arrangements are in place to provide for the continuing education of her younger child now in Zimbabwe will be interrupted as a consequence of her return.
75. For the sake of completeness we should record that Mr Hussein did not advance any submission based upon the appellant’s health or need for treatment for her HIV status that the appeal should succeed on the basis of an infringement of the

appellant's human rights. There is nothing before us to suggest otherwise and so we need say no more about that.

76. Finally, we should record that, although at the date of the hearing this appeal had not been formally categorised as a country guidance case, it had in the past been identified, as the parties are aware, as a potential vehicle to provide country guidance on the current position relating to teachers in Zimbabwe and the expert report had been commissioned on that basis.

Summary of Decision:

76. The appeal is dismissed on all grounds.

Signed

Upper Tribunal Judge Southern  
Date: 28<sup>th</sup> March 2013

## SCHEDULE OF DOCUMENTARY EVIDENCE

Date	
Undated but received by fax on 11/03/2013	Country Expert Report by Dr Laurel Birch Aguilar
28/02/2013	The Herald: Zimbabwe: Coltart Bars Teachers from Referendum.
17/08/2012	Zimbabwe Peace Project Report; July 2012
07/08/2012	UKBA Operational Guidance Note; August 2012
13/07/2012	UKBA COI Report; July 2012
18/04/2012	Voice of America News Report: Zimbabwe President Wants Elections to End Coalition Government.
13/02/2012	ZimOnline Report: Half of Zim teachers are victims of violence
19/01/2012	SW Radio Africa Report: Zanu PF violence intensifies in Mbare
23/06/2011	SW Radio Africa Report: Union says militia & CIOs harassing striking teachers.
27/03/2011	Voice of America News Report: Zimbabwe Tensions Rise Before Regional Meeting.
22/03/2011	Voice of America News Report: Zimbabwe Group Says Political Violence Back to Levels Seen in Early 2009.
18/03/2011	ZimOnline Report: Zim soldiers rob, rape women.
05/11/2010	SW Radio Africa Report: Four teachers severely beaten by Zanu PF youths in Masvingo.
03/08/2010	Radio Africa Report: Teachers the target of violence as country slides into election mode.