

Zimbabwe Update

November 2008

Court recognises deterioration of situation in Zimbabwe

RN (Returnees) Zimbabwe CG [2008] UKAIT 00083

On 19th November 2008 the Asylum and Immigration Tribunal published a determination on a significant country guidance case for Zimbabwe¹. It is the latest in a series of country guidance cases which set out who would be at risk of return to Zimbabwe. This determination, RN, revises existing country guidance and finds that additional categories of Zimbabweans would be at risk on return; notably that *a person not able to demonstrate loyalty to Zanu-PF or with the regime in some form or other will be at real risk having returned to Zimbabwe from the United Kingdom having made an unsuccessful asylum claim.*²

The Tribunal found that the evidence before it showed a serious deterioration in the human rights situation in Zimbabwe, affecting a wider range of people than the criteria outlined in previous determinations.

The headnote from the determination reads as follows:

1. Those at risk on return to Zimbabwe on account of imputed political opinion are no longer restricted to those who are perceived to be members or supporters of the MDC but include anyone who is unable to demonstrate support for or loyalty to the regime or Zanu-PF. To that extent the country guidance in HS is no longer to be followed.³ But a bare assertion that such is the case will not suffice, especially in the case of an appellant who has been found not credible in his account of experiences in Zimbabwe.
2. There is clear evidence that teachers in Zimbabwe have, once again, become targets for persecution. 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.

¹ RN v SSHD http://www.ait.gov.uk/Public/Upload/j2184/00083_ukait_2008_rn_zimbabwe_cg.doc

² Ibid, paragraph 234.

³ See HS (Zimbabwe) v SSHD AA/02471/2006 <http://www.refugeecouncil.org.uk/policy/briefings/2007/zimbabwe.htm>

3. It is the CIO⁴, and not the undisciplined militias, that remain responsible for monitoring returns to Harare airport. In respect of those returning to the airport there is no evidence that the state authorities have abandoned any attempt to distinguish between those actively involved in support of the MDC⁵ or otherwise of adverse interest and those who simply have not demonstrated positive support for or loyalty to Zanu-PF⁶. There is no reason to depart from the assessment made in HS of those who would be identified at the airport of being of sufficient interest to merit further interrogation and so to be at real risk of harm such as to infringe either Convention.
4. Although a power sharing agreement has been signed between Mr Mugabe on behalf of Zanu-PF and Mr Tsvangirai on behalf of the MDC, the evidence presented does not demonstrate that the agreement as such has removed the real risk of serious harm we have identified for anyone now returned to Zimbabwe who is not able to demonstrate allegiance to or association with the Zimbabwean regime.
5. General country conditions and living conditions for many Zimbabwean nationals have continued to deteriorate since the summer of 2007. Some may be subjected to a complete deprivation of the basic necessities of life, for example access to food aid, shelter and safe water, the cumulative effect of which is capable of enabling a claim to succeed under article 3 of the ECHR. But that will not always be the case and each claim must be determined upon its own facts.

The Tribunal did note that *"what this means is that each case will turn on its own facts. We do not say that most Zimbabwean claimants will be unable to demonstrate loyalty to the regime that will be necessary to avoid the persecutory ill-treatment meted out to those who cannot"*⁷ and *"this will be a question of fact to be resolved in each case."*⁸

Likely impact on existing cases

If a failed asylum seeker can now establish that s/he will not be able to demonstrate loyalty to the regime, then that could be the basis of a fresh asylum claim. A significant number of those who have been refused asylum should now benefit from this decision, particularly those who have been in the UK for some time.

For all those cases still in the system, RN will provide the basis on which they should now be reconsidered, either by the UKBA or whichever court currently has their case. We assume that those cases in the High Court and Court of Appeal will now be sent back to the Tribunal to reconsider.

UKBA undertaking not to enforce removals to Zimbabwe

UKBA has given an undertaking not to resume enforced removals until the previous case HS is resolved.⁹ HS remains to be resolved due to a technical legal point relating to the jurisdiction of the Court of Appeal and the outcome of HS will be decided in the context of a similar case, *MT, RB and U v SSHD 2007 EWCA Civ 80*, that is now before the House of Lords.

What to do if you think you may be affected by this judgement.

Seek legal advice.

⁴ Central Intelligence Organisation – the main national intelligence agency in Zimbabwe.

⁵ Movement for Democratic Change – the main opposition party in Zimbabwe.

⁶ Zimbabwe African National Union – Patriotic Front (ZANU-PF) has been the ruling government party in Zimbabwe since independence in 1980

⁷ RN v SSHD paragraph 244

⁸ Ibid, paragraph 246

⁹ Ibid, paragraph 27

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Both the Refugee Legal Centre <http://www.refugee-legal-centre.org.uk/>

and the Immigration Advisory Service <http://www.iasuk.org/>

have been involved in these cases and can provide further advice through their normal drop in services.

Alternatively legal representation can be found through the Community Legal Service Direct website on www.clsdirect.org.uk