



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

Appeal Number: DA/00947/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 April 2014**

**Determination  
Promulgated**

**On 9 May 2014**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**MM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Ball, instructed by ABL Solicitors LLP

For the Respondent: Ms A Holmes, Senior Presenting Officer

**DETERMINATION AND REASONS**

**Background**

1. The appellant is a citizen of Zimbabwe born in August 1969. She arrived in the United Kingdom on 5 October 2002 and claimed asylum on that date. This application was refused and Adjudicator Verity dismissed a subsequent appeal on 28 March 2003. When doing so she found the evidence given by the appellant to be lacking in credibility.
2. On 11 January 2007 the appellant was convicted of possession and/or use of a false instrument and sentenced to twelve months' imprisonment. She

was subsequently served with a notice of intention to deport her from the United Kingdom. An appeal brought against this decision was dismissed in a determination of 28 August 2007. On 7 May 2008 a deportation order was signed against the appellant. On 13 October 2010 the Secretary of State made a decision refusing to revoke this deportation order. A subsequent appeal against that decision was also dismissed by the First-tier Tribunal (Judge Head and Mr P Bompas – non-legal member), in a decision of 22 December 2010.

3. The appellant thereafter made further representations to the Secretary of State in support of another request that the deportation order be revoked and on 24 April 2013 the Secretary of State made a further decision refusing to revoke the deportation order.
4. First-tier Tribunal Judge O’Flynn heard an appeal against this decision on 19 September 2013 and dismissed it on all grounds in a determination promulgated on 26 September. In summary the judge concluded as follows;
  - (i) Whilst living in Zimbabwe the appellant worked for a Danish NGO called Total Control of the Epidemic (TCE), counselling victims of AIDS;
  - (ii) This work did not bring the appellant to the attention of the Zimbabwean authorities as claimed, or at all;
  - (iii) The appellant had no involvement with the MDC in Zimbabwe;
  - (iv) The appellant began her activities in support of the MDC in the United Kingdom in 2006;
  - (v) She attended MDC meetings in Crawley, Luton, Bedford, Charing Cross and outside of the South African Embassy in London;
  - (vi) She attended the Zimbabwe Vigil in London;
  - (vii) Just one month after the Tribunal’s determination of December 2010 the appellant was interviewed by the Zimbabwe Human Rights Television for ZBN News;
  - (viii) The appellant undertook activities in the United Kingdom in support of the MDC in “bad faith”;
  - (ix) The appellant’s brother and daughter are living in the family home in Harare. The appellant could return to Zimbabwe and live rent free in the family home;
  - (x) The appellant’s brother is employed as a prison officer and supports ZANU-PF;

5. As to the appellant's time in the United Kingdom First-tier Tribunal Judge O'Flynn made the following relevant findings of fact:
  - (i) The appellant has been in a relationship with a Mr C since 2007 and they have lived together since August 2008;
  - (ii) Mr C is HIV positive;
  - (iii) Mr C has no lawful right to remain in the United Kingdom;
  - (iv) The couple have a child together, N, who was born on 9 December 2012. Their daughter has had several HIV tests and so far the results are negative.
6. On the basis of these factual findings the First-tier Tribunal concluded that the appellant's deportation would not lead to a breach of the Refugee Convention or of Articles 3 or 8 of the Human Rights Convention.

### **Error of law and scope of re-making**

7. Upper Tribunal Martin granted the appellant permission to appeal to the Upper Tribunal by way of a decision dated 16 October 2013. The appeal initially came before me on 26 November 2013.
8. At that hearing Ms Frances of Counsel withdrew reliance on all of the pleaded grounds of appeal save for the ground which had been identified by Upper Tribunal Judge Martin as being arguable i.e. the asserted failure of the First-tier Tribunal to take into account an expert report when coming to its conclusions on the Refugee Convention and Article 3 ECHR grounds.
9. Ms Martin, at that time representing the Secretary of State, accepted that the First-tier Tribunal had failed to take into account, or indeed even mention, the expert report from Dr Aguilar, but submitted that such failure was not material to the determination given the findings in the recent country guidance decision of CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC).
10. Having observed some deficiencies in the report from Dr Aguilar I nonetheless concluded that the determination in the First-tier Tribunal should be set aside as a consequence of its failure to take account of the evidence contained therein: setting out my reasons for doing so in 'Decision and Directions' of 26 November 2013. Having first considered the exercise of my discretion as to the scope of the remaking of the decision, I then said as follows at paragraph 13:

"The findings of primary fact made by the First-tier Tribunal are, however, to remain standing; the thrust of which I have summarised in paragraph 4 above. The remaking of the decision is to be limited to the consideration of whether, on the findings of primary fact made by the First-tier Tribunal, the

appellant faces a real risk of suffering treatment upon return to Zimbabwe, contrary to the Refugee Convention or Article 3 ECHR.”

11. The scope of the remaking was so limited given that there had been no challenge maintained as against (i) the findings of primary fact made by the First-tier Tribunal or (ii) to the First-tier Tribunal’s consideration, and subsequent dismissal, of the Article 8 ECHR ground. At the hearing of 26 November 2013 neither party sought persuade me to take a contrary position.
12. The hearing of the appeal was then adjourned for Dr Aguilar to provide further evidence.
13. When the matter came back before me on 9 April Mr Ball, by this time representing the appellant, initially sought to argue that I should remake the decision on Article 8 grounds; however, when reminded of the terms of, and the reasoning behind, the Decision and Directions it was agreed that Article 8 ECHR was not a matter now in issue.

## **Re-making**

### *Appellant’s Submissions*

14. Turning to the respective parties’ cases: Mr Ball clearly and carefully set out the appellant’s case in his skeleton argument dated 26 February 2014, which he supplemented orally at the hearing of 9 April.
15. In his skeleton argument Mr Ball sets out several relevant passages from the Tribunal’s decision in CM; accepting when doing so that a failed asylum seeker with no MCD profile would not, as a general rule, face a real risk of having to demonstrate loyalty to ZANU-PF upon return to Zimbabwe. He further accepted that, in the instant case, the appellant had not been found to have ‘an MDC profile’. Mr Ball continued by observing that the appellant’s home area of Zhombe is a rural area, submitting that following the decision in CM a person returning to a rural area of Zimbabwe may find it difficult to avoid adverse attention if they do not have ZANU-PF connections and that such persons are likely to face a loyalty test, with the consequent prospect, in this case, of the appellant being subjected to persecutory treatment because she is not positively disposed to Zanu-PF. He identified Zhombe as being in the Midlands province.
16. As to internal relocation to Harare, Mr Ball cited from the conclusions of the Tribunal in CM in this regard; in particular those to the effect that a returnee to Harare would in general face no significant difficulties if returning to live in a low or medium density area. He accepted, applying this country guidance, that “in general” MM would not face any significant problems in Harare. It was asserted, however, that:

“Given her brother’s ties to ZANU-PF there is a heightened risk that her sur-place activities will come to the adverse attention of the authorities. The

supplementary expert report makes clear that 'it is important to note that ZANU-PF is not a faceless army of people. ZANU-PF activists are present in every city and town across the country. They are neighbours and family members. Her risk increases when one ZANU-PF member chooses to identify her as not being loyal to ZANU-PF'. There is a very real risk that an associate of her brothers will come to doubt her loyalty to ZANU-PF, and she may well be subject to a loyalty test."

17. It is said that it follows from this, and the conclusions in CM, that the appellant would face a real risk of being ill-treated if returned to Harare, which would compound the already unreasonable circumstance of the serious level economic deprivation she would face whilst living there.
18. At the hearing Mr Ball referred me to a recent witness statement drawn in the name of the appellant's brother, submitting there to be no reason why this statement should be disregarded. The evidence contained therein was not, it was said, inconsistent with the First-tier Tribunal's findings given the date the statement was written. In short Mr Ball submitted that the tribunal should accept (i) that the appellant's brother had sold the family house in 2009 for 5,700 US Dollars in order to pay for medical treatment that his father had received prior to his death, (ii) that the appellant's brother thereafter built a property with two rooms, where he currently lives with his wife and youngest child as well as the appellant's daughter when she is on school holidays from boarding school, (iii) that this property is too small to accommodate the appellant and her daughter, (iv) that it is vulnerable to demolition by the authorities and (v) that the appellant's brother is now unemployed and unable to provide any financial support to the appellant should she return to Zimbabwe.
19. I was then taken through Dr Aguilar's report of 26 February 2014, in addition to a number of the news articles attached to that report. It was accepted that the report from Dr Aguilar did not give the impression that it had been produced with as much care as the appellant's case deserved but, nevertheless, submitted that weight ought to be given to it, particularly when viewed in conjunction with the news articles attached thereto.
20. In summary, it was submitted that (i) the appellant would be perceived as a member of the MDC upon return, (ii) she would be at risk of suffering persecutory treatment in her home area and (iii) that it would be unduly harsh for her to move to, and live in, Harare. In relation to the latter submission Mr Ball asserted that this was so because (i) the appellant's brother's friends in the ZANU-PF may ask her questions and she would be unable to pass a loyalty test, (ii) she would be returning to a high density area which has previously been the subject of 'cleansing' and (iii) she would be returning with a young child to circumstances of economic depravity.
21. Mr Ball accepted that in order to succeed on the basis of pure economic hardship the appellant would have to meet the exceptionality threshold

identified by the House of Lords in N v Secretary of State [2005] UKHL 31 (HL).

22. In reply Ms Holmes relied upon a skeleton argument drawn up by her on 6 April 2014. In that document she observed that the appellant had no involvement with MDC prior to leaving Zimbabwe and submitted that her involvement with the MDC in the UK was purely superficial; amounting to 14 meetings in four years. She asserted that even if the Zimbabwean authorities were aware of the appellant's UK-based MDC activity this would not attract their adverse attention. She continued by identifying a number of features of Dr Aguilar's report of February 2014 that, it was said, ought to lead to the tribunal to attach little weight to it. She further submitted that there is no identifiable reason why the appellant would be subjected to a loyalty test upon return to Zhombe, particularly if it is known that her brother is a ZANU-PF member. As a consequence there would be no real risk of the appellant suffering persecutory or other ill-treatment in that village. In the alternative, the appellant could internally relocate to Harare where she could live with her brother in the family accommodation.
23. At the hearing Ms Holmes maintained reliance on her skeleton argument. As to the statement from the appellant's brother, she submitted that little weight should be placed on it for reason that (i) he was not in attendance before the Tribunal and therefore could not be cross-examined, (ii) the terms of his statement were vague, and (iii) its terms were inconsistent with the decision of the First-tier Tribunal.
24. As to the articles attached to Dr Aguilar's expert report Ms Holmes submitted that little weight should be placed on these as a consequence of (i) a number of the articles being very old, (ii) all of the articles appearing to derive from posts on an unknown website by someone identifying themselves as Zimsitrep J, and (iii) that the articles are general in nature and broadly relate to those who undertake MDC activities in Zimbabwe, which the appellant have not done in the past, and would not do so upon return.
25. Turning to Dr Aguilar's report, in addition to those matters identified in her skeleton argument Ms Holmes referred to the limited sources referred to by Dr Aguilar, and submitted that the conclusions in the report are so general in nature so as to be of little assistance to the Tribunal.

## **Discussion**

### **Legal Framework**

26. This is an appeal against a decision of the Secretary of State of 24 April 2013 refusing to revoke a deportation order. The refusal letter identifies a request having been made by the appellant in this regard on 5 March 2013 but I note that further representations were in fact made by the appellant as long ago as 8 May 2012.

27. The First-tier Tribunal treated the Immigration Rules as amended by HC194 (from 9 July 2012) as being the relevant Rules for consideration. No submissions were made before me to the effect that this was not the correct approach. In any event nothing turns on the issue of whether these are the correct Rules for consideration in the circumstances of this case, given that the scope of the re-making is limited to Article 3 ECHR and Refugee Convention grounds.
28. It is for the appellant to show that she is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.
29. Under the Qualification Directive a person is to be regarded as a refugee if they fall within the definition as set out in Article 1A of the Refugee Convention and not excluded by Articles 1D, 1E or 1F of that Convention.
30. I remind myself that the degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This has been expressed as a “reasonable chance”, “a serious possibility” or “substantial grounds for thinking” in various authorities. That basis of probability not only applies to historical fact, but also to the question of persecution in the future were the appellant to be returned to Zimbabwe.
31. The appellant also raises Article 3 ECHR grounds. It is for her to show that her removal to Zimbabwe would breach Article 3 of the Human Rights Convention. She need only demonstrate that there are substantial grounds for believing that there is a real risk that she will be subjected to treatment proscribed by Article 3. This creates a burden on the appellant akin to that under the Refugee Convention.

### Home Area

32. I accept that the appellant comes from the village of Zhombe in the Midlands province. This has not been disputed before me and is a fact that the appellant has maintained throughout. I also accept that this is a rural area. The Tribunal in the country guidance decision of CM concluded as follows in relation to the risks in rural areas of Zimbabwe:

“(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 a 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.

- (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.”

33. I have not been drawn to any evidence relating specifically to the appellant’s home village of Zhombe, and neither can I locate any material evidence in the documents before me. There is however evidence relating to the Midlands province. Reference is made in the evidence to incidents of post-election retributive violence against MDC election candidates and their agents, as well as incidents of assaults by ZANU-PF supporters and war veterans on MDC supporters.
34. Zhombe is a rural area and the appellant would be returning to that area after a significant period of absence. Given the evidence relating generally to the Midlands province, and the guidance given in CM, I am prepared to accept that there is a real risk that the appellant will be subjected to a ZANU-PF loyalty test if she now returns to live in Zhombe. I also find, given that she does not have any Zanu-PF allegiances, that there is a real risk that she would fail that test.
35. Consequently, following the rationale of the Tribunal in CM, I conclude that there is a real risk of the appellant being subjected to treatment contrary to the Refugee Convention, and Article 3 ECHR, if she were to return to her home area.

#### Internal relocation

36. In reality this appeal turns on whether the appellant can internally relocate within Zimbabwe i.e. whether it is unreasonable and/or unduly harsh for her to live in another area of her home country. The Secretary of State, for obvious reasons, commends the possibility of the appellant living in Harare.
37. In its determination the First-tier Tribunal concluded that the appellant has a family home in Harare, where her brother, his family and the appellant’s daughter presently live. In coming to this conclusion the tribunal rejected the evidence given by the appellant that the family home had “gone down because nobody had taken care of it but it is still there”. When the



appellant's nephew gave evidence before the First-tier Tribunal he stated that he had lived with the appellant in Harare and that the house that they lived in had belonged to her father. He went on to say that the family still has that property in Harare, that the appellant had lived there for free and that other rooms in the house had been rented out. He also gave evidence that he had telephoned the appellant's brother and had learnt from that conversation that the appellant's youngest daughter is still living with the appellant's brother in the family home in Harare.

38. As I identified earlier the appellant has recently obtained a statement, dated 13 March 2014, from her brother dealing primarily with his current living arrangements. In summary the appellant's brother says as follows in that statement:
- (i) His (and the appellant's) father died in 2007 after suffering from a long illness, the medical bills relating to which totalled approximately 3,400 US dollars;
  - (ii) His father had a house in Chitungwiza, Harare with four rooms. He took the decision to sell this house for 5700 US Dollars in 2009 to pay for his father's medical bills;
  - (iii) With the remainder of the money he joined the Joshua Muqauko Cooperative and built a property with two rooms in 2009. He lives in this property with his wife and two daughters; the appellant's daughter lives with them when she returns from boarding school during the school holidays;
  - (iv) The property is not large enough to accommodate the appellant and her United Kingdom based child;
  - (v) He is currently unemployed and unable to provide financial support to the appellant;
  - (vi) He believes that the appellant will face difficulties in Zimbabwe if she returns because the area in which he lives is predominantly occupied by ZANU-PF;
  - (vii) He does not want the appellant to live with him because this will create problems for him;
  - (viii) The property he lives in was built on land belonging to a tobacco company, and was the subject of a land grab. After the recent elections the government carried out a land audit in the cities and the local housing officer has told him that the Cooperative had not been legally allocated the land. He believes that the property will be demolished, although he does not know when this will happen.
  - (ix) The evidence given by the appellant's nephew to the First-tier Tribunal was not accurate.

- (x) He lives in an area which he believes to be high density.
39. I attach no weight to the contents of this statement for the following reasons.
40. The evidence contained therein is totally at odds with the findings of the First-tier Tribunal and inconsistent with the evidence given by the appellant's nephew to that Tribunal. Although the appellant's brother gives evidence in his statement to the effect that the nephew's evidence to the Tribunal was inaccurate, no explanation has been proffered by either the appellant's brother or, more significantly, by the appellant's nephew as to why this was so. The appellant's nephew specifically identifies in his evidence before the First-tier Tribunal that he spoke to the appellant's brother on the telephone and that it was during that conversation that he learned that the appellant's brother was still living in the family home in Harare. However, it is now said by the appellant's brother that he sold the family house in 2009. Although there is good reason why the appellant's brother's evidence could not be tested in cross-examination, no explanation has been provided as to why an application was not made to recall the appellant's nephew to provide evidence in relation to the appellant's brother's statement; not least to explain the clear and obvious discrepancy between the evidence that he gave to the First-tier Tribunal and the evidence now given by the appellant's brother. The appellant's brother's evidence is also inconsistent with the evidence given by the appellant before the First-tier Tribunal on this issue, although such evidence was in any event rejected.
41. As to the evidence that the appellant's brother is unemployed, this is not consistent with the First-tier Tribunal's finding that he is a prison officer [38]. The brother's evidence in this regard is in the briefest of terms. No explanation is given as to when or why he lost his employment as a prison officer, or how the family are said to economically survive given his claimed unemployment.
42. Looking at the appellant's brother's statement in the context of the evidence as a whole, I reject the truth of the evidence provided therein.
43. I therefore proceed on the basis of conclusions of the First-tier Tribunal i.e. that if the appellant returns to Harare she could live in the family home, with her brother and her daughter, rent free. I also proceed on the basis that her brother is not unemployed as claimed and that he is in fact a prison officer who supports ZANU-PF.
44. Turning back to the Tribunal's decision in CM, the following is said in relation to Harare:
- “5. A returnee to Harare will in general face no difficulties, if going to a low density or medium density area. Whilst the socioeconomic 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.”

45. On the accepted evidence I find that the appellant does not have a, or a significant, MDC profile, she is not reasonably likely to feature on a list of those targeted for harassment and neither is she reasonably likely to engage in political activities liable to attract the adverse attention of ZANU-PF.
46. In coming to these conclusions I remind myself that the activities she has undertaken on behalf of MDC in the United Kingdom were found to have been embarked on in bad faith.
47. Mr Ball submits that the situation and circumstances identified in CM no longer prevail and that the situation in Harare has deteriorated.
48. I observe at this juncture of the terms of Upper Tribunal Practice Directions 12.2 and 12.4 which state as follows:

“[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 any later CG determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authority 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.

[12.4] 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.”

49. The Upper Tribunal Immigration and Asylum Chamber Guidance Note 2011 No. 2, at paragraphs 11 and 12, states:

“[11] If there is credible fresh evidence relevant to the issue that has not been considered in the country guidance case or, if a subsequent case includes further issues that have not been considered in the CG case, the judge will reach the appropriate conclusion on the evidence, taking into account the conclusion in the CG case so far as it remains relevant.

[12] Where country guidance has become outdated by reason of developments in the country in question, it is anticipated that a judge of the First-tier Tribunal will have such credible fresh evidence as envisaged in paragraph 11 above."

50. In DSG and Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC) the Upper Tribunal [UT] Allen and UT] Storey] concluded that a judge may depart from existing country guidance authority in circumstances described in Practice Direction 12.2 and 12.4 and the UT (IAC) Guidance Note 2011 No. 2, paragraphs 11 and 12. This is an approach that I have followed in the instant appeal and neither party suggested to the contrary.
51. In making his submissions Mr Ball relies ostensibly on the expert report of Dr Aguilar of 26 February 2014, and its attachments.
52. Broadly speaking, in relation to the general situation in Zimbabwe, Dr Aguilar provides evidence that ZANU-PF no longer contends with a viable opposition party; what is read in the news about the situation in Zimbabwe is the tip of the iceberg; that there is an entrenched elite unwilling to let go of the privilege and riches from pillaging land and resources and ZANU-PF members control by fear and by force and a member of the ZANU-PF can commit a crime against a non-member including killing with impunity. It is further said that MDC members have been persecuted with impunity since the election, and demonstrators are still beaten. MDC members, activists and those present at the polls during the election are known by their ZANU-PF neighbours and are at risk at any time. There is ample evidence of ongoing political violence and disregard for human rights, including beatings, arrests, partisan food distribution, food insecurity, evictions, deaths in prison from lack of food, and disruptions of homes which is widespread across the country.
53. In relation to the appellant Dr Aguilar opines that she will not be able to engage freely in the political system as an opposition member.
54. Dr Aguilar concurs with the country guidance in EM that (i) a person returning after a long absence will be at higher risk than a person who has been absent for a short period of time and (ii) a person returning from the United Kingdom will be at increased risk on return. Further, it is said that a Shona speaking person will have more difficulty in relocating to an Ndebele speaking area, including Matabeleland and Bulawayo. The appellant is Shona speaking.
55. In relation to Harare Dr Aguilar concludes that in an area of medium to low density there will be less risk, although the risk would not be eliminated. It is said that certain areas in Harare are subject to violence and mass evictions, such as occurred in the Murambatsvina evictions that led to one million displaced persons in 2005.
56. He opines that upon her return the appellant is highly likely to be recognised by persons that knew her, especially if she returns to a place

where she has previously lived or joins her family members. Wherever the appellant settles she is likely to be asked questions, and will be of interest to the local leadership, traditional chiefs or town and city ward leaders. Newcomers are easily identified by neighbours and in local markets. Dr Aguilar continues by observing that ZANU-PF activists are present in every city and town across the country. The appellant's risk increases when one of the ZANU-PF members chooses to identify her as not being loyal to ZANU-PF. As her arrival becomes known and the appellant is identified or questions are asked, she will be at risk of someone in the ZANU-PF knowing her. Her treatment may well depend on the interest that a ZANU-PF member has in her activities in the United Kingdom, or perceptions that person has about her absence or imputed political beliefs.

57. In paragraph 4.9 of his report Dr Aguilar also concludes:

“In my ongoing research I have seen various reports about the increase in monitoring of modern communications in all its forms. Phone use and internet use in Zimbabwe is closely monitored. The government has dedicated considerable resources to sophisticated monitoring technologies training Zimbabwean CIO and military personnel in Iran and building a military spying complex built by the Chinese. Iran and China are two of the worst offenders of internet censorship, monitoring and blocking in the world ...

I have no doubt the sophisticated monitoring of all internet activity in Zimbabwe will easily collect information about the Zimbabwean diaspora in the UK. Sur-place activities in the UK showing support for MDC or any other opposition will be available to CIO in Zimbabwe. On return, in my opinion based on the ongoing reports of monitoring over several years up to the current time with the first graduates of the National Defence College, the appellant will be perceived as a member of MDC and an opposition activist in the diaspora whether this activism was genuine or not.”

58. Dr Aguilar goes on to conclude that internal relocation for the appellant would not be a viable option because each village, town and city ward has leaders responsible for knowing the people therein. There are ZANU-PF agents and abuses across the country. Relocating to Harare is no protection. She may face eviction from any home if she is perceived to be a member of the opposition and is targeted for any reason including having a personal enemy who is a ZANU-PF activist.

59. As to the economic situation in Zimbabwe Dr Aguilar states:

“I will note that the ability of the appellant to survive on return with a young child may depend on refraining from opposition politics. If she and her child require food aid, she may be denied that aid in certain situations as in reports attached. If she seeks to enter the informal work sector trading or setting up a market stall she may be forced to demonstrate loyalty to ZANU-PF as in attached reports. The informal sector is more difficult to enter than appears, as traders rely on established networks, ethnic and kinship ties ...”

60. Dr Aguilar attaches a number of documents to his report, under the heading *“Research on current situation relied upon for opinions”*. These reports, on the whole, relate to assaults on MDC activists by various manifestations of the Zimbabwean state or its agents. The reports in the main, although not exclusively, emanate from news organisations. He indicates [3.1] that he gleans *“current information”* ... *“primarily from ongoing internet research reviewing NGO reports, human rights reports, government reports, jstor scholarly publications, and news from the Zimbabwean government as well as the most recent documents available, largely in news reports.”*
61. It is said by Dr Aguilar that the documents attached to the report provide ample evidence of ongoing political violence and disregard for human rights. On analysis they are, in general, reports from news organisations regarding particular incidents where MDC-T members or activists have suffered human rights abuses at the hands of Zanu-PF supporters. The documents also include limited reports of the targeting of gays, lesbians and National Constitutional Assembly activists, Women of Zimbabwe Arise activists, as well as threats being made against journalists. The appellant does not fall within any of these categories of persons neither, in my conclusion, is there a reasonable likelihood she would be perceived to do so.
62. I find that, when looked as a whole, neither the articles relied upon by Dr Aguilar or the content of his report itself support a contention that the situation in Zimbabwe has deteriorated to any significant extent from that identified by the tribunal in CM.
63. Much of the evidence provided by Dr Aguilar broadly accords with the circumstances found to be present in Zimbabwe by the tribunal in CM and it is notable that in paragraph 8 of his report Dr Aguilar opines that *“little has changed for people that are not known or seen, that live in towns and villages, farms and high density areas.”* This is position is also re-iterated in paragraph 5.6 of the report.
64. Turning particular attention to Dr Aguilar’s opinions as to the appellant’s fate upon return, I accept that returning to Zimbabwe after a long absence from the country, and in particular returning from the United Kingdom in such circumstances, are two features which increase the likelihood of individual being thought of as not being loyal to the Zanu-PF. I remind myself, however, that these features alone would not, according to the tribunal in CM, create a real risk of persecution for a person returning, or moving, to Harare. The evidence given by Dr Aguilar does not lead me to conclude otherwise.
65. Dr Aguilar opines that the risk to the appellant will depend on the interest that a Zanu-PF member, and in particular one who is already known to her, has of her activities in the United Kingdom, or the perception that such a person has of her absence or imputed political beliefs. Paragraph 4.1 of his report he reads, however:

“The appellant may suffer any of the above abuses of human rights on return, or none of the above abuses of human rights on return. And she may not suffer any abuses of human rights on arrival, or in the first week, or in the first year. She may suffer in the fifth year after return. This cannot be objectively known, but there are factors that will contribute to the risk.”

66. A claimed risk which relies upon a speculative assessment of whether an as yet unidentified Zanu-PF supporter - whether this be a person previously known to the appellant or a friend of the appellant's brother - would take a particular interest in the appellant upon her return such that this person would become aware of her political activities in the United Kingdom, or impute particular political beliefs to her, and then will act in a persecutory manner towards her as a consequence, cannot, in my conclusion, be categorised as 'real'. Consequently it does not engage the protection of the Refugee Convention or Article 3 ECHR.
67. In paragraph 5.4 of his report Dr Aguilar alludes to the prevalence of internet and phone cell monitoring by the Zimbabwean authorities. This is not a trait of the Zimbabwean authorities' actions that featured with any significance in the decision in CM, or indeed in its predecessor country guidance determinations. It is said by Mr Ball to be of particular relevance in the instant appeal because of the appellant's MDC activities in the United Kingdom and her appearance on ZBN news in early 2011.
68. The evidence provided in relation to the monitoring of Diaspora activities by the Zimbabwean government, including the monitoring of the internet in relation to such activities, is limited. The evidence on this issue attached to Dr Aguilar's report comprises of a news article from 2009, which indicates that the government has obtained sophisticated phone tapping, radio jamming and internet monitoring equipment from China, and an article from 2013 identifying the setting up of the National Defense College, which Dr Aguilar describes as the 'spy college'. No evidence is provided therein as to the extent and reach of the monitoring or as to actual or even claimed instances of such monitoring resulting in the detention and/or ill treatment of an individual.
69. Whilst Dr Aguilar opines [4.9] that "*Sur place activities in the United Kingdom showing support for MDC or any other opposition will be available to the CIO in Zimbabwe*" this is unsourced and, as I have identified above, the articles attached to the report are both limited in the number and in the assistance they provide. One would have thought that if information about *sur place* activities in the United Kingdom on the scale suggested by Dr Aguilar were available to the CIO then this would be more widely reported. Alternatively, if such information is available to the CIO and this had caused difficulties for those returning to Zimbabwe, then once again one would have expected the reporting of such difficulties to be in the public domain and available to this tribunal. Further, there is also no satisfactory evidence to support a contention that even if the CIO had information about the MDC activities of an individual in the United

Kingdom, such information would be more widely available to Zanu-PF supporters generally.

70. Looked at as a whole, I find that the appellant will be able to live in the family home in Harare, with her child, her brother and, if necessary, her partner. It is not asserted that the family home is in a high density area of Harare but, even if it is, I do not accept this would lead to the appellant being at risk, given the guidance provided in CM and the findings I have made above. The appellant will not be living in Harare in a situation of economic depravity. Her brother works as a prison officer and no doubt will be able to support her, at least until she re-establishes herself in her home country. Returning the appellant's young child to Zimbabwe will not, in these circumstances, amount of itself to a breach of Article 3.
71. I do not accept that there is a real likelihood that the appellant will be required to undertake a loyalty test in Harare. She had no actual or imputed affiliations or connections to MDC before her departure from Zimbabwe and I do not accept that the activities for the MDC that she undertook in bad faith in the United Kingdom are reasonably likely to become known to Zanu-PF members or sympathisers in Zimbabwe. In any event, I find that even if such activities were to come to the attention of Zanu-PF sympathisers or members in Harare, this would not lead the appellant to have significant difficulties and, in particular, would not lead to a real risk of her suffering persecutory treatment.
72. For the sake of completion I observe that no submissions were made to the effect that there is a reasonable likelihood of the appellant suffering ill treatment at the airport upon return and I find that she would not. In coming to this conclusion I have considered and applied the guidance given in HS [2007] UKAIT 00094, which has been affirmed by all of the country guidance decisions that have followed thereafter. I do not accept that the initial questioning of the appellant at the airport will reveal a political profile considered adverse to the Zimbabwean regime. She will not therefore be taken for the second stage of the interrogation process, but rather she will be allowed to enter Zimbabwe and go on her way. Even if she is the subject of monitoring thereafter, given that she has no pro-MDC sympathies and is not reasonably likely to engage in any activities that will lead to a perception she has such sympathies, there is no real risk of her being picked upon at a later date and further interrogated.
73. For these reasons I find that there is not a real risk of the appellant suffering from treatment contrary to the Refugee Convention or Article 3 of the Human Rights Convention if returned to Zimbabwe.

## **Decision**

The determination of the First-tier Tribunal is set aside for the reasons given in my decision of the 26 November 2013

Upon re-making the decision I dismiss the appeal on all grounds.



I make an anonymity direction in this appeal. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. Failure to comply with this direction could lead to contempt of court proceedings

Signed:

A handwritten signature in blue ink, appearing to read 'N. O'Connor', written over a faint rectangular stamp.

Upper Tribunal Judge O'Connor  
Date: 27 April 2014