



IAC-AH-SC-V1

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

Appeal Number: AA/10912/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons Promulgated
Birmingham
On 19th November 2015**

On 4th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**SIMBARASHE MANDIZVIDZA
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muzenda of Longfellow Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant has appealed against a decision of Judge Saffer of the First-tier Tribunal (the FTT) promulgated on 16th February 2015.
2. The Appellant is a male Zimbabwean citizen born 7th August 1978 who arrived in the United Kingdom on 22nd July 2014 with a valid visa enabling him to enter as a visitor. The Appellant claimed asylum on 20th August

2014, and his claim was based upon his political opinion, as an MDC member.

3. The Respondent refused the application on 26th November 2014 and the Appellant's appeal was heard by the FTT on 12th February 2015. The FTT found the Appellant to be incredible and did not accept that he would be at risk if returned to Zimbabwe. His appeal was dismissed on asylum, humanitarian protection and human rights grounds.
4. The Appellant applied for permission to appeal to the Upper Tribunal, and permission to appeal was granted on the basis that the FTT had failed to make factual findings on many of the matters detailed in the Appellant's witness statement, and the lack of detailed findings might suggest an inadequacy of reasoning.

Error of Law

5. On 6th October 2015 I heard submissions from both parties in relation to error of law, and concluded that the FTT decision must be set aside with no findings preserved. Full details of the application for permission, the grant of permission, the submissions made by both parties, and my conclusions are contained in my decision dated 7th October 2015, promulgated on 13th October 2015. I set out below paragraphs 12 – 24 which contain my conclusions and reasons for setting aside the FTT decision;

“12. I firstly consider ground (a) of the application. The FTT found in paragraph 28 of the decision that the Appellant had no MDC profile and could return to Zimbabwe, and in particular his home of Chikomba and there was no real risk that he would have to demonstrate loyalty to ZANU-PF. The Appellant had failed to establish that it was reasonably likely that he would be going to a high density area, or 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. He would not need to internally relocate because it was safe for him to return to his home.

13. The Appellant's evidence (paragraph 6 of his witness statement dated 5th February 2015) was that he came from Chikomba which is a rural area, although he had not in fact been living in Chikomba immediately before leaving Zimbabwe because he had been serving as a police officer. It was however his case as presented to the FTT, that if returned he would have to go back to Chikomba and the FTT found that it was safe for him to do so and did not consider any option of relocation to another area.

14. I find there is merit in the contention that the FTT did not properly apply the guidance in CM and I set out below for ease of reference, paragraphs (1) and (2) of the headnote to that decision;

‘(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 Mataberland North or Mataberland 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 loyalty (RT Zimbabwe).'
15. As the Appellant claimed that Chikomba was a rural area, the FTT should have assessed the risk to him, in line with the guidance in CM which is set out above. The FTT did not explain why the Appellant would be able to avoid the adverse attention of ZANU-PF in a rural area, having returned from the United Kingdom after a significant absence.
16. I find that the FTT erred in law on this issue by failing to properly apply the guidance in CM, and failing to give adequate reasons for the conclusions reached in paragraph 28.
17. The remainder of the grounds can be dealt with together as they relate to findings made by the FTT in relation to the Appellant's credibility, and the contention that findings were not made on material matters, and adequate reasons for findings were not given.
18. In relation to adequacy of reasoning, the principles in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) should be taken into account and for ease of reference I set out below the headnote to that decision;

'It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost. '
19. In paragraph 25 the FTT simply records that the 'delay in claiming asylum adversely affects his credibility.' There was a conflict between the parties as to the length of delay and the judge did not make findings to resolve this conflict. I find this to be an error of law. The Respondent contended that the delay in claiming asylum was relevant to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act) and specific reliance was placed upon section 8(2) which I set out below;

'(2) This section applies to any behaviour by the claimant that the deciding authority thinks -

- (a) is designed or likely to conceal information;
- (b) is designed or likely to mislead, or
- (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.'

20. Presumably the Respondent was relying upon 8(2)(c) and referring to the delay in claiming asylum. In my view the judge erred by not considering the principles in IT (Cameroon) [2008] EWCA Civ 878 and in particular paragraphs 19 - 21 of that decision. Behaviour falling within section 8 must be taken into account in assessing credibility, but the weight to be given to such behaviour is entirely a matter for the fact-finder, and there may be cases in which behaviour of the kind identified in section 8 is held to carry no weight at all in the overall assessment of credibility. It was confirmed in paragraph 19 that a global assessment of credibility is required.
21. The FTT should have recorded whether it accepted the Appellant's account that he telephoned the Home Office on 1st August 2014, the Appellant having arrived on 22nd July 2014, and that the Appellant was then given an appointment by the Home Office to make his asylum claim on 20th August 2014. This in my view was relevant to the overall assessment of credibility.
22. As pointed out by the judge granting permission, there are no factual findings on many aspects of the Appellant's account as set out in his witness statement. The FTT appears to have placed significant weight upon the delay in claiming asylum and the fact that the Appellant lied to obtain a visa in South Africa, did not disclose to an Immigration Officer at the airport that he had come to the United Kingdom to claim asylum, and lied by stating that he intended to leave this country at the conclusion of his visit.
23. The FTT does not fulfil the duty set out in Budhathoki to give adequate reasons so that the Appellant knows why his appeal has been dismissed. The Appellant's claim to have been granted asylum in South Africa appears to have been rejected simply on the basis that no documentary evidence was produced. The documentary evidence purporting to confirm this was in fact provided after the hearing, indicating that the Appellant had been granted refugee status in South Africa in 2008.
24. I conclude that for the reasons given above the decision of the First-tier Tribunal is unsafe and must be set aside. No findings are preserved."

6. The hearing on 6th October 2015 was adjourned so that the decision could be re-made by the Upper Tribunal after further evidence was given.

Re-Making the Decision

The Law

7. The Appellant is entitled to asylum if he is outside his country of nationality and is recognised as a refugee as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification)

Regulations 2006 as a person who falls within Article 1A of the 1951 Geneva Convention. The onus is on him to prove that he has a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group or political opinion), and is unable or, owing to such fear, unwilling to avail himself of the protection of the country of his nationality.

8. The Appellant would be eligible for humanitarian protection under paragraph 339C of the Immigration Rules if he does not qualify as a refugee, and establishes substantial grounds for believing that if he was removed from the United Kingdom, he would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself of the protection of the country of return.
9. The Appellant claims that to remove him from the United Kingdom would breach Articles 2 and 3 of the 1950 European Convention on Human Rights (the 1950 Convention). The Appellant must therefore establish that there are substantial grounds for believing that returning him to Zimbabwe would create a real risk that he would be killed, or subjected to torture or inhuman or degrading treatment or punishment.
10. In relation to risk on return, the burden of proof is on the Appellant and can be described as a reasonable degree of likelihood which is a lower standard than the normal civil standard of the balance of probabilities. The Tribunal must consider the circumstances as at the date of hearing.

The Appellant's Claim

11. The Appellant's claim as initially presented to the Respondent is set out in his screening interview record dated 20th August 2014, his Asylum Interview Record dated 11th November 2014, and his undated witness statement contained at pages A1 – A4 of the Respondent's bundle. The claim may be summarised as follows.
12. The Appellant joined the MDC in Zimbabwe in 1999. He was an active member.
13. He is married, and he and his wife have four children. They lived together as a family in Zimbabwe before fleeing to South Africa. Two of the children were born after the family had left Zimbabwe and were living in South Africa.
14. The Appellant was born and grew up in Chikomba which is a rural area. He was involved in clashes and skirmishes with ZANU-PF youths. The Appellant was injured in an attack which caused him and his family to flee to South Africa in February 2008 and in that month he was granted asylum.
15. The Appellant was an active MDC member while in South Africa although he did not hold an official position within the party. He briefly returned to

Zimbabwe in December 2012, for a period of three days to visit his gravely ill father. He then returned to South Africa.

16. The Appellant applied for a Zimbabwean passport while in South Africa. He did not travel to Zimbabwe to make this application, but authorised his sister who lived in Zimbabwe to submit his application, and collect his passport. This she did, and his passport was given to a friend of the Appellant who operated a bus service between Zimbabwe and South Africa. For reasons unknown to the Appellant, the bus driver had his new passport stamped at the border which is why there is a 2014 date stamp in the passport.
17. There was unrest in the Zimbabwean community in South Africa. The Appellant believed that the community had been infiltrated by the CIO, and there was hostility against Zimbabweans from South African citizens. The police did not offer protection. There was a split within the MDC, the Appellant supporting Tsvangirai, while others supported another faction led by Tendai Biti.
18. On 10th May 2014 the Appellant was detained and taken away by three men, two Zimbabweans and one South African. He was threatened with a pistol and questioned as to why he was supporting Tsvangirai. He was assaulted and told that he had three weeks to leave South Africa or he would receive worse treatment. After being held for four hours he was released.
19. The Appellant thereafter discovered that his church was having a conference in the UK between 23rd and 25th July 2014 and applied for and was granted a visa enabling him to visit the UK to attend the conference.
20. The Appellant did not claim asylum when he arrived at the airport in the UK, as he did not know he was able to claim asylum at that time. Shortly thereafter he sought advice and attempted to telephone the Home Office to make an asylum claim. He first called the Home Office on 23rd July but could not get through. He eventually made contact with the Home Office by telephone on 1st August 2014 and was given an appointment to claim asylum on 20th August 2014, which is when he made his asylum claim and underwent a screening interview.
21. The Appellant indicated that he feared persecution and ill-treatment if forced to return to Zimbabwe, because of his support and activism for the MDC.

The Refusal

22. The reasons for refusal are set out in a letter dated 26th November 2014 which may be summarised as follows.
23. It was accepted that the Appellant had provided a wealth of documentary evidence, including photographs, to prove his MDC membership. He had

correctly answered a number of questions about the MDC. Therefore his identity, nationality and membership of the MDC were accepted.

24. In relation to his problems in Zimbabwe, the Respondent accepted that the Appellant's account was broadly consistent with background evidence and that his account had been internally consistent. There was however no objective external evidence to confirm the threats to him, and therefore this aspect of his claim would be considered when the benefit of the doubt was considered.
25. In relation to the Appellant's claimed problems in South Africa, the Respondent noted a lack of objective evidence to confirm that MDC supporters are targeted in South Africa. It was accepted that the Appellant's account was internally consistent, and therefore this part of his claim would also be considered when the benefit of the doubt was considered.
26. The Respondent believed that the Appellant had returned to Zimbabwe to collect his passport which was issued on 3rd January 2014 despite having claimed to have been granted asylum in South Africa. It was not accepted that the Appellant had such a profile that he would be targeted by the CIO.
27. The Respondent contended that the Appellant's credibility was adversely affected by the fact that he did not claim asylum when he arrived at the airport in the UK. It was noted that he had arrived on 22nd July 2014 but did not claim asylum until 20th August 2014.
28. When considering the benefit of the doubt the Respondent considered paragraph 339L of the Immigration Rules together with section 8 of the 2004 Act. The Respondent accepted that the Appellant satisfied paragraph 339L(i), (ii), and (iii). However sub-section (iv) required an individual to have made an asylum claim at the earliest possible time, and because the Appellant had not done this, the Respondent found that he did not satisfy paragraph 339L(iv) and because he had not claimed asylum without delay, it was not accepted that his general credibility had been established as required by paragraph 339L(v). Therefore the Respondent did not extend to the Appellant the benefit of the doubt and did not accept that he had given a credible account.
29. The Respondent went on to consider internal relocation contending that it would be reasonable for the Appellant to relocate to Bulawayo.
30. Because the Respondent did not accept that the Appellant would be at risk if returned to Zimbabwe, as he would not be of adverse interest to the Zimbabwean authorities, the Respondent did not accept that he was entitled to be granted asylum, or humanitarian protection, and it was not accepted that Articles 2 or 3 would be breached if the Appellant returned to Zimbabwe.

31. The Respondent did not consider that the Appellant had established a family or private life in the UK that would engage Article 8 of the 1950 European Convention.

The Appellant's Response to Refusal

32. The Appellant prepared a witness statement dated 5th February 2015. The statement may be summarised as follows. The Appellant confirmed that he had joined the MDC in the UK. He is the secretary of the South Yorkshire branch, and the vice secretary of the northern district for UK and Ireland.
33. With reference to the refusal letter the Appellant confirmed that he had not returned to Zimbabwe in 2014 to collect his passport. He had only visited in 2013 for a short period to visit his father.
34. The Appellant contended that he was in fact a founding member and chairperson of the MDC group in the Strand area of Cape Town from 2008. He had a high profile in that area.
35. The Appellant contended that the short delay in claiming asylum should not mean that his claim should be dismissed as incredible.
36. The Appellant contended that he could not relocate to Bulawayo as he would suffer ethnic discrimination as he is of Shona ethnicity and does not speak Ndebele.

The Hearing

Preliminary Issues

37. The Appellant attended the hearing. I established that there was no need for an interpreter.
38. I ascertained that I had received all documentation upon which the parties intended to rely and that each party had served the other with any documentation upon which reliance was to be placed. I had the Respondent's bundle with Annexes A - C, and in addition had the refusal decision and a typed copy of the asylum interview dated 11th November 2014. I also had the Appellant's bundle of documents comprising 55 pages.
39. Mr Muzenda confirmed that the Appellant claimed asylum based upon his political opinion, that being his membership of the MDC. He did not make a separate humanitarian protection claim. The Appellant relied upon Articles 2 and 3 of the 1950 Convention, but placed no reliance upon Article 8.

Evidence

40. The Appellant gave oral evidence, confirming the accuracy of his two interview records, and his two witness statements. He was not asked additional questions by Mr Muzenda but was cross-examined by Mr Mills.
41. I recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them in full here. If relevant, I will refer to the Appellant's evidence when I set out my conclusions and reasons.

The Respondent's Submissions

42. In submitting that the appeal should be dismissed Mr Mills accepted that evidence had now been produced, which had not been before the FTT, to indicate that the Appellant had been granted asylum in South African in 2008. He submitted that this added little to the claim, because the situation in Zimbabwe had now changed.
43. Mr Mills submitted that the most recent country guidance to be considered is CM Zimbabwe CG [2013] UKUT 00059 (IAC) although in relation to risk at the airport, the authority to be considered is HS (returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094. In relation to the airport, Mr Mills submitted that questioning by the CIO was intelligence led, and the Appellant would not be of adverse interest. If it was accepted that the Appellant had a significant MDC profile which attracted the attention of the CIO, then Mr Mills accepted that he may be at risk at the airport, but it was not accepted that the Appellant had a profile that would attract the attention of the CIO.
44. I was asked to take into account that the Appellant accepted that he had not been truthful when he applied for a visa to visit the UK. He had indicated that he intended only a visit, but his true intention, as he accepted, was to claim asylum and remain in the UK. This indicated a propensity to lie.
45. I was also asked to note the delay in claiming asylum.
46. I was also asked to note a discrepancy in the Appellant's evidence in that when interviewed (questions 88 - 90) he had stated that he held no position within the MDC in South Africa, but he now contended that he was in fact the founder of one of the branches and chairperson of that branch and he had submitted a letter from an official of that branch in South Africa, confirming this. The Appellant when asked about this discrepancy had accepted that he had not disclosed his position within the MDC branch in Cape Town, when interviewed because he could not prove it. Mr Mills submitted this was not a satisfactory explanation.
47. I was asked to note that the Appellant had returned to Zimbabwe voluntarily after he had been granted asylum in South Africa. His evidence was that he had not encountered any road blocks, and he had not encountered any problems. I was asked to find that this indicated that the authorities had no interest in him. Alternatively, if the Appellant had

encountered road blocks, he must have been able to pass a ZANU-PF loyalty test.

48. In relation to the Appellant's passport and the 2014 stamp which indicated that the passport had been in Zimbabwe, Mr Mills submitted that the only sensible explanation was that the Appellant had actually used that passport in Zimbabwe in 2014.
49. It was accepted that there was violence in South Africa directed towards Zimbabweans in 2013 - 14, but it was not accepted that the South African authorities were involved in that violence. I was asked to note that the Appellant's evidence was that his wife and four children are still in South Africa, Mr Mills questioned why the Appellant would leave his family in South Africa if there was any danger.
50. In addition Mr Mills pointed out that the Appellant had indicated that his activities for the MDC in the UK were in the public domain, and questioned why he had publicised those activities as this might put his wife and children in danger in South Africa.
51. In relation to risk on return, Mr Mills submitted that if it was accepted that the CIO would have no interest in the Appellant at the airport, then the Appellant could relocate to Bulawayo. CM Zimbabwe indicated that even if the Appellant had an MDC profile he would not be at risk there and I was asked to note paragraphs 206 - 209 of CM which reaffirms the position initially set out in EM Zimbabwe which stated that there are just over a million people in Bulawayo, and 20% of them are Shona. There is therefore a very significant Shona population, and there is no reason why the Appellant as a Shona should be discriminated against in Bulawayo.

The Appellant's Submissions

52. Mr Muzenda pointed out that the Respondent accepted that the Appellant was and is an MDC member. It was accepted that the Appellant had failed in interview to state his role as founder/chairperson of a branch in Cape Town. There is however a letter at page 18 of the Appellant's bundle confirming his role in that branch. There are photographs of the Appellant in the Respondent's bundle, which show the Appellant's activities in South Africa.
53. Mr Muzenda submitted that the Appellant had reinvigorated the MDC branch in South Yorkshire and had now risen to district level and this proved that he had a significant MDC profile. The CIO would therefore have an interest in him and he would be at risk at the airport.
54. I was asked to find the Appellant's account credible and to accept that he had a good reason to visit Zimbabwe to see his father, who died very shortly after the visit. I was asked to note that it was the Appellant who had volunteered information to indicate that he had visited Zimbabwe for three days in December 2012 and January 2013.

55. I was asked to accept that the Appellant would be at risk at the airport if returned, and that he would not have a reasonable relocation option if he managed to pass through the airport, either in Harare or Bulawayo. In relation to Bulawayo, the Appellant has no family there, cannot speak the Ndebele language and would not be able to find accommodation or employment.
56. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

57. I have taken into account all the oral and documentary evidence placed before me, together with the oral submissions made by both representatives. I take into account the lower standard of proof that applies, which can be described as a reasonable degree of likelihood, and I accept that it is important that I view the Appellant's account in the context of conditions in Zimbabwe.
58. I have considered the evidence in the round, and with anxious scrutiny, and consider this appeal in the light of the provisions of paragraph 339L of the Immigration Rules which for ease of reference I set out below;

"339L. It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim. Where aspects of the person's statement are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

 - (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim;
 - (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
 - (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
 - (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
 - (v) the general credibility of the person has been established."
59. I find as a fact that the Appellant is a Zimbabwean citizen and an MDC member. This has been accepted by the Respondent.

60. I take into account that the Respondent in the refusal letter accepts that the Appellant satisfies paragraph 339L(i), (ii), and (iii). The Respondent attaches significant weight to the Appellant's delay in claiming asylum, and because of this, does not accept that the Appellant's general credibility has been established.
61. I find as a fact that the Appellant arrived in the UK on 22nd July 2014. It is a fact that he underwent a screening interview on 20th August 2014. It is also accepted that he did not claim asylum at the airport.
62. It is not disputed by the Respondent that it is now common practice for an appointment to be given for an asylum claim to be made. This supports the Appellant's contention that he made a telephone call to the Home Office to claim asylum and was given an appointment. I accept the Appellant's evidence that he initially called the day after his arrival but was unable to get through. I accept the Appellant's evidence that he then spoke to a solicitor who gave him another number to call, and having called this number, the Appellant was given an appointment to claim asylum. I therefore do take into account pursuant to section 8 of the 2004 Act, that the Appellant did not claim asylum at the airport. I find however that he then attempted to contact the Home Office the following day.
63. I do not find that the short delay in claiming asylum means that the Appellant's account must be dismissed as incredible.
64. I have also taken into account that the Appellant accepts that he was not truthful when he applied for a visit visa, as it was his intention to claim asylum when he arrived in the United Kingdom. I take this into account when assessing credibility, but have to look at the evidence in the round, and take into account the Appellant's explanation that he was not truthful when he applied for his visit visa because he feared for his life.
65. I accept that the Appellant was attacked by ZANU-PF members when in Zimbabwe. I find that this was because of his MDC activities. I make this finding because the Appellant has given a consistent account on this issue. His oral evidence did not differ significantly from what he said in his screening and substantive asylum interviews. I also place weight upon the fact that the Respondent accepts that the Appellant's account accords with background evidence, which was accepted in paragraph 18 of the refusal letter.
66. I also take into account that the Appellant was granted asylum in South Africa in February 2008. I accept this to be the case, based upon the Appellant's evidence which has been consistent on this point, and which is supported by documentary evidence contained within the Appellant's bundle. It was not disputed at the hearing before me, that the Appellant had been granted asylum in South Africa. I am satisfied that the document from the South African authorities confirming the Appellant's refugee status can be relied upon.

67. I accept as credible the Appellant's account that he returned to Zimbabwe on 30th December 2012 in order to visit his father who was very seriously ill. I place weight upon the fact that it was the Appellant who disclosed this. It was initially disclosed in his screening interview (2.1). I find that this enhances the Appellant's credibility. He chose to disclose that he had gone back to Zimbabwe, and he did not exaggerate or embellish his evidence. It would have been open to him to say that he encountered difficulties from ZANU-PF. He did not make such a claim, explaining that he had travelled across the border, and thereafter for a considerable distance into Zimbabwe, without encountering difficulty. He did not encounter any difficulties in his home area although he did keep a low profile and only remained there relatively briefly. I accept this account and find the Appellant credible on this issue.
68. I am satisfied that the Appellant did not travel to Zimbabwe to collect his passport in 2014. I do not find that he has a reason to be untruthful about this. The Appellant has already accepted that he has travelled back to Zimbabwe after being granted asylum in South Africa and encountered no difficulty. Taking into account the low standard of proof, I accept that the Appellant made an application for a passport while in South Africa, and that he authorised his sister to collect the passport and send it to him in South Africa. There is a letter from his sister confirming this and I find that this letter can be relied upon. The Appellant has not been able to explain exactly why the bus driver who transported his passport chose to have a stamp put in it and again, I find that he did not seek to exaggerate or embellish his evidence on that point.
69. There is an inconsistency in the Appellant's account as to whether or not he was the founder and chairperson of an MDC branch in Cape Town. In interview he specifically said that he held no position within the party. In my view he was unable to give a satisfactory explanation as to why he said that, if in fact he was the founder and chairperson. I am satisfied that the Appellant did undertake MDC activities in South Africa but I am not satisfied, even to the lower standard of proof, that he was the chairman and founder of a branch of the MDC. If that was the case, I find that he would have said so in interview. I therefore reject that aspect of his claim, although I accept what he said in interview, that in Cape Town he strongly supported Morgan Tsvangirai, and that he did not have a position in the party but he actively mobilised people as he had done in Zimbabwe.
70. It was accepted at the hearing that background evidence indicated that there had been violence perpetrated against Zimbabweans in South Africa, by South African citizens. There was a newspaper report at page 38 of the Appellant's bundle making reference to this. I do not accept that the South African authorities were involved in ill-treating Zimbabweans. The Respondent's reasons for rejecting this aspect of the Appellant's account, according to the refusal letter, is because his credibility had been damaged due to his delay in claiming asylum. I found the delay in claiming asylum to be very minor, and I accept that the Appellant was threatened by individuals with a weapon, in May 2014. I accept the

Appellant's account that he was told to leave South Africa. I do not accept that the CIO from Zimbabwe were involved in this.

71. Turning to the Appellant's activities in the UK, I accept that he has joined the MDC, and there is documentary evidence in the form of emails at pages 19 – 31 of the Appellant's bundle, indicating that he is the secretary of the South Yorkshire branch, and holds an official position as claimed in the northern district of the UK. One of the emails confirms that the Appellant was co-opted to the position of vice organising secretary for the north district on 19th September 2015. I accept that this evidence as to the Appellant's position within the MDC in the UK is in the public domain.
72. I therefore have to assess the risk on return, based upon the facts as I have set out above.
73. A primary submission made on behalf of the Respondent was that the Appellant could relocate to an area of Zimbabwe other than his home area of Chikomba, and in particular he could relocate to Bulawayo. The Appellant does not accept this. On this issue I find that the Appellant does in fact have a reasonable option of relocation to Bulawayo, and this would not be unduly harsh. Paragraph 6 of the headnote to CM confirms that a returnee to Bulawayo will not in general suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile. I accept that the Appellant is Shona, but I do not accept that he would be unable to find employment or accommodation. A significant proportion of the population in Bulawayo are Shona, and the country guidance case law indicates that this is approximately 20% of a population of 1 million. I do not find that the evidence indicates there would be discrimination against the Appellant which would amount to persecution, or which would breach Articles 2 or 3 of the 1950 Convention. The Appellant is an MDC activist, and the background evidence indicates that all the MPs in Bulawayo are MDC MPs. Bulawayo is not an area that supports ZANU-PF.
74. However I must firstly consider whether the Appellant would be at risk at the airport if returned to Zimbabwe, and it was accepted by both representatives that the relevant country guidance case law in relation to risk at the airport is HS Zimbabwe CG [2007] UKAIT 00094. I note that paragraph 205 of CM indicates that the Tribunal was satisfied that the fresh evidence considered, failed to disclose any change in the position as described in HS, and there was no heightened scrutiny of returnees. It was also noted in the same paragraph, that there is no evidence to show that the CIO are likely to detain at the airport and torture a person for attending an MDC branch meeting in the UK.
75. HS confirms that the process of screening returning passengers at the airport is an intelligence led process and paragraph 3 of the headnote, indicates that the CIO will generally have identified from the passenger manifest in advance, based upon such intelligence, those passengers in whom there is any possible interest. HS refers back to the risk categories

in SM and Others Zimbabwe CG [2005] UKAIT 00100 as adopted, affirmed and supplemented in AA Zimbabwe CG [2006] UKAIT 00061.

76. In SM the Tribunal found at paragraph 51a that there is a real risk of persecution for individuals perceived to be politically active in opposition to the regime in Zimbabwe. Some categories are more likely to be at risk than others, such as MDC activists and campaigners rather than supporters.
77. In AA the Tribunal confirmed at paragraph 244 that those at risk on return to Zimbabwe continue to fall into the risk categories identified and set out in SM. Paragraph 248 indicated that persons arriving at the airport in Zimbabwe identified as deportees will be diverted for questioning by CIO officers.
78. At paragraph 249 the Tribunal found that the purpose of the initial interview is to establish whether the deportee is of any interest to the CIO or the Security Services and an individual will be of interest if questioning reveals that he has a political profile considered adverse to the Zimbabwean regime. If such a political profile is suspected, the individual would be taken away for interrogation. Paragraph 251 of AA is relevant and is set out below;

“251. This second stage interrogation carries with it a real risk of serious mistreatment sufficient to constitute a breach of Article 3. If the reason for suspicion is that the deportee has a political profile considered to be adverse to the Zimbabwean regime that is likely to be sufficient to give rise to a real risk of persecutory ill-treatment for a reason that is recognised by the Refugee Convention. That will not necessarily be the case where the only matter of interest is a relevant military history or outstanding criminal issue. Each case must be considered on its particular facts.”
79. I find it reasonably likely, applying the above principles, that the Appellant would be questioned upon his return to the airport. The fact that he holds secretarial positions within the MDC in the UK is in the public domain, and it is reasonably likely that the CIO would be aware of this. If questioned, the Appellant could not be expected to lie, and I find following the initial interview, it is reasonably likely that the Appellant would be taken away for a second stage interrogation as it would be suspected that he does have a political profile adverse to the Zimbabwean regime. It is that second interrogation which would give rise to the persecutory ill-treatment.
80. For that reason, I find that the Appellant would be at risk at the airport in Zimbabwe, because of his political opinion, and he is therefore entitled to a grant of asylum.
81. I do not find the treatment that the Appellant would be at risk of receiving would amount to a breach of Article 2, but there would be a real risk of treatment contrary to Article 3 of the 1950 Convention. For those reasons the Appellant’s appeal is allowed.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I allow the appeal on asylum grounds.

The Appellant is not entitled to humanitarian protection.

I allow the appeal on human rights grounds in relation to Article 3 of the 1950 Convention.

Anonymity

The First-tier Tribunal made no anonymity direction. There has been no request for anonymity to the Upper Tribunal and I see no reason to make an anonymity order.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

26th November 2015

TO THE RESPONDENT FEE AWARD

No fee is paid or is payable. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

26th November 2015