

LSH  
Heard at Field House

RN (Credibility - Background  
Material) Zimbabwe [2003] UKIAT  
00086

On 16 September 2003

## **IMMIGRATION APPEAL TRIBUNAL**

notified:

Date Determination

2004

.24<sup>th</sup> September

**Bef  
ore:**

**Mr G Warr (Chairman)  
Mr A Smith**

**Between**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

### **DETERMINATION AND REASONS**

1. The appellant, a citizen of Zimbabwe, appeals the determination of an Adjudicator (Mr D M Page) who dismissed his appeal against the decision of the Secretary of State to refuse his application for asylum.
2. The appellant was represented by Miss E Shaw while Miss Hart appeared for the Secretary of State.
3. The appellant's claim was that he was involved with the MDC in Zimbabwe. He had had problems with ZANU-PF but had been able to escape from them on three occasions. On one occasion the appellant had offered to pay for some beer for his guards while the appellant was having a shower. On another occasion, the guard had been using the toilet. On the third occasion the appellant had been taken in a truck and had had

large heavy stones tied to him – two at the back and two at the front. He was taken to a river which was infested with crocodiles. He was thrown into the river which was generally very deep but in the place where the ZANU-PF men threw him, the water only came up to his knees. The appellant managed to remove the stones from his body and made his way to the opposite bank of the river and climbed out.

4. The Adjudicator's assessment of the facts in this case reads as follows:

"42. It is agreed that the issue in this appeal is the appellant's credibility. I did not find the appellant credible as a witness and I certainly did not find any part of his story credible. The standard of proof may be low but it cannot be met with badly invented fiction like this. It was plain to me that this appellant was making up his evidence as he went along. This whole story beggars belief.

43. The appellant did not know who the MDC chairman was but he claims to be a chairman of the youth wing in his area. In his interview he did not know who the treasurer of the MDC was. I accept that the appellant had some knowledge of the MDC but this was information that was in the public domain and could have been learned by anybody. If he had the profile that he claims to have had, then I would have expected him to have known who the MDC chairman was and who the treasurer was.

44. The appellant's evidence about MDC policy which I have set out above was vague in the extreme and demonstrated quite plainly in my view that this appellant has not been engaged in the political process at any level.

45. I accept that the appellant may have some injuries recorded in the photograph which is before me. However, the photograph does not prove the cause of any injury that the appellant may have. It is interesting to note that Dr Nhau's report that was faced recently for us in this appeal makes no mention of the appellant's jaw being wired. I would expect this report to have mentioned the fact that the appellant's jaw was wired for one month. She has not mentioned anything about referring him to the dental section for this operation to take lace. If this report is genuine then the injuries that are described must have another cause than that which the appellant has claimed. The injuries recorded in this document are fairly minor injuries in any event. I do not accept that these injuries were caused by an assault with a blunt object as Dr Nhau concludes. These injuries

could have many accidental and indeed non accidental causes.

46. The MDC cards that the appellant has produced could equally have been obtained very easily. His evidence was that his mother obtained these for him. I did not find it credible that the appellant's mother went to the trouble of obtaining his MDC card from his house to give him to leave the country with. The appellant appears to be claiming that he fled Zimbabwe because of his MDC membership and I do not find it credible that he would have left carrying his MDC card and MDC T-shirt if he genuinely had this fear. I would have thought that his mother would have left those things behind.
  47. All of the above escapes that the appellant has described in evidence are so unlikely that they are preposterous. The respondent in his refusal letter had made this point to the appellant and pointed out how unlikely these escapes are. The appellant's post refusal witness statement dated 20<sup>th</sup> February 2003 deals with these refusal issues and it makes comic reading and provides some light relief in considering what is, in my view, a manifestly false claim.
  48. The appellant has added in that witness statement that since he has been in the United Kingdom he has learned from his mother that the ZANU-PF members are still looking for him even though he is in the United Kingdom.
  49. I have reached the clearest conclusion upon all the evidence before me, including the evidence to which I have not specifically referred to above, that this appellant's claim is a false claim and that he would be of no interest to the authorities upon return to Zimbabwe should he be returned there.
  50. For the reasons I have set out above I find that this appellant has not shown a well-founded fear of persecution for any Convention reason but is falsely claiming asylum as a means to obtain an immigration status in this country. I therefore dismiss this appeal as brought on asylum grounds."
5. The Adjudicator then dealt with the human rights aspect and concluded that the appellant would be of no interest to the authorities on return and that there was no evidence before him to suggest that he would be at risk on inhuman or degrading treatment as a failed asylum seeker.
  6. Miss Shaw in her submissions relied on the grounds of appeal and the skeleton argument. She submitted that the

Adjudicator had not referred to the objective material at all and it was wrong for an Adjudicator to make a credibility assessment without regard to the background evidence. The situation in Zimbabwe was poor and had recently deteriorated as appeared from the material contained in the appellant's bundle. Although the events relied on by the appellant might appear fictitious, it was necessary to look at matters from the stand point of the refugee and not from a western perspective. While the account of the escapes were not directly supported by effective material the general country situation should have been taken into account by the Adjudicator. In particular the Adjudicator was to be criticised for failing to make reference to a letter from the Zimbabwe Association dated 18 February 2003. The Adjudicator could have attached little weight to it but it was necessary to mention it. Miss Shaw was unable to tell us what the Zimbabwe Association was or why there were two addresses on the letter.

7. At the conclusion of the submissions we did not trouble Miss Hart and reserved our determination.
8. The Adjudicator directs himself appropriately on the law and the burden and standard of proof in paragraphs 3 to 9 of the determination. He refers, for example, to **Karanakaran** [2000] Imm AR 271 and he states in paragraph 49 of the determination (which we have reproduced above) that he had reached his conclusions on all of the evidence before him including evidence to which he had made no specific reference. How far it is necessary to go into the background material depends very much on the circumstances. In **R v Secretary of State ex parte Befekadu** [1999] Imm AR 467 at 474 it was held as follows:

“In some instances, perhaps many cases, it will be impossible to make a full and fair finding on credibility without going into a good deal of detail about the background circumstances of the country in question. In other cases such an exercise will be neither necessary nor, in my judgment, fruitful. For example, if an applicant claims to be a member of a particular organisation which is persecuted, if the Adjudicator finds as a matter of fact, on the evidence that he has heard, that the applicant is clearly not a member of such an organisation, it is not necessary to explore in detail the extent and circumstances to which members of such an organisation are or not persecuted.”

9. The court went on to observe that it was also clear that great care must be taken before making adverse findings of credibility in asylum cases and that they should only be made when they are justified in the light of the circumstances of the particular case under consideration.

10. This was a case in which the Adjudicator had to make his judgment about the truthfulness of the appellant's account. He had the advantage of hearing and seeing the appellant give evidence before him.
11. We do not find that the Adjudicator's reference to the appellant's witness statement dated 20 February 2003 making "comic reading" indicates that he did not give the appellant's claim the anxious scrutiny required or that he had pre-conceived motions about it.
12. We do not accept that the Adjudicator overlooked the letter from the Zimbabwe Association. Miss Shaw was unable to tell us what this association was. The writer of the letter expressed the view that the appellant's account about the rocks and the crocodiles was perfectly credible. The appellant's family were truthful people and practising Christians. Just because the events described seemed so unbelievable this did not mean that the appellant was lying. The writer of the letter took the view that the account was to be believed.
13. The Adjudicator had the task of determining credibility. As he states in paragraph 42 of the determination it was agreed by the representatives before him that the issue in the appeal was the appellant's credibility. He had properly directed himself, as we have observed, on the burden and standard of proof and he had heard the appellant's evidence. He took the view that the appellant was making up his story as the case progressed and that he had given an entirely untruthful account. We are not satisfied that a lengthy recitation of the background material was necessary or appropriate in this case. The Adjudicator states, and we have no reason to doubt, that he had taken all the evidence before him into account. It was not necessary for him to spell out that evidence or to make a specific reference to any particular part of it. The Adjudicator's determination is sufficiently reasoned and we find no flaws or misdirections in it. The Adjudicator determined that the appellant would not be at risk as a failed asylum seeker on return having not made out any aspect of his case before the Adjudicator. We have not been referred to any material that would indicate that simply being a failed asylum seeker would expose a returnee to risk of harm or persecution.
14. For the reasons we have given, the Adjudicator's determination is affirmed and this appeal is dismissed.

**G Warr  
Vice**

**President**

