

Heard at Field House

Appeal No: HX36821-2001

On 7 August 2002

LM (MDC) Zimbabwe CG [2002] UKIAT 03916

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
21ST AUGUST 2002

Before:

Mrs J A J C Gleeson (Chairman)

Mr R Baines JP

Mr A F Sheward

Between:

MR LUZANI MOYO

APPELLANT

and

The Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The appellant, Mr Luzani Moyo, appeals with leave against the determination of an Adjudicator (Mr C G Blake), promulgated on 6 December 2001. He is a national of Zimbabwe. The Adjudicator dismissed his appeal against the decision of the respondent on 10 July 2001, setting removal directions after refusal of asylum.
2. At the hearing, Miss E Storey of Refugee Legal Centre appeared for the appellant. Ms M Banwait, Home Office Presenting Officer, represented the respondent.
3. The Adjudicator in his determination accepted that there had been some ill-treatment of the appellant in the past, but leave to appeal was granted on the basis that arguably he had not provided any clear reasoning for

rejecting parts of the appellant's claim, and further had not considered the background evidence.

4. The Adjudicator accepted that the appellant was a journalist, which appeared to be of relevance in the light of present circumstances in Zimbabwe.
5. The determination records that the appellant was a cameraman working for the Zimbabwe Broadcasting Corp (ZBC) and that in 1999 he began to support the MDC (Movement for Democratic Change). He was detained in June 2001 and questioned at police headquarters in Harare for 2 days, then released unharmed on the basis that his arrest had been an error. During his absence, his home was burgled; his identity card, educational records, some MDC papers and an MDC t-shirt were taken. The appellant was not afraid. He reported the burglary to the police.
6. On attending at the Police Station he was arrested, detained overnight, punched, kicked and made to sleep on a cold floor, and was interrogated about the items found in his house. He was also asked about his coverage of an MDC meeting, which he filmed in October 2000. Three police officers interrogated him, asking why he worked for a ZANU-PF company if he supported the MDC.
7. On 21 June, he covered another MDC meeting, and was arrested at home the same evening. He was assaulted, beaten and urinated upon. He was released after four days of ill-treatment, and his home was searched again. His cat was killed. His rural MDC mp would not help him. The Adjudicator accepted that the appellant had some problems with the authorities, but found the account to be exaggerated. In the light of paragraphs 5.9-5.19 of the CIPU Country Report for April 2001, which reports very similar treatment of other journalists in the appellant's position, and the lack of reasoning for the Adjudicator's disbelief, that approach is hard to sustain. The Adjudicator did find that the Appellant had established a limited subjective fear of difficulties with the ruling party.
8. Given those findings, we began by inviting Ms Banwait for the respondent to make submissions on the present position and the position of the respondent. There was no objection to this approach. Ms Banwait indicated that in her view the appeal should be remitted. The Vice-President who granted leave had suggested remittal, and it was the appellant's representatives who were unwilling to proceed on that basis.
9. The Home Office was in discussions with the UNHCR, which should shortly lead to guidance on the current position in Zimbabwe in relation to MDC sympathies and activities.
10. For the appellant, Miss Storey asked that the appeal be allowed outright. The determination was not clearly expressed at paragraphs 18 and 19, and on the face of the determination, the appellant was a journalist who had been employed by the State authorities and had problems in 2001. Given

the deteriorating situation, and following Ravichandran she submitted that the appellant would also have problems on return. The appellant's account had been consistent throughout except for two minor matters, and was clear on the documents and from the determination that the Tribunal could reach different conclusions on the evidence from those of the Adjudicator. She set out the appellant's explanation for the two remaining discrepancies. They were not sufficient to invalidate the determination as a whole

11. The determination showed that the Adjudicator had considered the background material, but given the present situation as set out at paragraphs 5.87-5.88 of the CIPU report, disbelief of the appellant's account was not sustainable against the respondent's own assessment of the factual position in Zimbabwe –

“POLITICAL ACTIVISTS

5.87 Opposition political activists, particularly those belonging to the MDC, have been targeted and attacked by Government supporters and war veterans since the parliamentary elections in June 2000. Although the Constitution allows for multiple political parties, Government supporters and security force members have subjected opposition activists to significant intimidation and violence. There were reports in 2001 of a growing number of abductions of MDC activists committed by Government supporters, especially in rural areas where loyalty to ZANU-PF is strongest. Some abductees were tortured and others later were found killed. Members of the security forces also participated in attacks on opposition activists and suspected supporters. [2b]¹

JOURNALISTS

5.88 Although the Constitution provides for freedom of expression, the Government restricts this right in practice. Security forces have arbitrarily detained journalists and refused to investigate or punish security force members who, with ZANU-PF supporters, tortured and harassed journalists. (See Sections 5.5 - 5.28 on freedom of speech and the media for further information on the position of journalists) [2b]”

12. The respondent was still not returning people to Zimbabwe because of the deterioration in the situation there. The appellant was plainly at risk and the appeal should be allowed.
13. In reply, Ms Banwait also referred the Tribunal to paragraph 5.88, and then took us to paragraph 5.5-5.28. Paragraph 5.24 was particularly relevant. Independent journalists were at high risk, but not ZANU-PF journalists such as this appellant (at paragraph 5.20). We set out at some length extracts from the respondent's CIPU report. Paragraphs 5.9-19, which are not reproduced, show a pattern of abuses against journalists who wish to report opposition views and the appellant's account fits precisely into the pattern of detention, beating, and release, which those paragraphs reflect over a two-year period. The following passages are particularly relevant to the consideration of the situation as it is today –

“FREEDOM OF SPEECH & THE MEDIA

General

5.5 Although the Constitution provides for freedom of expression, legislation limits this freedom on grounds such as defence and public order. The Government continues to

¹ The bracketed reference [2b] refers to the United States Department of State, Bureau of Democracy, Human Rights, and Labor 2001 Country Report on Zimbabwe, issued in March 2002

restrict press freedom and monopolises radio broadcasting. Journalists have faced increasing difficulties as the Government has sought to extend its control over the news in the face of political crises. The Government enforces restrictive laws against journalists and intimidates them. Security forces have arbitrarily detained journalists and have refused to punish security force members who have tortured journalists...

5.6 The Government restricts the freedom of speech of its political opponents and those making public comments critical of President Mugabe. Sections 44 and 50 of the Law and Order Maintenance Act (LOMA) criminalise and allow the Government to suppress the publication of any statement deemed to be subversive or likely to cause "alarm and despondency". In addition, anti-defamation laws criminalise libel of both public and private persons. Legislation passed in early 2002, ahead of the presidential election in March 2002, placed stringent Government controls on journalists and the media.

Newspapers

...**5.20** The International Press Institute wrote to President Mugabe in November 2001 asking him to repudiate his Government's accusation that local and foreign journalists were colluding with terrorists. The pro-ZANU-PF *Herald* newspaper had quoted a Government spokesman as saying that six foreign journalists were "assisting terrorists" after they had reported on attacks on whites and opposition activists in Bulawayo. The journalists report for British newspapers the *Independent*, the *Guardian*, the *Times* and the *Daily Telegraph*, US news agency *Associated Press* and the South African *Business Day*. One of the journalists also reports for the Zimbabwean paper *Financial Gazette*. Since the terrorist attacks in the USA on 11 September 2001, President Mugabe has repeatedly referred to his opponents as 'terrorists'...

5.21 The controversial Access to Information and Privacy Act, passed by Parliament on 31 January 2002, barred foreign journalists from working in Zimbabwe except for short periods to cover specific events and compelled local journalists to apply for a one-year renewable licence issued by the government-appointed Statutory Media Commission or face two years in prison. Other provisions of the bill include a ban on publishing "unauthorised" reports of Cabinet deliberations or releasing information about intergovernmental relations or their financial and economic interests. Journalists' unions pledged to fight the new law and defy its strict rules...

Radio and Television

5.24 Radio is the most important medium of public communication, especially for people in rural areas. The government controls all domestic radio stations through the State-owned Zimbabwe Broadcasting Corporation (ZBC), supervised by the Minister for Information and Publicity in the President's Office. Ministers are reported to routinely review ZBC news and delete reports on the activities of political opponents.

5.25 In September 2000 the Supreme Court declared the government's broadcasting monopoly to be unconstitutional. Despite a statement by the Information Minister that no private radio stations would be allowed to broadcast until the Government had set up a proper regulatory framework for private operators, a private radio station called Capital Radio began operating. In October 2000 police shut down Capital Radio and seized its equipment, despite the issue by the High Court earlier the same day of a decision barring the seizure. The police also searched the homes of the station's co-owners and others associated with the station, including MDC MPs Michael Auret and David Coltart. The High Court ordered the return of the seized equipment and directed the Government to issue a licence within ten days. Most of the equipment was returned but a licence was not issued and, that same day, President Mugabe issued by decree temporary regulations giving the Information Minister the power to issue and deny broadcasting licences. Later in October 2000, a legal committee of Parliament, in a non-binding resolution, declared the new regulations unconstitutional. At the end of 2001, Capital Radio was awaiting Parliament's final report on the regulations before proceeding with a planned appeal to the Supreme Court.

5.26 In 1999 the Supreme Court ruled that the Government's monopoly on telecommunications was unconstitutional because it interfered with the right to freedom of expression. The Government subsequently granted a broadcasting licence to a private television station, Joy TV. However, the President's nephew, Leo Mugabe, is reported to have financial ties with Joy TV and the ZBC reportedly exercises editorial control over

the station's programming. International television broadcasts are freely available through private cable and satellite firms.

5.27 In April 2001 Parliament passed a sweeping new law establishing the Broadcasting Authority of Zimbabwe and giving the government control of broadcasting. The new law gives Jonathan Moyo's Information Ministry the final authority to issue broadcast licences and the right to withdraw licences from independent broadcasters. It also stipulates that independent broadcasters should give the government one-hour a week to air its policies. The law prohibits foreigners and non-residents from owning shares in broadcasting companies and limits individuals to a maximum of 10% in station ownership. The MDC criticised the new law as a crackdown on free speech ahead of presidential elections due to be held in 2002.”

14. Ms Storey did not wish to exercise a right of reply to Ms Banwait's final observations. The Tribunal reserved its determination for postal delivery, which we now give. We note that there is no suggestion of any blood link between this appellant and the Information Minister, Jonathan Moyo.
15. We then considered the position. We do find that the appellant's account is not inconsistent with the background evidence in relation to the treatment of journalists in 2001. Given the grave nature of the subsequent deterioration, we accept that the risk to the appellant if returned to Zimbabwe as a known MDC supporter and former ZBC cameraman now is of sufficient gravity and likelihood to engage both the United Nations Convention Relating to the Status of Refugees 1951, as amended by the New York Protocol of 1967 and the European Convention on Human Rights.
16. This appeal is accordingly allowed.

**J A J C Gleeson
Vice-President**