

Heard at Field House  
On 8 July 2002

**Appeal No HX52444-2000**  
LS (Persecution-CIO) Zimbabwe CG [2002] UKIAT 03342

**IMMIGRATION APPEAL TRIBUNAL**

**Date Determination Notified**

1 August 2002

Before

**Mr S L Batiste (Chairman)**  
**Mr M G Taylor CBE**  
**Mr D R Bremmer**

**LINDON MANDHLENKOSI SIWARDI**

**Appellant**

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**DETERMINATION AND REASONS**

1. The Appellant, a citizen of Zimbabwe, appeals, with leave, against the determination of an Adjudicator, Mr J J Molloy, dismissing his appeal against the decision of the Respondent on 25 March 2000 to refuse leave to enter and refuse asylum
2. Mr P Morris represented the Appellant. Mr A Sheikh, a Home Office Presenting Officer, represented the Respondent.
3. The issues in this appeal are relatively limited and straightforward. The Appellant was a businessman from Zimbabwe who conducted business in the Democratic Republic of Congo from late 1997, selling food and clothing. He returned to Zimbabwe in the middle of 1998 in order to renew his passport and to purchase more goods for sale. He did not return to the Democratic Republic of Congo as foreigners were being advised to stay away, due to the security situation. He noticed he was being followed by a particular car. He received a number of anonymous telephone calls telling him to watch out and that he would be next. A friend, who worked for the Central Intelligence Organisation then told him that they believed he must be involved with the rebels in the Democratic Republic of Congo and he should hide. He went to stay with friends in Harare. His friend told him some time later that because he had gone into hiding the CIO had decided to arrest him if he could be found. The Appellant went to stay with his mother in Bulawayo for a few days and then went into hiding until he left for the United Kingdom. He arrived here in 1998.
4. The Adjudicator found that the Applicant was an honest and credible witness and accepted his evidence of what happened to him. However he also found that this evidence and the assumptions, which he made from it, were rather tenuous. He

considered that the CIO's interest in the Appellant was a low level. There was no evidence to link him to the rebels beyond his having been in the Democratic Republic of Congo for some time. Whilst the Mugabe regime was extremely unpleasant, the Appellant appeared to have suffered no direct unpleasantness and if the CIO had he wanted him they would have taken him when he was within their view. If he were to return to Zimbabwe now and were asked to account for himself he would be able to satisfy the CIO as to his innocence "without any unpleasantness."

5. Mr Morris argued that this was an unrealistic assessment of the ill-treatment which the Applicant was likely to receive on return to Zimbabwe, given the objective evidence about the behaviour of the CIO. Mr Sheikh argued that there was no flaw in the Adjudicator's assessment. The Tribunal reserved its decision.
6. This is a case which turns upon the assessment of risk on return and which, on its facts, is marginal in the sense that there are valid arguments both ways. We are grateful to both advocates, who argued their cases with clarity and brevity.
7. The Tribunal has decided that the Adjudicator erred in his assessment of risk for the following reasons. The objective evidence shows that the Mugabe regime in Zimbabwe is irrational and brutal towards its opponents, real and perceived. The CIO behaves with considerable brutality and impunity. The Adjudicator found that the Appellant was a credible witness in his recital of facts. This means that the CIO was aware that he had been in the DRC for some time and on his return had taken an interest in him as a possible rebel supporter. He was followed and anonymous phone calls were made, no doubt to see what reaction would follow. In the event the Appellant went into hiding on the advice of his friend in the CIO and, given the paranoid nature of the regime, it is reasonable to suppose that the CIO concluded he therefore had something to hide, as his friend later confirmed to him. The CIO then decided to arrest him but he left the country before this could be implemented. Given these circumstances and given the fact that the CIO now controls the airport at Harare, there must be a real risk that the Appellant will be detained on return for questioning by them. He may indeed ultimately be able to persuade the CIO of his actual innocence, but there is nothing in the background material to suggest that this process would be likely to be conducted "without any unpleasantness." The CIO routinely commits serious human rights abuses, which include torture. This is one of the reasons why the Respondent is not returning anyone to Zimbabwe at the present time. Given the CIO interest in the Applicant and their suspicion that he might be involved with the enemies of the regime, we conclude there is a real risk, even after some 3 years, that he will suffer ill-treatment in interrogation amounting to persecution, on account of his perceived political opinion, as well as ill-treatment in breach of Article 3. For the reasons given above this appeal is allowed.

**Spencer Batiste**  
**Vice-President**