

**IMMIGRATION APPEAL TRIBUNAL**

Heard at: Field House  
on: 26 April 2002  
Dictated: 26 April 2002

Determination Promulgated  
.....31.05.02.....

Before:

**Mr P R Moulden - Chairman**  
**Mr N Kumar JP**  
**Ms S S Ramsumair JP**

between

**The Secretary of State for the Home Department**

**Appellant**

and

**Everjoyce SITHOLE**

**Respondent**

**DETERMINATION AND REASONS**

1. The Appellant is the Secretary of State for the Home Department. The Respondent is a citizen of Zimbabwe. The Appellant has been given leave to appeal the determination of an Adjudicator (Mr A A Wilson) allowing the Respondent's appeal against the Appellant's decision to give directions for her removal from the United Kingdom and to refuse asylum.
2. Mr C Trent a Home Office Presenting Officer represented the Appellant Ms A Swaniker of IAS appeared for the Respondent.
3. The Respondent claimed to fear persecution from the authorities, ZANU-PF and the War Veterans because of her husband's involvement with the MDC and her

4. perceived political opinions by association with him. Her husband, who was politically active in Zimbabwe as a member of the MDC, was assaulted and abducted in January 2001. He has not been seen since. The Respondent fears that he is dead. When her husband disappeared the Respondent was not in Zimbabwe. She had been working in South Africa for some time. She did not have residence rights there. After her husband disappeared she returned to Zimbabwe where her son had been at school. She found that he was affected by the disappearance of his father and that individuals had visited his school and behaved in a way which gave rise to fears for his safety. The boy recognised the individuals who were involved in the abduction of his father.
4. The Respondent was represented at the hearing. The Appellant was not. Inevitably there was no cross-examination of the Respondent. The Adjudicator found that the Respondent was a credible witness. He believed her account of events and found that she had established not only a well-founded fear of persecution for a Convention reason but that her Article 3 human rights would be infringed.
5. It is common-ground that the Adjudicator erred in his application of **Horvath**. The question of sufficiency of protection does not arise when those whose actions are complained of are the authorities themselves or those acting with the approval of the authorities. It is clear that the War Veterans in ZANU-PF come within this category.
6. It is equally clear that the Adjudicator wrongly identified the Respondent and her husband as belonging to a particular social group. The Respondent does not need to rely on this Convention reason. If there is a Convention reason it is her perceived political opinions.
7. Both the representatives agreed that this appeal turns on whether the Respondent and her son are at risk of persecution for a Convention reason, namely the Respondent's perceived political opinions, or at risk that their human rights will be infringed under Article 3. Paragraph 2(A) of the grounds of appeal raises the issue of whether the Respondent, who had lived in South Africa for a number of years, would be perceived as an opposition supporter. It is submitted that there is no reason to suppose that anyone would wish to abduct and harm her child. The objective evidence did not support the proposition that ZANU-PF would target the family members of opposition supporters.
8. It is unfortunate, but all too often the case that the Appellant was not represented before the Adjudicator. An appeal to the Tribunal should not be a substitute for proper representation at the first tier of the appeal process. On the evidence the Adjudicator was entitled to conclude that the Respondent was a credible witness and to reach her final conclusions. The Respondent's claims are in line with the Country Information.
9. Even though the Respondent had been out of the country for some time when she returned, following the death of her husband, there were clear indications of continuing interest in her family by ZANU-PF and the War Veterans. Those who had abducted her husband had visited the school looking for her son, in circumstances which quite gave rise to valid concerns for his safety and, through him, her safety as well.

10. Ms Swaniker has produced an extract from the Independent newspaper of 24 April 2002 which reports that a 53 year old woman was beheaded in front of two of her daughters aged 10 and 17 by supporters of Robert Mugabe, Zimbabwe's President, because of her suspected backing for the opposition. The woman, who had eight children, was decapitated by twenty ruling party militants inside her hut. She was killed because she was the mother of an MDC youth activist. He was killed by ZANU-PF militants days before the June 2000 parliamentary election in Zimbabwe. The family discovered his body in a mortuary six months later.
11. This report indicates that relatives are targeted because of the activities of members of the family. Mr Trent has not produced any Country Information to support the contrary view.
12. Mr Trent did not seek to argue that the Respondent would be safe in any other part of Zimbabwe. There is no question of internal flight to South Africa. The evidence is that the Respondent would not be entitled to live there.
13. We agree with the Adjudicator's main conclusion. The Respondent has established both a well-founded fear of persecution for a Convention reason and that her human rights are likely to be infringed under Article 3.
14. For these reasons we dismiss the Secretary of State's appeal.

**P R MOULDEN  
CHAIRMAN**