refugee council
briefing

Zimbabwe update

11 December 2007

This briefing updates information about the legal challenges to forced returns to Zimbabwe

The current legal position

HS (Zimbabwe) v SSHD AA/02471/2006

On 21st November 2007 the Asylum and Immigration Tribunal published the long awaited judgement relating to removals to Zimbabwe. This was a Country Guidance case held in the light of the judgement of 6th March 2007 in Court of Appeal in AA (Zimbabwe) v Secretary of State for the Home Department.

The Court of Appeal had decided that the Tribunal had not given sufficient consideration to the evidence before it – in particular how the Zimbabwean Central Intelligence Organisation (CIO) treats asylum-seekers who are forcibly removed to Harare airport from the UK and whether any unnecessary physical violence by the CIO (or other authorities) is capable of amounting to a violation of Article 3 of the European Convention on Human Rights. It had been agreed that these issues should be examined in HS (Zimbabwe) which was heard from 23-26 July 2007.

The Tribunals' findings

The Tribunal found in favour of the Secretary of State and did not allow the appeal. It examined the evidence of each of the witnesses referred to and the arguments in relation to Article 3. It also considered some evidence provided in addition since the previous case.

The Tribunal concluded that HS would not be at risk of persecution simply by virtue of having been forcibly removed from the UK even as a failed asylum seeker. It noted:

> "If she discloses the fact of having made an unsuccessful asylum claim while in the United Kingdom, in the absence of some other reason for the CIO to entertain interest in her that fact alone will not give rise to any real risk that she would be taken for further more intense questioning or interrogation…… A positive response would not in itself lead to any reason for further action in the absence of other intelligence, in which case the returnee would already have been identified as a candidate for interrogation.
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> The appellant would, therefore, be allowed to pass through the airport after, at most, a relatively short screening interview."[1]

[1] HS(Zimbabwe) v SSHD AA/02471/2006 Paras 285-6

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Similarly it found that HS would not be at risk subsequently having left the airport saying:

> "As a deportee from the United Kingdom who is returning home after having spent some time away the appellant may well attract some interest on return to her home area, or wherever she chooses to go to re-establish herself. This interest will be from whoever represents the authorities in the area to which she has gone. There is nothing about this appellant to give rise to any intense monitoring or any adverse interest from those authorities that will cause the appellant any difficulty."[2]

The Tribunal also found that HS would not risk a breach of her Article 3 rights at the airport saying:

> "We have explained why the evidence …….. does not support the proposition that violence is used during the initial interview that will take place at the airport. The evidence before us reinforces the finding that there is a two stage process at the airport and that anyone identified during the initial questioning that takes place at the airport as being of interest will be taken for interrogation. At that second stage there is a real risk of serious harm, but not before."[3]

Only certain groups were at risk (see below) and these are likely to have been identified in advance by intelligence.

The Tribunal found that:

> "The country conditions, poor as they are, do not establish that the generality of those returning to Zimbabwe today would be subjected to conditions that are sufficiently grave as to infringe article 3. Even if conditions were life threatening, that in itself would not enable the appellant to rely upon article 3 to resist removal. That much is established from what might be referred to as the article 3 health cases. As can be seen from N v SSHD [2005] UKHL 31, there would be no infringement even where: 'in almost all these cases stopping the treatment will lead in a very short time to a revival of all the symptoms from which the patient was originally suffering and to an early death.'"[4]

Thus the article 3 threshold is a high one and cases have to be examined on their merits. The Tribunal noted:

> "We find that returnees, whether deportees or voluntary returnees, do not all face living conditions sufficiently severe to reach the article 3 threshold. This does not mean that each such claim must fail. Each case must be considered on its own facts…….
>
> The appellant is a qualified doctor who has worked at a state hospital in the past. It can be seen from the Country of Origin Information report that there is a huge demand for medical professionals and, despite what she says in a recent witness statement …….. there is no reason to believe that she will not immediately be welcomed back into practice and hence relatively well paid employment."[5]

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[2] Ibid Para 287
[3] Ibid Para 260
[4] Ibid Para 62
[5] Ibid Paras 64-65

Types of case that continue to be considered at risk

The Tribunal confirmed the findings of the AIT on 2nd August 2006, in the case of AA Zimbabwe CG [2006] UKAIT 000061.

In that case having ruled that "a failed asylum seeker returned involuntarily to Zimbabwe does not face on return a real risk of being subjected to persecution or serious ill treatment on that account alone", the AIT went on to identify three types of case where there may be a continuing risk of persecution and hence a need for protection:

1. Those whose military history discloses issues that will lead to further investigation by the security services upon return to Harare airport.
2. Those who have outstanding and unresolved criminal issues.
3. Those who have a political profile (possibly at a low level) considered adverse to the regime

The Tribunal in this case confirmed these categories as being as risk and added a fourth saying "The risk categories identified in SM will need to be revisited in the light of the evidence about the treatment of those active in human rights organisations and what are referred to as the 'civil society organisations'".[6]

Information for Zimbabweans who think they might be affected by this judgment

- Seek legal advice about your current position in light of decision by the AIT.

- It is not clear whether the Home Office intends to begin to enforce removals to Zimbabwe, or whether it will continue to request that refused Zimbabwean asylum seekers make a voluntary departure. There is no current evidence that Zimbabweans are being detained for removal, unless they have a South African or Malawian passport (this was ongoing before the AIT decision).

- The Refugee Legal Centre, who represented HS in the AIT, has submitted an application to the AIT for permission to appeal against the decision to the Court of Appeal.

- It is possible that the Home Office will begin to detain Zimbabweans refused asylum seekers and attempt to remove them. If you are concerned about detention and if you do not have a legal representative, or your representative is not active on your case, it is important that you have a copy of your asylum papers and your file. You can request this from your former legal representative. You can make copies of the papers and leave them with a friend. Any new legal representative will need all your papers.

- If you are detained you are entitled to make a phone call. You may want to agree an action plan in advance with a friend so that you can call them if you are detained and they can start taking action on your behalf.

- If you are detained you are entitled to apply for bail. If you have a solicitor ask them about making a bail application. You might find it difficult to find a solicitor to act for you but you can apply for bail yourself using the "Bail Notebooks for Detainees" written by Bail for Immigration Detainees (BID) and available free online at http://www.biduk.org/obtaining/notebook.htm Copies of the BID notebooks on bail are available in all detention/removal centre libraries.

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[6] Ibid Para 51