Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/13249/2011

THE IMMIGRATION ACTS

Heard at Field House	**Date Sent**
On 10th October 2013	**On 23rd October 2013**
	……

Before

UPPER TRIBUNAL JUDGE REEDS

Between

MISS M K
(ANONYMITY DIRECTION GIVEN)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Symes, Counsel instructed on behalf of Luqmani Thompson and Partners
For the Respondent: Mr C. Avery, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Zimbabwe.

2. This appeal is subject to an anonymity direction that no report or other publication of these proceedings or any part or parts of them shall name or directly or indirectly identify the claimant. Reference to the claimant may be by use of her initials but not by name. Failure by any person, body or institution whether corporate or incorporate (for the avoidance of doubt to include either party to this appeal) to comply with this direction may lead to a contempt of court. This direction shall continue in force until the Upper Tribunal (IAC) or an appropriate court lifts or varies it.

The Background

3. The Appellant left Zimbabwe on 3rd October 2002 and arrived in the UK on 4th October having been granted leave to enter as a visitor. She subsequently applied for leave to remain as a student and leave was granted from 2003 until 2009. On 28th September 2009, she applied for further leave to remain on a post-study visa which was granted until 11th October 2011. An application was made for asylum on 13th October.

4. In a notice of immigration decision dated 17th November 2011 the Respondent refused that application. Her appeal was heard by Immigration Judge Perry on 6th January 2012 and was dismissed.

5. As set out at paragraph 60 of the determination the following facts were accepted by the Respondent; that the Appellant's father was a teacher and as such was a target for ZANU-PF youths. There had been a number of violent incidents that had occurred in Zimbabwe including the family being subjected to violence in 2002 when the home was smashed and the family subjected to violence. The police "did nothing" in relation to the attacks at the family home in Harare. There was a further attack upon the family home in 2003, culminating in a serious sexual assault of rape upon the Appellant's sister and after the family had moved to escape harassment, the Appellant's parents were subjected to an arson attack in Murewa in 2009.

6. The Immigration Judge, whilst noting that "teachers are targeted in 2011" reached the conclusion that the Appellant would not be at risk upon return to Zimbabwe as there had been nothing in her account to show that she had been an activist or member of the MDC and that there was nothing in the Appellant's past or present activities that would support her assertion that she was a "perceived supporter of the MDC". At paragraph 63, the Immigration Judge rejected any link between the Appellant being perceived as a supporter of the MDC and to her father who had been beaten up by ZANU-PF youths because he was accused of teaching MDC policies. The judge found this to be a "distant and tenuous link" that she would be perceived to be an MDC supporter because her father was attacked for the reason that he taught MDC policies. The judge found that there was no evidence that the Appellant's father was a member or supporter of the MDC or that he taught MDC policies.

7. When considering risk on return, he found that there was no risk arising from her political profile because he had not found that she had any profile that would place her at risk. He found that she would not be viewed as a MDC sympathiser and that she would not be at risk merely because she had been in the UK since 2003 as she

would be able to demonstrate that she had been in the UK legally as a student. He did not find that she would come to the attention of the authorities. Thus he dismissed the appeal on asylum grounds.

8. He also considered Article 8 in that determination at paragraphs 72-75 and reached the conclusion that on the facts as presented in this case, that there was no dependency, either emotional or financial, demonstrated by the evidence in relation to her family life with her sister who did not attend the hearing. As regards her private life, he accepted that she had been in the United Kingdom since October 2002 and had studied and worked in the United Kingdom, but found that her removal would be proportionate as the extent of her private life had not been substantial and was one that could be continued in Zimbabwe. He found that she would be able to seek work and resume friendships with people that she had grown up within Zimbabwe and whilst that private life may be different it would remain the same in all essential respects, thus he dismissed the appeal under Article 8.

9. The Appellant sought permission to appeal that decision and First-tier Tribunal Judge Brunnen granted permission for the following reasons:

> "(i) The grounds on which permission to appeal is sought argued that the judge failed to take account of the fact that the Appellant, who is from Zimbabwe, is the daughter of a teacher and that she and her family have previously suffered several attacks by ZANU-PF supporters.
>
> (ii) In paragraph 60 of the determination the judge noted that it was accepted the Appellant's father was a teacher and that teachers were subject to attack in 2011. It was also accepted that the family had suffered attacks in 2002, 2003 and 2009.
>
> (iii) It is arguable that the judge misapprehended the evidence and the country guidance given in **EM [2011] UKUT 98** in finding at paragraph 62 and 65 of the determination because neither the Appellant nor her family had in fact been politically active in support of the MDC they would not be at risk of being perceived as MDC supporters. It is arguable that the judge did not take account of the evidence that teachers and their families are being perceived in this way in Zimbabwe irrespective of whether they have been fact to being politically active. It is also arguably inconsistent with the judge's statement at paragraph 63 that 'teachers are vulnerable even in 2011'. The judge gave no consideration to the implications of that vulnerability for the safety of the Appellant and arguably failed in this respect to make any finding on a relevant issue. It is arguable to that if the judge had no equated actual and perceived involvement with the MDC he might have come to a different conclusion as to whether the Appellant would be at risk on return not withstanding the points in paragraph 66 as to her long absence in Zimbabwe.
>
> (iv) The grounds refer also to the judge's reasons for finding that removal would not breach the Appellant's right to receipt for her private life and argued that he failed to take account of a letter from her employer. Article 8 does not protect and right to work. I do not consider that this letter could have had any material effects on the outcome. However I do not refuse permission to argue this ground."

10. At a hearing before the Upper Tribunal panel (Judge Coker and Judge Reeds) the Appellant was represented by Mr Jones and the Secretary of State by Ms Holmes. The panel heard submissions from the parties concerning the issues set out in the grounds seeking permission to appeal the decision of the First-tier Tribunal and following the hearing a decision was promulgated setting out the nature of the error of law found by the panel and the consequential directions. The panel reached the following conclusions as to the error of law:

> "11. We have concluded that there is a material error of law in the determination of the Immigration Judge regarding risk on return to Zimbabwe. The accepted facts were set out at Paragraph 60 of the judge's determination. Whilst the Immigration Judge noted that the profile and occupation of the Appellant's father and that serious incidents of persecution had taken place, the judge did not take account of the evidence that teachers and their family members are perceived to have links to the MDC irrespective of whether they are politically active themselves.
>
> 12. We are satisfied that the Judge failed to assess the risk in the light of the totality of the evidence and his findings including the past persecution, that her father was a teacher and perceived to be a supporter of the MDC, the rape of the sister, the arson attack, the relevance of and weight to be placed on the time between adverse incidents and since the last incident, but rather considered it solely in terms of whether her father was a member of the MDC and the risks that attached to that.
>
> 13. We find no error of law in the conclusions that he reached when considering Article 8 of the ECHR. In our judgment, the Immigration Judge had little evidence before him in respect of Article 8 and indeed at paragraph 72 of the determination, he noted that the skeleton argument had made no reference of any significance to the Appellant's rights in relation to family life or private life. Notwithstanding that, the Immigration Judge considered the Appellant's right to respect for family and private life. We find that the conclusions that he reached on the evidence and set out at paragraph 73 to 75 were conclusions that were open for him to make on the little evidence that he was presented with. There were no submissions made by Mr Jones drawing our attention to any factors that may have been overlooked or misinterpreted or elaborating on the grounds upon which permission had been granted. We are satisfied that the Judge reached a sustainable decision on the basis of the evidence before him and thus find no error of law in the Immigration Judge's assessment of the issues under Article 8 of the ECHR.
>
> 14. At the outset of the hearing we informed the parties that the country guidance decision in **EM and Others (returnees) Zimbabwe CG [2011] UKUT 98 (IAC)** had been quashed by the Court of Appeal in the decision of **JG (Zimbabwe) and CM (Zimbabwe) 13th June 2012** .
>
> 15. It was agreed between the parties, and on the stated intention to submit further evidence, that we should adjourn the hearing and for the Tribunal to issue directions.
>
> 16. We therefore preserve the findings of the Immigration Judge with regard to the findings set out at paragraph 60 but consider that it is appropriate that the appeal

proceed a further hearing to consider further evidence and submissions concerning the risk of return to the Appellant in the light of the issues raised.

17. The case shall be relisted as a resumed hearing in accordance with the directions given. "

11. Following the notification of the panel's decision concerning the error of law, the matter was not listed for a resumed hearing until September 2012 by which time the Appellant had changed her legal representatives. It appears that there was some delay in obtaining the Appellant's case file and the necessary papers.

The resumed hearing before the Upper Tribunal:

12. This is a resumed hearing before the Upper Tribunal. At the hearing the Appellant was represented by Mr Symes, Counsel, and the Secretary of State by Mr C Avery, Senior Presenting Officer. For the purposes of this hearing, and in accordance with the directions issued by the Upper Tribunal, a bundle of documentation had been presented on behalf of the Appellant and the previous documentation that had been before the First-tier Tribunal was helpfully consolidated into one core bundle. The bundle numbers pages 1 to 215 and includes within it the documents that were before the First-tier Tribunal including screening interview, substantive interview record, decision letter of 17th November 2011 and also documentation that had been produced on behalf of the Appellant including a letter from her father dated 30th October 2011, a series of certificates concerning her educational qualifications and witness statements dated 22nd November 2011 and 2nd December 2011. The bundle also contains the determination of the First-tier Tribunal promulgated on 16th January 2012 and the documentation relating to the proceedings before the Upper Tribunal.

13. As to other documentation that was not before the First-tier Tribunal, that is dealt with at pages 115 onwards. That consists of background material from an IRIN report (8th June 2012), extracts from the South-West Radio Africa (September 2012), extract ZimOnline February 2012 and extract Zim Diaspora dated November 2010. There is also other background material of more recent origin in the bundle including the US State Department Report 19th April 2013, extract from Voice of America 29th July 2013, extract from African Union dated 26th July 2013, International Crisis Group Report 29th July 2013, extracts from Agence France 1st August 2013, extract from BBC 5th August 2013, extract from Amnesty 6th August 2013, IPS News Agency report 12th August 2013 and an extract from the BBC 16th August 2013. As regards updated evidence from the Appellant, there is a further witness statement dated 30th August 2013 and a letter from the Appellant's mother dated 24th July exhibited at page 179.

14. As can be seen from the trial bundle, much of the Respondent's bundle is replicated there. For the avoidance of doubt, the Secretary of State relied upon the original bundle that had been produced on behalf of the Respondent before the First-tier Tribunal. No further documentation has been produced on behalf of the Secretary of State for the purposes of this appeal.

15. The bundle contained information that had not been placed before the First-tier Tribunal and there was no dispute between the parties that that material should not

be admitted pursuant to Rule 15(2A) and thus formed part of the evidence that was put before the Upper Tribunal.

16. The Appellant also gave oral evidence. She adopted the witness statements referred to in the preceding paragraphs as her evidence-in-chief and confirmed that she had read those statements, had understood them and the contents of them were true when she made them. There was no further oral evidence-in-chief.

17. In cross-examination Mr Avery asked the Appellant about her account. In particular she was asked to clarify the incidents and the date of them that had occurred to her family in Zimbabwe. In particular, she had referred in her statement to a most recent incident that had occurred to her father in November 2012 and she was asked if there had been any other incident save that one. She confirmed that she had said in her statement that in March that they had been forced to attend rallies. It was put to her that between 2009 and November 2012 there had been no incidents of harm to her parents. The Appellant said that between that period, there had been destruction to the property and crops and there had been times when people had come and removed them from the house and torturing them making them go outside. When asked to clarify when the house was burned (referring to her earlier account of destruction of the property) she said in 2009. When asked about when the crops were destroyed, the Appellant could not give a date but stated it had been "after they had been to the house and burnt it they still kept coming back". When asked to be more specific, she could not give any further dates or explanatory evidence.

18. Mr Avery referred the Appellant to the letter written by her mother (page 179 of the bundle). It was put to the Appellant that in that letter there was no reference to the Appellant being of interest specifically. The Appellant stated that "they always mention everything. They know it is the children". When asked why that had not been put in the statement, she stated that she was asked to tell the court about what had happened during the sexual attack. It was put to her that there was no mention in the letter (from her mother) that they had threatened the Appellant. She said "It is an ongoing thing. She had said it was not safe for me". It was put to her that if there had been a threat to her it was likely that her mother would have said so. The Appellant responded by saying "It is always about father's connections and where you children are. When looking at the family they put us all together. That's when it becomes a target".

19. The Appellant was asked that if her family had been targeted for such a significant period why they had not left the area? The Appellant stated that they did not have the means to leave the area and that "Zimbabwe is a small country, they don't have the funds, they don't have the knowledge to be somewhere safe". It was put to her that both she and her sister could help them financially. The Appellant refuted this suggestion stating that she was not working and had not worked since 2011 when she left her job at John Lewis. She said that even if she had had the money in 2009 there had been nowhere that the family could go to as they would be "known in the next city". When asked if she had discussed it with them she said that she had not stating "they know that every city they will be known". It was put to her that that was an odd position and that in those circumstances it would be open to try something. She responded by stating that it was well-known that if a family moved away from Harare they would still have the problems. She said they had attempted to move but

the danger had followed them. She confirmed that the family had moved from Harare to an area where ZANU-PF were active. When asked why they would do so knowing of the problems, the Appellant stated that this was "the best option they had. They had ties and a place away. There was a lot of ZANU-PF activity going on there and since they had been there problems had been ongoing".

20. She confirmed in her oral evidence that she had no involvement in the MDC nor did her father have any involvement in the MDC and that it was an assumption on the behalf of others based on his past employment as a teacher. Against that background she was asked why she would have a problem returning if her father had no involvement in the MDC and if she lived in an area that was not her home area. She was asked why would they seek her elsewhere in Zimbabwe? The Appellant stated "The perception is not dead. They are pursuing our family. I still have to be MK. I can be traced back to my father and there is a danger that they will locate me. I am still linked to my family".

21. There was no re-examination. In answer to questions from myself, she confirmed that when the family left Harare they had sold the house. They did not move immediately because it took a while for them to sell the house and they had rented it out at first. The money that they obtained from the sale of the house they used to help her sister financially and to build up the property that they had moved to. She confirmed that her father was no longer a teacher and had gone into retirement in 2004. She did not know her father's date of birth but thought he was 73 or 74. As to her circumstances, she confirmed that she had not worked since she had the job with John Lewis in 2011. That employment was as an events organiser and carrying out general administrative duties.

22. At the conclusion of the evidence I heard submissions from each of the parties. Mr Avery on behalf of the Secretary of State relied upon the refusal letter notwithstanding its age. He submitted that there was still some relevance to that document. He submitted that the first question the Tribunal would have to consider was whether or not the Appellant was giving a truthful account concerning events in Zimbabwe by reference to the most recent events. He submitted that there was a significant degree of vagueness about the events that had occurred and that was surprising given the nature of them. Her evidence concerning events that had happened in Zimbabwe post 2009 were not set out in any statements. With regard to the letter from her father in 2011, its contents are non specific and covered a long period of time including the period when the family lived in Harare. There would be no reason why people would ask about his daughter in 2011. The more recent letter from her mother, the contents when they were considered do not suggest a direct interest in the Appellant from the authorities given that she has been in the United Kingdom for a substantial period of time. The account given by the Appellant concerning her family's difficulties, the issue remained as to why the family themselves had not relocated. The evidence from the Appellant was that the harassment and targeting of the family had gone on for a substantial period of time from the ZANU-PF yet they had moved from Harare to another area which had strong ZANU-PF connections. When they had sold the home, there was no answer to the question as to why they had not moved elsewhere. Why the family still remained in that area, given its ZANU-PF connections and the events that had been

said to occur was also puzzling. It did not seem to be logical or credible. He further submitted that there was no interest in the Appellant and that was a point that was hard to take seriously and was not supported in the recent evidence via the letter.

23. He submitted that there would be no reason why the Appellant would be restricted to that area and that the issue of internal relocation was a real one. The Appellant had good qualifications and employment experience thus she could relocate to a different part of Harare, obtain employment and live independently. It is not credible that anyone would individually be looking for this Appellant given the low profile of her family and it was not reasonably likely that such interest would extend outside an area where her father is known. In the circumstances of this case, the Appellant could relocate. There is extensive case law relating to Zimbabwe showing that the conditions have improved considerably and certainly since the previous set of elections. The violence associated with the elections has been remarkably low given the history of Zimbabwe. The MDC has given up its challenge to the election results (see the documentation in the Appellant's bundle).

24. When considering the country guidance relating to teachers (see **MN**) the Appellant is not a teacher. In fact her father is no longer a teacher and it is difficult to see why anyone would have any interest in her upon return.

25. In respect of the skeleton argument produced by Mr Symes, whilst the family home has been sold in Harare there is no reason why she could not go back to Harare itself or within an area it being a large city. The country guidance of **CM** confirmed that that would be a realistic option to relocate to. Contrary to the submissions made in the skeleton argument, Mr Avery stated that it remained a submission that the Appellant would be able to find work, support herself, and that she would not be restricted to relocation to an area where she had previously lived. Thus he invited the Tribunal to dismiss the appeal.

26. Mr Symes relied upon the helpful skeleton argument that he produced in advance of the hearing. The skeleton argument set out past history and the previous appeal hearings. At paragraphs 12 to 17 it set out country guidance and at paragraphs 18 to 20 dealt with the factual basis of her claim. Paragraphs 21 to 24 dealt with the risks faced by the Appellant at the airport based on the evidence in her case. That part of the skeleton argument submitted that as she was a person whose father had suffered serious harm as a result of imputed political opinion as an MDC supporter based on his role as a school teacher and that risks he faced were exacerbated by suspicions that his family abroad remitted funds to the MDC, as a family member of such a person she would be at risk given her association and that would be revealed under interrogation at the airport on return. It was submitted that there "may well be some institutional memory of these suspicions capable of featuring in official records". It was further submitted that given "serious harm and threats directed towards the Appellant in the past, there was a presumption of its repetition by reference to 339K of the Immigration Rules". Paragraphs 27 to 29 dealt with the issue of internal relocation. Within those paragraphs the general thrust of them but particularised was that internal relocation was not available to this Appellant for the reasons advanced at paragraph 29.

27. Mr Symes also made the following oral submissions. As to the past events, he submitted that she had given a credible account and there was nothing implausible about the events recounted. Concerning the "geographical filter" there was a real risk of persecution of those living in a ZANU-PF area thus the account given has some plausibility about it. Whilst it has been stated on behalf of the Secretary of State the family would have moved if those events had occurred, Mr Symes submitted that they were elderly and preferred to take their chance in an area known to them. He submitted that there was evidence given by the Appellant in her interview (question 37) concerning money that she had sent from the UK and that that placed her at risk.

28. When looking at the risk, he invited the Tribunal to take into account 339K of the Immigration Rules concerning past persecution and that objectively she met the test.

29. He submitted that the issue came down to one of relocation. In this respect he invited the Tribunal to consider the Appellant's witness statement in which it is said that she had clear links by her name to her father and that this did not apply to her sister living in Zimbabwe who had married and therefore had a different name and was able to subsume herself within Zimbabwean society. In addition her accent has a London lilt and she would stand out in the context of a country where money was scarce and also in the light of her length of residence. As to the point made by Mr Avery concerning the prospects of employment, the point made by the Appellant in her statement was that working in the hospitality industry such as in hotels in Harare there are a number of people who would act as an informant and inform on this Appellant and from that she would receive adverse attention. The same would be true of rented accommodation that a check would be made and that would lead her to being connected to her father. She would not be able to join her sister and would be at risk of the militia who are active in Harare. In general internal relocation would be unavailable to the Appellant because of danger but also because it would be unduly harsh. She would not be able to survive as a street vendor given her characteristics. Thus she had demonstrated that she would be at real risk of persecution or serious harm upon return to Zimbabwe.

30. I reserved my determination.

The Legal Framework

Burden and Standard of Proof

31. The burden of proof rests on the Appellant to prove her case on the lower standard of a reasonable degree of likelihood, which I take to be the same as "substantial grounds for believing" or "real risk". Where below I refer to 'risk' or 'real risk' this is to be understood as an abbreviated way of identifying: (1) whether on return there is a well-founded fear of being persecuted under Refugee Convention; (2) whether on return there are substantial grounds for believing that a person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended

Immigration Rules; and (3) whether on return there are substantial grounds for believing that a person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of ECHR. I have to consider the evidence in the round and, so far as the assessment of the Appellant's case is concerned, place it in the context of all of the background evidence.

Internal Relocation

32. Of particular relevance in this case is paragraph 339O headed "Internal Relocation". This states:

> "i. The Secretary of State will not make:
>
> (a) a grant of asylum if in part of the country of origin a person will not have a well-founded fear of being persecuted and the person can reasonably be expected to stay in that part of the country; or
>
> (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
>
> ii. In examining whether a part of the country of origin or country of return meets the requirements in i. the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
>
> iii. It applies notwithstanding technical obstacles to return to the country of origin or country of return."

33. In considering the proper approach to the issue of internal relocation I have also to apply the principles set out by the House of Lords in **Januzi [2006] UKHL 5** (which adopts the criteria now contained in paragraph 339O but also contains more detailed guidance) and **AH (Sudan) [2007] UKHL 49**.

34. In **Januzi** their Lordships held that the test for whether it would be unreasonable for an asylum seeker to relocate to a safe haven within his own country, was not whether the quality of life there failed to meet the basic norms of civil, political and socio-economic human rights, but whether he would face conditions such as utter destitution or exposure to cruel or inhuman treatment, threatening his most basic human rights. There was no presumption that when persecution emanated from agents of the state or where the state encouraged or connived in that persecution by others, there could be no viable internal flight option. The greater the power of the state over all parts of the asylum seeker's country the less viable such an option would be and vice versa.

35. In **AH (Sudan)** their Lordships repeated that the test to determine whether internal relocation was available was as set out in **Januzi**, namely whether it was reasonable to expect the Appellant to relocate or whether it would be unduly harsh to expect him to do so. The 'unduly harsh' test did not require conditions in the place of relocation to reach the Article 3 ECHR level. The enquiry was to be directed to the

situation of the particular Appellant, whose age, gender, experience, health, skills and family ties might all be very relevant. Cases had to be assessed holistically with specific reference to personal circumstances, including past persecution or fear thereof in family and social relationships.

36. In assessing risk to an appellant whose family members have suffered persecution or serious harm it is also important to bear in mind the principles set out at Recital 27 of the Qualification Direction 2004/83/EC that:

> "(Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status)".

37. I have also had regard to the circumstances of the individual where that person has already been subject to persecution or serious harm and therefore falls into the category of persons to whom to Rule 339K of the Immigration Rules applies mirroring Article 4 of the Qualification Directive. That Rule is in the following terms:

> "The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution and such harm, will be regarded as a serious indication of the person's well founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated".

Findings of fact and analysis of the evidence:

38. The starting point for an assessment of risk are the findings of fact made by the First-tier Tribunal that have been preserved. Those findings are set out in the determination of First-tier Tribunal Judge Perry at paragraph 60. They are as follows. The Appellant's father was a teacher and had been a target for ZANU-PF youths. In July 2002 the family was subjected to violence when the Appellant was attacked at the family home by ZANU-PF supporters who forced their way into the house and sought to force themselves on the Appellant and her sister, beating up their father when he intervened. The police did nothing to help when the matter was reported to them. The Appellant took the opportunity to leave Zimbabwe and entered the United Kingdom on a visit visa. In January 2003 the family home was attacked by ZANU-PF supporters who wrecked the house contents and beat her father. It is asserted that they questioned her parents about her whereabouts and accused her of being sponsored by the MDC to come to the United Kingdom. In February 2003 ZANU-PF supporters returned and her sister S was the subject of a serious sexual assault. She left the home area in 2004. In 2009, after the Appellant's parents moved to Murewa the family home was set on fire and the kitchen was burned.

39. Those are the preserved findings that are set out at paragraph 60 of the determination of the First-tier Tribunal. It is plain from the determination that the judge rejected some of the facts advanced by the Appellant as the basis for her asylum claim. That was in respect of a letter sent by the Appellant's father dated 30th October 2011 in which the judge considered at paragraphs 64 and 68 of the

determination noting that she did not find it credible that ZANU-PF youths were "looking and asking for the whereabouts of my daughter MK". The judge did not find her father's reference to the visit of youths in Murewa and their interest being in the Appellant being either plausible or credible.

40. It is submitted in the skeleton argument at paragraph 19 that the finding of the First-tier Tribunal that the father's evidence that she was at a continued risk is not credible is a finding that must be revisited by the Upper Tribunal. For the purposes of this hearing, and as a result of the directions given, I have heard further evidence from the Appellant including evidence of an updated nature dealing with a further incident that she asserts has occurred in November 2012 and for the Appellant to give further evidence generally concerning the issue of risk to her arising out of the profile she asserts her father has in Zimbabwe which is imputed to her. Her evidence has been the subject of cross-examination by Mr Avery on behalf of the Respondent and I have set out earlier his submissions concerning the nature of her evidence. Therefore I am required to make further findings of fact based on the evidence I have heard and also to consider the context of the evidence as a whole when making an assessment of the risks faced to this Appellant.

41. The first incident relates to 2002 and is set against the background of the Appellant's father's occupation as a teacher. The background material relating to teachers and problems that they have met in Zimbabwe is set out in the refusal letter at paragraphs 50 to 63. The background evidence was also summarised by the Upper Tribunal in the most recent country guidance decision of **NN (Teachers; Matabeleland/Bulawayo: risk) Zimbabwe CG [2013] UKUT 00198 (IAC)** where the Tribunal at paragraph 33 onwards summarised the development of the guidance relating to teachers in Zimbabwe as conditions have changed for the better or for the worse. They then went on to consider the current country evidence and the fresh evidence upon which the Appellant had relied in the appeal. It is apparent from that background material referred to by the Tribunal and also by the Secretary of State that teachers in recent years have been the subject of attacks in Zimbabwe and were targeted in postelection violence as a result of their occupation and by being linked to the MDC.

42. It is plain from the circumstances of the attack in 2002, which is accepted, that it arose as a result of the Appellant's father's occupation. It cannot be said that the incident arose because of the Appellant's profile per se nor can it be said that it was due to any links with the United Kingdom because at that stage she was still resident in Zimbabwe. There was also an incident in January 2003 where the home was attacked by ZANU-PF supporters and her father was attacked and in February 2003 the Appellant's sister was the subject of a serious sexual assault. The family remained there for a period post 2003. According to the oral evidence given by the Appellant at this hearing there were problems in selling the house that were caused also by renting it out and it took a period of six months before a sale could be achieved. The Appellant's parents moved to Murewa in May 2004.

43. I have considered the evidence concerning the period between May 2004 to 2009. Having considered the evidence as a whole, I have reached the conclusion that there were no incidents of any significance that took place between May 2004 and the

incident that occurred in 2009. I have reached that conclusion for the following reasons:-

(a) The evidence contained in the Appellant's statement (22nd November 2011) was that harassment had continued throughout the years and in 2009 their home was set on fire and the kitchen was burnt (paragraph 8). When interviewed the Appellant was asked about the events in Murewa and in particular, whether apart from verbal harassment her parents faced any other persecutory harm. The Appellant replied that they had but the biggest was in 2009 when the place was set on fire calling them traitors and getting money sent over from the UK (see question 37). However the questions continued and at question 40 she was asked "You have told me of the 2009 event. What else happened to your parents between 2004-2009?" The reply was "Yes ZANU-PF set fire to the crop of maize. Another time he was beaten. There were so many incidents going on from 2009 up to this date". A careful consideration of those questions in the interview between questions 37 and 40 relates solely to the period between 2004 and 2009. Whilst I would accept that during that period there was likely to be harassment and verbal abuse as claimed given that they were living in a ZANU-PF area, I am not satisfied that the account given by the Appellant in her oral evidence before me that during this time there were many incidents, up to 15 incidents, which she described as "constant persecution" that was "almost like a patrol" is not consistent with the account that she gave when interviewed in 2011.

(b) I do not find that there is a reasonable likelihood that they would have remained between 2004 and 2009 in Murewa if they had been the subject of "constant persecution" in the way that the Appellant described in her oral evidence before me. During this period of time they had access to funds as it was the period of time when the Appellant was a student in the United Kingdom. They had sold their family property and thus if they had been subjected to such persecution I am satisfied that there is a reasonable likelihood that they would have taken the opportunity to move to a different place.

(c) I also take into account that in cross-examination as noted by Mr Avery in his submissions, she was unable to give any specific examples or dates in her evidence concerning the period between 2004 and 2009.

44. I now turn to the incident that occurred in 2009 where the family home was set alight and the kitchen was burned. It is common ground that the Respondent accepted that that incident occurred. The background evidence relevant to that period of time demonstrates that ZANU-PF militias operated as "de facto enforcers" of government policies and had committed assault, torture, rape, extralegal evictions and extralegal executions without fear of punishment, the incidence of these abuses increased significantly in 2008 and continued, though at a decreased rate, in 2009". (See Freedom in the World 2010 Zimbabwe covering events in 2009).

45. I have considered the background to this incident. As set out in the preceding paragraphs, I have not found that there were any incidents of significance between 2004 and 2009 but from the evidence would accept that in the light of the background material that the Appellant's parents were reasonably likely to be the subject of some harassment, verbal abuse and that their crops may have been destroyed, however I do not accept the level described by the Appellant that the Appellant's parents suffered during this period "constant persecution" in the light of her vague and non specific evidence before me and the fact that it is not consistent with the Appellant's family remaining in that area for such a significant period of time. Whilst it has been argued by Mr Symes that this was her family home, they did obtain the proceeds which were not spent on purchasing a new home according to the Appellant's oral evidence, but to assist in the rebuilding of their old home and could have used the proceeds to move elsewhere or at the very least join their other daughter who was living in another part of Zimbabwe at the time.

46. The Appellant's father retired from teaching in 2004. When considering the Appellant's factual account, it has been submitted on behalf of the Appellant that part of the circumstances that gave rise to the risk related to the Appellant's absence and the assertion that it had been said they were receiving remittances or money from the United Kingdom.

47. I have considered the evidence in respect of this as relevant to the incident that occurred in 2009. In interview it was put to the Appellant that when ZANU-PF supporters came to the house and they had accused her parents of receiving money from the UK, it was put to her how would ZANU-PF in Murewa know that she was in the United Kingdom? The Appellant gave an explanation as follows:-

> "They ask where are your children? My parents say they disowned us. The same things in Harare can travel. They have good communication. I am not sure how they do it."

It is plain from the explanation that she gave in interview concerning the events in 2002 and 2003 that the ZANU-PF supporters in Harare knew that she had gone to the United Kingdom because the information had probably been given to them from the neighbours (see interview). It is also plain from the evidence before me that those involved in the incidents in Harare and in Murewa have not been identified or given any type of description; whether they were part of the same group, whether they were the same individuals. They have only ever been described in terms as "ZANU-PF supporters" (see interview) or "ZANU-PF youths" (see letter at F1). Against that background I do not find that it has been substantiated to the lower standard that these people involved were any linked, homogenous group with any significant personal profile or characteristics. It has not even been demonstrated that they were linked by any common theme, other than loosely being identified as "Zanu –PF supporters" or even knew each other.

48. I do not accept that information from 2002 / 2003 travelled from Harare to Murewa in the way asserted by this Appellant. I have reached that conclusion for a number of reasons. The geographical distance between Harare and Murewa would preclude that as being reasonably likely and as to the lack of profile of those concerned, either

on the basis that they knew each other or that they would relay information of such an age. The Appellant had not been in Zimbabwe since 2003 and had not moved with them to Murewa in 2004. There has been nothing suggested in the evidence before me to demonstrate that the local ZANU-PF in Murewa would even be aware of her previous presence or the circumstances of the 2002/2003 attack. I find that the circumstances of the earlier incident can be distinguished because the account given by the Appellant is that neighbours in the area have told local ZANU-PF supporters/youths that the Appellant had gone to the United Kingdom. I do not find that there is a reasonable likelihood that the same neighbours would inform unidentified ZANU-PF supporters who live a significant geographical distance away following such a significant time lapse of an incident in 2002 to 2003. I find that that stretches credulity.

49. I have also considered the period from 2009 until November 2012. The Appellant made her claim for asylum on 13th October 2011 having been in the United Kingdom since 2002. By reason of that application she was interviewed by the Respondent. The interview took place on 28th October 2011. She was asked at that time when she had last spoken to her parents and she said "about four weeks ago" (question 57). At question 58 she was asked about the current situation for her parents. She said "they live day to day. They don't know what tomorrow will be. We are a Christian family and we leave things in God's hands and pray we will be OK". There was no reference to any incidents occurring at the date or at the time of the interview in October 2011 dealing with events post the 2009 incident in Murewa. This was a point made on behalf of the Respondent in the refusal letter at paragraph 69 where it made reference to the incident occurring in 2009 but that her parents had remained in Zimbabwe. The Respondent noted that it was now nearly 2012 and that it had not been stated on the Appellant's behalf that anything else had occurred during that period. The Appellant responded to that assertion in a document entitled "comments on the refusal letter" dated 2nd December 2011 which was adopted as part of her evidence. She says this:-

> "At no point in interview did I say they were peaceful. My parents still live in fear. They don't want to tell me about incidents that occur."

I have considered the evidence about this period of time and what is said by the Appellant. I do not accept that if there had been any incidents that the Appellant would not have made reference to them either in her interview or in her statement, particularly that that dealt with the comments made in the refusal letter. The purpose of her family recounting incidents to the Appellant would be to ensure that she knew what was happening in Zimbabwe so that she did not return and put herself at risk. I find that there is a reasonable likelihood that if any incidents had occurred post 2009 that her parents would have told her about those events to ensure her safety. In the letter that her father sent on 30th October 2011 (see F1) there are no references to any incidents that occurred to them nor are there any incidents referred to in her witness statement. The evidence before the First-tier Tribunal at the hearing that took place on 6th January 2012 also makes no reference to any other incidents post 2009.

50. It is against that background that I have considered the letter sent by the Appellant's father on 30th October 2011 (F1) the contents of which the First-tier Tribunal did not find to be credible. As set out in the skeleton argument this evidence requires further assessment in the light of the evidence as a whole.

51. From my analysis of the evidence earlier, there have been no incidents described by the Appellant or particularised that took place following the incident in 2009 until 2012. The last incident that she relied upon during her asylum claim which was heard by the First-tier Tribunal in January 2012 related to the incident in 2009. Whilst the skeleton argument refers to the interview at question 40 as providing evidence that there were events that occurred post the 2009 incident, I find that that submission misreads the answer and the way that the question was framed. It is plain from reading question 40, both the question and the answer, that the interviewer was asking about what had happened specifically between 2004 and 2009 the previous questions relating to the incidents that occurred between that period (see question 37). The Appellant had been answering questions in relation to the period 2004 and 2009. Nonetheless for the reasons that I have given earlier I reject the Appellant's account that during this period of time the family were subjected to "constant persecution" as I find that none of the incidents have been particularised, her evidence was unimpressive and vague concerning those incidents when asked about them in cross-examination.

52. Furthermore her statement at paragraph 8 gave no indication of further incidents concerning family members in Murewa and there were no references to any incidents that had taken place in the letter from her father dated 30th October 2011. As Mr Avery submits, the letter dealt with historical incidents in Harare but not to any recent events. The issue that arises from that letter relates to personal risk to this Appellant. The contents of the letter refer to ZANU-PF youths coming to look and asking for the whereabouts of the Appellant. I have set that letter against the findings that I have made concerning the earlier periods. I do not accept that in 2011 unidentified ZANU-PF youths would have been searching for the whereabouts of the Appellant. There is no credible evidence before the Tribunal as to how these unidentified ZANU-PF youths or supporters either knew of her existence nor how they would know that she had gone to the United Kingdom. The explanation given by the Appellant previously was that the neighbours in Harare had told them by reference to the events in 2002 and 2003, however when asked to account in her interview as to how ZANU-PF would know in Murewa that she had gone to the United Kingdom the only explanation that she could give is that the news travels. I have found that to be an implausible event given the geographical distance between Harare and Murewa and the time lapse of the events in 2002/2003 and the next event of significance in 2009. I do not find that it is plausible or credible that in 2011 the ZANU-PF were specifically asking where this Appellant was. It is significant that in the letter it only identifies the Appellant and although there is another daughter in the United Kingdom there is no reference to her nor is there any reference to a further daughter who lives in Zimbabwe. There has been no evidence before this Tribunal to link those individuals in Harare with any individuals in Murewa, indeed they have not been described in any way whatsoever but just given a basic description as "ZANU-PF youths" or "ZANU-PF supporters". There is also no reason given for their interest in her. Thus I reject that

evidence and do not find that there have been any attempts to locate this Appellant whilst she has been in the United Kingdom or any interest shown in her whilst her parents have been in Murewa from 2004 to date.

53. Having considered the evidence in its totality, I reject the claim that it is a ZANU-PF suspicion that family members were a conduit for remittances from the United Kingdom and that this was a major exacerbating factor. I do not find that that has been demonstrated by the evidence when viewed as a whole for the reasons that I have set out earlier.

54. It is now asserted that a further incident occurred in November 2012 which is a significant period of time since the last incident that occurred in 2009. The circumstances are set out in the Appellant's most recent witness statement and by a letter that was sent by the Appellant's mother. It is asserted by the Appellant that in November 2012 her father was attacked by a group of men who were members of the militia and had carried out a serious sexual assault upon her father (see paragraph 14 of the statement). It is said that during the telephone call in which this was relayed to the Appellant by her mother, her sister Ruth who was also present in the United Kingdom heard the contents of the telephone call (see paragraph 20). The letter in support of this is from the Appellant's mother at page 179. It consists of a letter dated 24th July 2013 and reports the attack from "ZANU-PF". The letter refers to the attack that happened in November whereby it is said they:-

> "Forced their way into our home destroying our property and beating us both which resulted in the sexual attack on my husband, to this day my husband has not recovered from this attack and remains unable to talk about it. … This area continues to be a strong area for ZANU-PF and it would be impossible to hide her".

The letter asks that the United Kingdom allow for the Appellant to remain here for her safety.

55. Mr Avery on behalf of the Respondent has submitted that the account given by the Appellant is one that has been lacking in credibility and that she has not told the truth concerning events in Zimbabwe. I have had to consider the circumstances of this incident set against the background which I have referred to in the preceding paragraphs.

56. In summary I have found that after the incidents in 2002 / 2003 there were no incidents of any significance between 2004 and 2009 when the parents were in Murewa. It is common ground that the family suffered an arson attack in 2009. When set against the background evidence of events in 2008 and 2009 there is support for such an incident occurring. I did not find that there had been any cogent evidence that there were any incidents between 2009 and the incident that was said to have occurred in 2012 based on the evidence the Appellant gave herself in her interview and that that was given before the First-tier Tribunal. Therefore there has been a significant lapse of time as the last incident was in 2009 where there has been no interest in the Appellant's parents despite living in a ZANU-PF area and having been in former employment as a teacher. There is no corroboration of the 2012 incident save for the letter written by her mother which may be seen as

self-serving and not supporting the incident from any other reliable source. There is no medical evidence produced nor has the Appellant's sister, who witnessed the telephone call being made and the contents of it, provided neither a witness statement nor attended court to give evidence about it. It was observed by the First-tier Tribunal Judge that her sister Ruth had not given evidence before the First-tier Tribunal despite her having produced a letter claiming that the Appellant's life was at risk if she returned to Zimbabwe (see paragraph 69 of the First-tier Tribunal determination). There has been no explanation as to why her sister who heard the telephone call and could give evidence as to what was said has not given evidence before this Tribunal or provided a statement.

57. I have not been referred to any background evidence concerning Murewa and any events in November 2012 which would give rise to such an incident of such severity, save that it has been asserted in general terms that Murewa is a ZANU-PF area. Thus the lack of support for such a serious allegation, given the significant time that has elapsed between incidents and the timing of this recent incident in the current proceedings gives rise to concern. I have also had the opportunity to hear evidence from the Appellant who has given vague and unimpressive evidence. When asked about her mothers letter and that there was no reference to her being at risk or threatened with harm, she said " they always mention everything; they know the children are here". She also claimed in her oral evidence that " the perception is not dead… they are pursuing our family." When set against the history as I have set out above, I do not accept that her evidence as credible that the unnamed individuals are "pursuing the family".

58. I therefore do not find that the burden of proof has been discharged by the Appellant to demonstrate that there is a reasonable likelihood that the incident in November 2012 occurred in the way described.

59. Even if I accepted that an incident occurred in November 2012, I would have to consider it in the light of the findings set out above and I would have to consider the circumstances that surround it. There is no reference made to the Appellant specifically or her whereabouts in connection with her presence in the United Kingdom. There is no reference in the evidence before me that those responsible have any interest in the Appellant nor is there any direct interest in her from the authorities.

60. I have considered the most recent background evidence relating to Zimbabwe. The Upper Tribunal in the decision of **CM** (**EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC)** refers to the earlier litigation but noted that the country guidance in **EM** has been reinstated by the publication in January 2013 of **CM**. This had the effect of replacing (and displacing) the country guidance in **RN** making clear not just that the country guidance in **EM** was re-established but bringing that guidance up-to-date to the extent that the scope of that hearing permitted. Whilst **CM** has not been designated in its entirety as a country guidance case, what **CM** has to say about the position in Zimbabwe as at October 2012 whilst not comprehensive and not authoritative country guidance, is worthy of note. As the Tribunal has stated in **NN (Teachers: Matabeleland/Bulawayo: risk)**

Zimbabwe CG [2013] UKUT 00198, the position was not found to have materially altered since the period under consideration in **EM**.

61. It is convenient to set out here the current country guidance, which is **CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059**. The case was added to the country guidance list on 1st February 2013, after the date of the hearing before the Upper Tribunal. It is head noted as follows:

> "(1) There is no general duty of disclosure on the Secretary of State in asylum appeals generally or Country Guidance cases in particular. The extent of the Secretary of State's obligation is set out in R v SSHD ex p Kerrouche No 1 [1997] Imm AR 610, as explained in R (ota Cindo) v IAT [2002] EWHC 246 (Admin); namely, that she must not knowingly mislead a court or tribunal by omission of material that was known or ought to have been known to her.
>
> (2) The Country Guidance given by the Tribunal in EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) on the position in Zimbabwe as at the end of January 2011 was not vitiated in any respect by the use made of anonymous evidence from certain sources in the Secretary of State's Fact Finding Mission report of 2010. The Tribunal was entitled to find that there had been a durable change since RN (Returnees) Zimbabwe CG [2008] UKAIT 00083. The Country Guidance in EM does not require to be amended, as regards the position at that time, in the light of -
>
> (a) the disclosure by the Secretary of State of any of the materials subsequently disclosed in response to the orders of the Court of Appeal and related directions of the Tribunal in the current proceedings; or
>
> (b) any fresh material adduced by the parties in those proceedings that might have a bearing on the position at that time.
>
> (3) The only change to the EM Country Guidance that it is necessary to make as regards the position as at the end of January 2011 arises from the judgments in RT (Zimbabwe) [2012] UKSC 38. The EM Country Guidance is, accordingly, re-stated as follows (with the change underlined in paragraph (5) below):
>
> (1) As a general matter, there is significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in RN. In particular, the evidence does not show that, as a general matter, the return of a failed asylum seeker from the United Kingdom, having no significant MDC profile, would result in that person facing a real risk of having to demonstrate loyalty to the ZANU-PF.
>
> (2) The position is, however, likely to be otherwise in the case of a person without ZANU-PF connections, returning from the United Kingdom after a significant absence to a rural area of Zimbabwe, other than Matabeleland North or Matabeleland South. Such a person may well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF authority figures and those they control. The adverse attention may well involve a requirement to demonstrate loyalty to ZANU-PF, with the prospect of serious harm in the event of failure. Persons who have shown themselves not to be favourably disposed to ZANU-PF are entitled to

international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty (RT (Zimbabwe)).

(3) The situation is not uniform across the relevant rural areas and there may be reasons why a particular individual, although at first sight appearing to fall within the category described in the preceding paragraph, in reality does not do so. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion are weak or absent.

(4) In general, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South is highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee is a MDC member or supporter. A person may, however, be able to show that his or her village or area is one that, unusually, is under the sway of a ZANU-PF chief, or the like.

(5) A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF.

(6) A returnee to Bulawayo will in general not suffer the adverse attention of ZANU-PF, including the security forces, even if he or she has a significant MDC profile.

(7) The issue of what is a person's home for the purposes of internal relocation is to be decided as a matter of fact and is not necessarily to be determined by reference to the place a person from Zimbabwe regards as his or her rural homeland. As a general matter, it is unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare will have a viable internal relocation alternative to a rural area in the Eastern provinces. Relocation to Matabeleland (including Bulawayo) may be negated by discrimination, where the returnee is Shona.

(8) Internal relocation from a rural area to Harare or (subject to what we have just said) Bulawayo is, in general, more realistic; but the socio-economic circumstances in which persons are reasonably likely to find themselves will need to be considered, in order to determine whether it would be unreasonable or unduly harsh to expect them to relocate.

(9) The economy of Zimbabwe has markedly improved since the period considered in RN. The replacement of the Zimbabwean currency by the US dollar and the South African rand has ended the recent hyperinflation. The availability of food and other goods in shops has likewise improved, as has the availability of utilities in Harare. Although these improvements are not being felt by everyone, with 15% of the population still requiring food aid,

there has not been any deterioration in the humanitarian situation since late 2008. Zimbabwe has a large informal economy, ranging from street traders to home-based enterprises, which (depending on the circumstances) returnees may be expected to enter.

(10) As was the position in RN, those who are or have been teachers require to have their cases determined on the basis that this fact places them in an enhanced or heightened risk category, the significance of which will need to be assessed on an individual basis.

(11) In certain cases, persons found to be seriously lacking in credibility may properly be found as a result to have failed to show a reasonable likelihood (a) that they would not, in fact, be regarded, on return, as aligned with ZANU-PF and/or (b) that they would be returning to a socio-economic milieu in which problems with ZANU-PF will arise. This important point was identified in RN … and remains valid.

(4) In the course of deciding CM's appeal, the present Tribunal has made an assessment of certain general matters regarding Zimbabwe as at October 2012. As a result, the following country information may be of assistance to decision-makers and judges. It is, however, not Country Guidance within the scope of Practice Direction 12 and is based on evidence which neither party claimed to be comprehensive:

(a) The picture presented by the fresh evidence as to the general position of politically motivated violence in Zimbabwe as at October 2012 does not differ in any material respect from the Country Guidance in EM.

(b) Elections are due to be held in 2013; but it is unclear when.

(c) In the light of the evidence regarding the activities of Chipangano, judicial-fact finders may need to pay particular regard to whether a person, who is reasonably likely to go to Mbare or a neighbouring high density area of Harare, will come to the adverse attention of that group; in particular, if he or she is reasonably likely to have to find employment of a kind that Chipangano seeks to control or otherwise exploit for economic, rather than political, reasons."

62. In **CM**, the panel considered the level of politically motivated violence and human rights violations in Zimbabwe between paragraphs 192 and 195 and found that overall the evidence has to a downward trend of politically motivated human rights violence in Zimbabwe is cogent.

The background evidence before the Upper Tribunal:

63. Much of the background evidence referred to in the Appellant's bundle relates to historical problems for those employed as teachers and in particular the run-up to the June 2008 Presidential Elections (see page 123 of the Appellant's bundle). The article is written in the context of what might happen in view of the elections that had not occurred at the date that the article was written.

64. The Tribunal in **CM** at paragraph 237 stated this:-

"… No one can rule out a resumption of some politically motivated violence when elections are called, there is no inevitability or even probability that elections will see a complete repetition of the actions taken in 2008."

65. The Tribunal were right to take that view and it is common ground that the elections did not lead to the type of violence that had been seen previously in 2008. An article in the Appellant's bundle (page 181) relates to the African Union who "have expressed appreciation for the peace that has prevailed in the run-up to the Zimbabwean harmonised elections to be held on July 31st". Whilst the article refers to concerns about people not being registered to vote, it is plain from that document that the position regarding the run-up to the elections appeared to be in the main trouble-free. That compares with the International Crisis Group article (see page 183) which compares the situation as to what they thought would happen. At page 193 (Appellant's bundle article dated 1st August 2013) it refers to the high turn out across the country for the elections since the polls of 2008 and notes "there were no reports of widespread violence this time round despite the fierce rhetoric of the campaign" (see page 197 of Appellant's bundle). At page 195 of the Appellant's bundle it states "at least it was peaceful" was the risk assessment of one Harare based diplomat after the Presidential Elections. The result of the elections meant that President Mugabe began his seventh term in office; ZANU-PF won two thirds of the seats in Parliament and took 61% of the vote.

66. Set against that material, there is some evidence of supporters of the MDC being attacked (see page 197) the article refers to eleven people claiming to have been attacked in a township who sought refuge in the MDC headquarters. The article goes on to state that the MDC itself would not be able to control its angry supporters if such events continued. At page 198 it was recorded that women political activists told Amnesty International that they were threatened with violence in the Mukumbwa district and page 201 refers to reports of intimidation of 38 supporters who served as polling agents and electors forced to leave homes in Mbare. The thrust of the background evidence placed before this Tribunal from the Appellant's bundle demonstrates that the politically motivated violence that had been seen in 2008 did not, in the main, occur in the elections either to the run-up to them or during or after the elections in July 2013. Whilst there are some reports which I have referred to of some incidents, it has not been demonstrated that such violence has been widespread or in the terms that it has occurred before in Zimbabwe.

Conclusions:

67. I now turn to the individualised risk to this Appellant in the light of the findings of fact I have set out, including the preserved findings. I take into account the principles set out at Recital 27 of the QD in respect of family members and also Rule 339K but I find that in this Appellant's case that there are no good reasons to consider that any persecution or serious harm would be repeated for the reasons given below. The first risk identified by Mr Symes relates to the risk at the airport. The risk at the airport must be assessed in the light of the findings of fact this Tribunal has made in respect of any profile that she may have. The Appellant left Harare when she was 17 thus she has never voted when in Zimbabwe (confirmed

by her at question 5 of the interview). She has no political connections of her own to the MDC and she is not someone in the past who has been identified as an opponent of the Mugabe regime. Furthermore it has not been demonstrated that her father has been involved in any political activity. Her case is based on political opinion imputed to her by reason of her father's past employment. It is common ground that he retired from teaching in 2004. Whilst it could be said that he had a local profile, there is no evidence before the Tribunal that his profile had any significance beyond that area. I have rejected the assertion and the evidence that during any attack in Murewa that the Appellant's whereabouts had been referred to at that time or at any other.

68. The country guidance case dealing with the risk at the point of return remains **HS (Returning asylum seekers) Zimbabwe CG [2007] UKAIT 00941** in which the Tribunal found that the process of screening returning passengers is an intelligence led process and the CIO will generally have identified from the passenger manifest in advance, based upon such intelligence those passengers in whom they have any possible interest. The fact of having made an asylum claim abroad is not something in itself that would give rise to adverse interest on return. At paragraphs 264 and 266 the Tribunal said:-

> "The CIO has taken over responsibility for the operation of immigration control at Harare Airport and Immigration Officers are being replaced by CIO officers. We accept also that one of the purposes of the CIO in monitoring arrivals at the airport is to identify those who are thought to be, for whatever reason, enemies of the regime. The aim is to detect those of interest because of an adverse military or criminal profile. The main focus of the operation is to identify those who may be of adverse interest remains those who are perceived to be politically active in support of the opposition. That anyone perceived to be a threat to or a critic of the regime will attract interest also … We have set out the evidence that indicates in whom the CIO has an interest. This will be those in respect of whom there is any reason to suspect an adverse political, criminal or military profile of the type identified in **AA (2)**. In addition, those perceived to be associated with what have come to be identified as civil society organisations may attract adverse interest as critics of the regime (and see paragraph 282)."

69. In **CM** (as cited) the Tribunal held that the fresh evidence regarding the position at the point of return does not indicate any increase in risk since the country guidance was given in **HS**. On the contrary, the available evidence is that the treatment of those who have been returned to Harare Airport since 2007 and the absence of any reliable evidence of risk there means that there is no justification for extending the scope of who might be regarded by the CIO as an MDC activist.

70. When applied to the facts of this case, I do not find that it has been demonstrated that the Appellant will face any interest upon return to Zimbabwe at the airport. She has no adverse military or criminal profile nor is she likely to be perceived to be politically active in support of the opposition. She has no association with any civil society organisations that may attract adverse interest as a critic of the regime. Whilst it is submitted that as a family member of a former school teacher, and that there may be some "institutional memory" of such a suspicion capable of featuring in "official records" there is no evidence before me that in 2002 or 2003 any such

record was kept of the incident that occurred or that there is any record of the Appellant being the daughter of a former teacher. There is no evidence that the Appellant's father had any links with the MDC, indeed to the contrary. Whilst the assertion is made on the basis of it being imputed to him as a result of his employment, there is no evidence before me that it is reasonably likely that someone in the Appellant's position would be at risk at the airport. I find that the likelihood is that she will be able to enter Zimbabwe and pass through the airport freely with no interest being shown in her. There is a suggestion in the Appellant's evidence that the fact that she is returning from the United Kingdom after a long absence that returnees are viewed by some with suspicion. However this has been known for some time and all such evidence was considered by the Tribunal in both **EM** and **CM** and found there was no reason to amend the conclusion set out in **HS**.

71. In light of the Appellant's profile that I have set out and her particular characteristics based on the findings of fact made by this Tribunal, I find that she has failed to demonstrate to the lower standard that she would be at risk on return at the airport. I do not find that there is any reasonable likelihood that she would be unable to pass through the airport without difficulty. I find to the contrary that she will be able to do so.

72. I now turn to risk beyond the airport applying the "geographical filter". I have considered the risk on return to Murewa (in Mashonaland East) where the Appellant's parents reside. The findings of fact that I have made including the preserved findings set out that the Appellant's parents moved there in May 2004. Between May 2004 to 2009 whilst there might have been some isolated incidents of harassment, the Appellant has not discharged the burden upon her to show that there were any incidents of significance between those two dates. There was an incident in 2009 whereby the house was set alight and the kitchen was burned. Post 2009 until November 2012 there is no cogent evidence that there have been any further ongoing difficulties despite the Appellant's parents' claim that this is a ZANU-PF stronghold (see F2, the letter written by the Appellant's father). The Appellant has never lived in Murewa with her family and whilst she suffered an incident in 2002 that was a significant time ago, over ten years, and those who were responsible have not been identified in any material way whatsoever but have been loosely identified as "ZANU-PF youths" or "ZANU-PF supporters". It has not been demonstrated that the attack in 2002/2003 upon the family was linked to any attack in 2009 as it had not been demonstrated credibly how those living a significant geographical location and distance away from Murewa would have known that any incident had occurred previously or the reasons for it. Furthermore the letter written by the mother in July 2013 makes no reference to those responsible (if that incident did in fact occur) would have any interest in the Appellant and no direct interest was referred to in the letter or the account of the incident that was said to have taken place in November 2012. I therefore do not find that she has discharged the burden on her to show that she would be at risk of harm in Murewa.

73. Even if I were to find that she would be at risk in Murewa I consider that it has not been demonstrated that she would be at risk of harm in Harare, which is where she has lived previously and that she could relocate there. The background material demonstrates that Harare is situated in Mashonaland East Province and has 1.6

million inhabitants with 2.8 million living in its metropolitan area. It comprises of a number of districts including Harare East which is the opposite side of Mafakose, Epworth, Mbare, Budirio, Highfield and Glennora. The background evidence concerning the suburbs of Harare was considered in the decision of **CM** (as cited). At paragraph 218, the evidence heard by the Tribunal was described as thus:-

> "As a returnee to, at worst, a medium density suburb Harare, he would not be at risk of persecution or serious harm. Mr Mavhinga conceded that he is not aware of a single incident in low or medium density parts of the city and this picture is consistent with Professor Ranger's evidence in October 2011, summarised at paragraph 128 of **EM** (and see also paragraph 100 of **EM**, the evidence of witness 77). There is no reported evidence suggesting that areas such as Hatfield can be compared to townships, let alone Mbare, in respect of security."

74. The position of Hatfield is described at paragraph 234 in the following terms:-

> "Whether Hatfield is regarded as a low or as a medium density suburb of Harare, it is certainly not a high density one and it is not a place where there is any reliable evidence of significant Chipangano activity or any other maligned presence that could be properly said to give rise to a real risk of **CM** facing an **RN** style loyalty challenge. There is no credible evidence that **CM** would be forced through economic necessity to seek work outside Hatfield, so as to come into contact with Chipangano."

Thus the Tribunal concluded in **CM** at head note (5):-

> "A returnee to Harare will in general face no significant difficulties, if going to a low-density or medium-density area. Whilst the socio-economic situation in high-density areas is more challenging, in general a person without ZANU-PF connections will not face significant problems there (including a "loyalty test"), unless he or she has a significant MDC profile, which might cause him or her to feature on a list of those targeted for harassment, or would otherwise engage in political activities likely to attract the adverse attention of ZANU-PF, or would be reasonably likely to engage in such activities, but for a fear of thereby coming to the adverse attention of ZANU-PF."

75. There is no cogent evidence before this Tribunal that the former family home in Mafakose in Harare is in a ZANU-PF dominated area. The evidence put forward in the skeleton argument (see paragraph 27) is based on what she said in interview, namely "It was ZANU-PF who were in control". That referred to the period in 2002 which is a significant time ago and there was nothing to substantiate or support the fact that the area that she lived in formerly, Mafakose in Harare, was ZANU-PF held either then or now.

76. The Appellant's paternal uncle lived in Glennora, a suburb of Harare. There is no evidence before this Tribunal that he has been at risk at any time whilst living in Glennora either on account of his brother being a teacher or by reference to his family name (see question 35 of the interview).

77. Whilst it is accepted there was historic interest in her in 2002 that was at a time when her father lived with her and was in employment as a teacher. The incident has to be seen against the background evidence at that time. It cannot be said that the incident occurred because she was "the schoolteacher's expatriate daughter"

because at that time she had not left Zimbabwe. I have rejected the claim made that there was any interest shown in her after she left for the reasons that I have given earlier.

78. There is no evidence before me to support the assertion made in the skeleton argument that someone with a "London accent" will stand out. Zimbabwe has been a country where there has been large upheaval with movement both out of Zimbabwe and into Zimbabwe as well as within the country itself. It is a country that has a long tradition of its young people travelling abroad for purposes of education or for employment prospects. The fact that the Appellant would be returning to Harare, its capital, or within its suburbs having been resident in the United Kingdom would not by itself be a risk factor on the facts of her case.

79. It has been submitted also that she could not live in Harare as a result of the group known as the Chipangano. The Tribunal in **CM** dealt with the issue of the Chipangano at paragraphs 196 onwards. They summarise the evidence at paragraphs 196 and 197 and reached the conclusion at 198 that after weighing the evidence, the Chipangano:-

> "Has been responsible for acts of violence and intimidation outside Mbare on limited occasions and largely in neighbouring suburbs as Epsworth and Highfield. The backlash in September 2012 shows that the professed allegiance to ZANU-PF was not sufficient to insulate Chipangano from a crackdown on their activities. There is scant evidence that Chipangano has any significant range or influence in low or medium density suburbs of Harare, and their forays into the centre of the town are infrequent. Notwithstanding the consistent claims of directional control by ZANU-PF, we find that the evidence falls short of showing that Chipangano is an arm of the party, capable of being deployed at will to further ZANU-PF ends. … Overall Chipangano's criminal activities, no doubt cause a considerable anxiety in high density suburbs in Harare, have not on the evidence, led to a significant rise in the overall number of human rights violations in the city."

80. At paragraph 200 of **CM** the Tribunal gave further consideration to Chipangano's activities and that they may be a cause:-

> "Of difficulty for a person returning or otherwise going to Mbara from the United Kingdom, who is reasonably likely to have to seek employment of such a kind as to encounter Chipangano "touts" or the like. However we do not consider that any such difficulties can be said as a general matter to have any actual imputed political element, in the sense that Chipangano will be hostile to the person in question because he or she is viewed as having a particular political affiliation. In particular, there is no credible evidence to show a reasonable likelihood that Chipangano will impose on the person a political loyalty test or challenge."

81. In that context applied to this Appellant, her background, qualifications and employment history does not give rise to the assertion that she would be likely to encounter Chipangano touts. She is not likely to wish to obtain work in the markets nor as a street trader in the informal sector. I reject the submission made that she would be in danger in Harare or that relocation (or return) would be unduly harsh for her. The time that she has spent in the United Kingdom has led to the Appellant amassing a number of qualifications in different areas. In January 2004 she

obtained a certificate having successfully completed an "Introducing Dementia Training Course". Also in 2004 she obtained results in Business and Business Environment, Marketing, Finance Business Planning and Human Resources. She completed an Access Course in Applied Sciences in Food Microbiology and Nutrition (see page 34) and was awarded 27 credits at level 7, 54 credits at level 3. She successfully completed the Access Course on 19th August 2005. After that she completed a Diploma in Hotel Management including Marketing, Business, Food Hygiene, Tourism and Global Hospitality (see page 78) and also holds an Advanced Diploma in Hotel Management awarded on 9th October 2008. On 26th June 2009 she was awarded a Bachelor of Arts (2nd Class) in International Hospitality and Tourism from Bournemouth University. These qualifications would assist her in re-establishing herself in Zimbabwe.

82. I do not accept the submission made that she would be required to undertake employment as a street trader in the informal sector based against that catalogue of qualifications in a number of areas. I further reject the submission made that if she worked in the hotel industry that would be work which would put her at the "constant risk of coming across ZANU-PF informers". The evidence in support of such a claim comes from the Appellant herself who has not been resident in Zimbabwe since 2002. On the profile that she has, it is not reasonably likely that any ZANU-PF supporter would have reason to have any interest in her as she has no political profile of her own and I have not found that any political profile imputed to her via her father's past employment as a teacher that ended in 2004 and did not follow her to Murewa for the reasons that I have given, would likely to be known in 2013.

83. She also has a sister who lives in Budiriro, a surburb of Harare (see Question 67 of the interview). It is claimed by the Appellant that she has now left to live in South Africa due to threats made to her. There is no evidence in support of this change of residence. Nor is there any explanatory evidence as to why she should now leave after having lived in Harare for a significant period of time and in the light of the background evidence that demonstrates that historically the violence and threats are at their lowest. Consequently I do not accept that she has discharged the burden of proof on her to demonstrate that her sister has left Zimbabwe.

84. In the light of her family links with Harare including her uncle who was resident there in a suburb of Harare throughout the trouble that was said to have occurred in respect of her father, the fact that she would be returning after a significant absence but would be returning in the light of having obtained qualifications and experience in a number of different fields which would equip her with the ability to obtain employment, does not demonstrate in my judgment that it would be unduly harsh for her to return there.

85. It would also be open to her to relocate to Mutare where her sister lives. The Appellant's sister resides there with her husband and despite the incidents that occurred in 2003 has remained in Zimbabwe. It is not said that her sister has suffered any attacks by reason of her relationship with her father or arising from his previous employment as a teacher. The reasons advanced as to why she could not join her sister in Mutare which is described as the "fourth biggest urban centre" in Zimbabwe (see page 87) is based on a claim that the Chipangano militia is hostile

towards MDC supporters and that there is evidence of Chipangano activity outside Harare in Mutare (see paragraph 29(e) of the skeleton argument). Mutare is in the province of Manicaland. It is 132.61 miles from Harare and is the third largest city in Zimbabwe. It has an urban population of 188, 243 and 260,567 rural population. It is submitted in the skeleton argument that there was evidence of war veterans and ZANU-PF militia locally in Mutare which would cause problems (see page 120 of the Appellant's bundle). The article relied upon refers to teachers at three schools in Mutasa South who were forced to take positions within the ZANU-PF structures to become branch secretaries. It refers to them having summoned 45 teachers from the area. However the article also states that some teachers told the authors of the report that they declined the positions and it is recorded that "they told us they now live in fear and only take comfort in the fact that they don't reside in the area (Mutasa South). Most of them live in Mutare and commute to work every day". Thus the thrust of the article refers to problems for teachers living in Mutasa South but not in relation to the area of Mutare which is where the Appellant's sister lives. There is no evidence before me that the Appellant's sister who has lived there for a period of time has been subjected to any interest in her arising out of her father's former profession. It is advanced on behalf of the Appellant that is because her sister has changed her name through marriage. I do not accept that. I do not find that the Appellant's name is likely to be of any interest to those living in that area whatsoever. It has not been demonstrated that any ZANU-PF in the Mutare area would know of the Appellant's father's former profession nor that the Appellant was linked to him. There is no credible evidence before me that the Appellant's father's profile was such that it would be known throughout Zimbabwe and I reject the evidence that she gave orally that her family including herself were being sought throughout Zimbabwe. There is no reason for anyone to inform on the Appellant; she would be joining her sister who has continued to live in Zimbabwe without harm. It has not been demonstrated for any credible reason that she could not live with her sister in Mutare.

Decision

86. For the foregoing reasons, I do not find that it had been demonstrated that the Appellant has a well-founded fear of persecution upon return to Zimbabwe and thus her appeal does not succeed. The decision of the First-tier Tribunal disclosed the making of an error of law. The decision is set aside. The decision is remade as follows:-

The appeal is dismissed.

Signed Date:

Upper Tribunal Judge Reeds