



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/01676/2011

THE IMMIGRATION ACTS

Heard at Field House  
On 14 to 21 October 2013

Determination Sent  
On 10 January 2014  
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Before

UPPER TRIBUNAL JUDGE JORDAN  
UPPER TRIBUNAL JUDGE DAWSON

Between

BC

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Howard, Solicitor  
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DETERMINATION AND REASONS**

INTRODUCTION

1. The appellant, who is a national of Zimbabwe where she was born on 5 January 1981, is one of seven appellants whose appeals were remitted by the Court of Appeal in its decision *SS & Ors (Zimbabwe) v. SSHD* [2013] EWCA Civ 237. One of those

appellants (SC) has been granted leave to remain by the Secretary of State. We heard the appeals by the remaining appellants on dates between 14 and 21 October as directed by the Court of Appeal. Ms Isherwood represented the respondent and Mr Howard the appellants in each case. We heard generic submissions from the representatives on the current situation in Zimbabwe in the light of the further country guidance decision by the Upper Tribunal in *CM (EM country guidance, disclosure) Zimbabwe* CG [2013] UKUT 00059 (IAC) approving the earlier country guidance decision in *EM (Zimbabwe) & Ors v SSHD* [2011] UKUT 98 (IAC) and specific submissions in each case at the conclusion of all the evidence.

2. As it appeared to be convenient, we have made separate determinations for each appellant. Our analysis of the case law is of application to all six appeals and it is therefore reproduced without amendment in each determination.
3. But for BC, the appellants in the other appeals are found to have no significant MDC profile and accordingly it is only for this appellant that we need to have regard to additional case analysis on risk at the point of entry.
4. Specific to the appellant BC, the Court of Appeal made certain observations and set out the following basis for the appeal to be reheard by the Upper Tribunal:
  88. This is the one case where the Secretary of State at no stage proposed remittal but, instead, throughout had said that the appeal should be dismissed: on the basis that on any view there had been no error of law in the tribunal decision.
  89. BC was born on 5 January 1981 and lived in Mandara (a suburb of Harare) until 2000. She came to the United Kingdom on 13 June 2000 on a visitor visa. Thereafter leave to remain was extended to enable her to complete her studies for a degree. Her husband visited on a number of occasions. BC had a child on 4 January 2010. The husband made an asylum application (with BC as his dependant) in April 2009. That was rejected, the rejection being upheld on appeal. BC then herself made an asylum claim on 16 November 2010, which the Secretary of State rejected.
  90. By determination dated 14 March 2011 Immigration Judge Robertson, sitting in the First-tier Tribunal, rejected BC's appeal. It had transpired that in 2010 BC and her husband, while in the United Kingdom, had joined the MDC and BC was elected as a branch secretary and treasurer. The Immigration Judge found that this was designed to boost the asylum claim. The Immigration Judge found, moreover, that the various sur place activities and positions held would not result in BC coming to the attention of the authorities in Zimbabwe. The Immigration Judge further found that, even if they did come to their attention, there was no real likelihood of risk because of her sur place activities. This was because BC's husband had past connections with the government and his parents had connections with the civil service (at the husband's appeal, indeed, the

parents had been found to be ZANU-PF loyalists): and so the authorities would be "likely...to regard her activities as insincere". In reaching her overall conclusion, the Immigration Judge had regard to the Court of Appeal decision in *RT (Zimbabwe)* and the country guidance in *RN (Zimbabwe)*. Article 8 claims were also rejected.

91. Permission to appeal was granted, essentially on the basis that the Immigration Judge was arguably wrong to have placed extensive reliance on the findings of the tribunal judge who had previously determined the husband's appeal. In the Upper Tribunal, Deputy Upper Tribunal Judge Juss, by promulgation dated 1 October 2011, dismissed the appeal. He found that there was no material error of law. The Immigration Judge had been entitled to place reliance on the earlier determination in assessing the husband's evidence: and had made independent findings of her own with regard to BC specifically. The Deputy Upper Tribunal Judge noted, and clearly accepted, the finding that even if the sur place activities did become known they would be likely to be accepted as insincere.
92. Permission to appeal was refused by the Upper Tribunal. Moses LJ refused an application for permission to appeal on the papers. Permission was eventually granted, after an oral hearing, by Sullivan LJ on 21 November 2012 in the aftermath of the Supreme Court decision in *RT (Zimbabwe)*. In addition, BC has indicated that she also wished to argue that the best interests of the child required proper assessment.
93. Given the findings of fact in the tribunal I have no difficulty at all in rejecting Mr Mahmood's argument that the appeal should be allowed outright. The position is demonstrably different from that in the *KM* appeal as decided in *RT (Zimbabwe)*, on which (yet again) he relied.
94. Altogether closer to the line in this case was Mr Thomann's submission that the appeal should be dismissed. His point, even by reference to *RT (Zimbabwe)* and *RN (Zimbabwe)*, was that BC, even if her sur place activities became known (and the finding was that they would not), would be at no risk: because her profile - through her husband and his family - would be of perceived and assumed loyalty, as the Immigration Judge found. Moreover, the milieu from which she came supported that. Thus she would not be at any real risk of being stopped and interrogated. This was even more strongly so, he subsequently has submitted, in the light of *CM (Zimbabwe)*.
95. I see the force in this. But, on balance, I think this case too should be remitted. It is true that the Immigration Judge found that the sur place activities would not become known. But the Immigration Judge did not, apparently, regard that as conclusive and went on to say that in any event the authorities would be "likely" to find such activities as "insincere" (a finding endorsed by Deputy Upper Tribunal Judge Juss). How such a

finding as to what is likely can be made in such a situation is unclear to me. Indeed the approach – at all events arguably – comes close, by analogy, to following the line of speculative reasoning specifically disapproved by Lord Kerr in paragraph 72 of *RT (Zimbabwe)*. While this objection was not formally taken in the grounds of appeal, it was noted by Senior Immigration Judge Jarvis (in refusing permission to appeal in the Court of Appeal) as arguably "something of a leap" in the absence of supporting evidence. I note also that the Immigration Judge did not (because of the view she took) make a finding as to whether BC was indeed a ZANU-PF supporter in reality and so did not consider whether she would be required to lie or be unable to demonstrate loyalty if stopped.

96. Overall, therefore, I think justice requires that the case be remitted for determination. It will also be a matter for the Upper Tribunal as to how it deals with the proposed new ground based on the best interests of the child.
5. We heard evidence from BC who explained that she had arrived in the United Kingdom in 2001. The reference by the Court of Appeal to arrival the year earlier stems from an error by the Secretary of State in the refusal letter dated 13 January 2011 which accompanied the removal decision of 27 January 2011. In the light of the detail in the extract from the Court of Appeal 's decision, it is unnecessary to repeat the chronology except to make the additional points that:
- (i) The appellant had leave to remain as a student at or completion of her degree in social care and policy at Wolverhampton University until 30 November 2009.
  - (ii) She thereafter made application for further leave to remain under the Tier 4 points-based system to pursue a postgraduate degree. The first application was rejected, initially because a part of the form had not been completed and by the time the appellant came to resubmit on 16 February, the Immigration Rules had changed such that she could not comply with them without returning to Zimbabwe to reapply.
  - (iii) Application for asylum was made on 16 November 2010.
  - (iv) The appellant married CC a national of Zimbabwe in August 2008 in a traditional ceremony. He had been away from Zimbabwe in Cuba until 2006 when he came to continue his studies in the United Kingdom. They have a child born 4 January 2010. The appellant is now pregnant and is expecting to give birth some two weeks hence by way of caesarean section.
  - (v) CC applied for asylum on 24 April 2009 with the appellant as his dependent which was refused. His appeal was dismissed by the First-tier Tribunal after a hearing on 25 June 2010. He has judicial review proceedings under way after being refused permission to appeal to the Upper Tribunal.

6. Having regard to the basis on which the appeal had been remitted and in the light of a statement which had been provided, Mr Howard accepted that no examination-in-chief was required before cross-examination. The evidence we heard covered the appellant's political activities in the United Kingdom, her domestic circumstances and those of her child and her pregnancy.

#### THE REFUSAL LETTER

7. The reasons why the Secretary of State rejected the appellant's claim are set out in the refusal letter we have referred to above. In summarising the appellant's claim the respondent observed that she had never experienced any problems in Zimbabwe. On leaving high school in 1999 she had worked for a company as an accounts officer. Her father left for South Africa in 1999 having separated from her mother the previous year. Her mother moved to South Africa in 2004/2005 where she lived (at the time of the interview) with two of the appellant's brothers. Her sister is studying in Tanzania and another sister at university in South Africa where she lives with her father.
8. As to her political activity in the United Kingdom, the appellant had explained to the Secretary of State that since 2005 she had been interested in the MDC and joined the Coventry branch of this party in April 2010 since when she has attended meetings. It is this association with MDC which is the basis of her fear of being killed by the ZANU-PF.
9. It appears the basis of CC's claim had been that he was a teacher and his appeal had been dismissed on the basis that he had never formally qualified or worked as such.
10. The respondent noted the appellant's claim that she had attended meetings at the end of each month and had been able to provide the names and roles of the Coventry branch executive but was unable to demonstrate even a basic knowledge of the MDC as a political party. She had stated that funds raised by her branch were sent to Tendai Biti in Harare but was unable to state what role he had within the party. She was unable to name neither the current party spokesman nor the national chairperson and was unaware who from the MDC represented her home area of Mandara (a suburb of Harare) in Zimbabwe.
11. Although accepting the appellant may have obtained a membership card for the MDC, it was not accepted that she was a genuine, active supporter. This was because she had waited five years before attempting to join the organisation had had failed to provide a persuasive account of her reasons for doing so. She had stated in her asylum interview that she had attended eight or none meetings but this was not reflected in the minutes which she had provided.
12. The respondent also drew an adverse inference from the appellant's explanation she had not joined the MDC earlier as she was not aware where the meetings were held or the branches were. The respondent considered the appellant more than capable of researching the party structure in the UK. Reliance was also placed by the Secretary

of State on aspects of CC's claim and the judge's finding. By way of conclusion the respondent stated:

"It is considered that your membership of the MDC is a cynical attempt to bolster your asylum claim, and it is not accepted that your account with regards to your interest in or role with, the MDC, is credible."

13. As to the human rights aspect of the claim, the respondent explained that consideration had been given to the appellant's family life with CC and their son and in addition the appellant's private life which it was accepted had been established through the pursuit of her studies. As to the son, the respondent considered that the appellant would be able to pursue her studies and future employment in Zimbabwe where she had resided for the majority of her life and that her son would be able to attend school. He was not of an age where he had spent his "formulative" years in the UK.
14. The respondent acknowledged s.55 of the Borders, Citizenship and Immigration Act 2009 and considered that as a dependent on the appellant's claim her son would be returning to Zimbabwe with her and his father which was considered to be in his best interests. He was considered to be of an age where he would be able to fully integrate into Zimbabwe as he had spent a limited amount of time in the UK at a significantly young age. No welfare issues had been identified.

#### THE HEARING BEFORE THE FIRST-TIER TRIBUNAL

15. First-tier Tribunal Judge Robertson heard evidence from the appellant at the hearing of her appeal on 11 March 2011. The oral evidence the judge heard included:
  - (i) The appellant was a branch secretary of a Coventry branch of the MDC to which she had been elected in February 2011 and the treasurer of the Woman's Assembly at district level for which she was elected on 3 March 2011. The appellant was involved in fund raising and that would not go unnoticed.
  - (ii) The appellant had joined the MDC "officially" in April 2010; in March that year she had gone to some meetings but did not pay subscription until April which she began to pay that month.
  - (iii) As to why she had waited five years before joining, due to her upbringing as a Christian, there had been hardly any experience with politics by the family and she had (had) no real political opinion.
  - (iv) Getting to the MDC branch was not easy. It was put to her in cross-examination that she had explained she had not attended meetings since she did not know where they were held and did not have the funds.
  - (v) As to her inability to answer questions regarding the names of the branch executive of the MDC, there had been a misunderstanding. She was able to give the names and there was one name which she could not recall but she

recalled it later on in the interview. She had not previously submitted minutes (of the meetings) before as this was no longer permitted to do so and they were only allowed to submit photographs.

- (vi) As to her statement that the CIO infiltrated meetings, she could not say whether any checks had been carried out on her and her husband.
- (vii) Her nomination as the treasurer of the Woman's Assembly had been because of her past skills in Zimbabwe where she had once worked in accounts and was good with figures.

16. Among the matters accepted by the judge were the following:

- (i) The appellant had attended MDC meetings, she was a member and that she had been so elected.
- (ii) It was implausible that those who had made her aware of politics in the UK activities of the MDC did not go so far as to tell her how to get to meetings.
- (iii) CC had been the Assembly for Youth chairperson and a particular internet printout had been provided updated on 10 January 2011. The printout, updated 23 February 2011, showed that he was no longer the Assembly for Youth chairperson. The judge was concerned that he had not occupied the role for a particularly lengthy time and this did nothing to inspire confidence that his involvement was genuine.
- (iv) Despite some misgivings about the timing and quality of the appellant's interest in the MDC it was accepted that she had raised her profile and her name appears on the website [www.mdcukandireland.org.uk](http://www.mdcukandireland.org.uk). Whilst the appellant's name appeared on the website as the branch secretary of the Coventry branch of "MDC UK", there did not appear to be any way of placing a name to a face with reference to the poor quality photographic evidence.

17. The judge's ultimate conclusion was that despite having been named as branch secretary and the treasurer, this would not result in her coming to the attention of the authorities on the basis that nothing would be known about her through activities in Zimbabwe.

18. In her most recent statement dated 17 July 2013, the appellant explains the following matters:

- (i) She is still actively involved with the MDC and was promoted to the role of Provincial Youth Assembly Secretary since October/November 2012, a relatively high position within the MDC in the UK.
- (ii) She attends meetings of the MDC monthly the last having been in Northampton. In addition she chats to other members by video conferencing.

- (iii) The appellant is involved in coordinating the MDC in the United Kingdom with Harare. She speaks Shona and is from Mandara, a “relatively high density” area.
- (iv) The appellant refers to her pregnancy and explains that it is not in the best interests of her child for her to be returned to any part of Zimbabwe where her life is in danger. She refers to family life with her paternal aunt and uncle who having sought asylum have now become British citizens and she sees them around once every two months. Her husband's parents are also British citizens and live in Nuneaton and they see each other most weeks and at the weekends. She teaches kindergarten Bible studies at the Seven Day Adventist Church in Walsall. She is involved with Citizens UK and attends meetings every three months. This is a community group helping people integrate into the community.

#### THE EVIDENCE GIVEN BEFORE US

19. The following key matters emerged in the course of cross-examination by Ms Isherwood:
- (i) The appellant has no family in Zimbabwe and she confirmed the whereabouts of her other family members as stated to the First-tier Tribunal. She had no surviving uncles or aunts still in Zimbabwe nor did her husband have any family there. She was unaware when his parents had last been here.
  - (ii) As to whom she is in contact with in Zimbabwe, the appellant referred to Skype call conferences with Solomon Madzore who is the leader of the Youth Assembly in Zimbabwe. She did not think they (with reference to her MDC contacts) were in hiding. They are the “big shots”. She referred to the trouble that Solomon Madzore had encountered and to the risks faced by people in the lower ranks. Solomon Madzore having been imprisoned for about a year and a half and that she is almost the same level as he is.
  - (iii) With reference to the MDC structure in UK, provincial level is the highest and she is the deputy secretary of Provincial Youth. After a detailed exchange including questions from us we established that the Provincial Committee for Youth comprises a chair and vice chair, a treasurer and vice treasurer (the latter post being vacant), a secretary for information and publicity (who attends infrequently), a secretary and vice secretary (roles held respectively by CC and the appellant) and an organising secretary and vice secretary.
  - (iv) As to whether there was anybody above her in the MDC, the appellant referred to the main Provincial Committee and described the Youth Committee as a subcommittee alongside the Woman’s Committee, so the most senior person of all is the chair of the Provincial Committee and, in aggregate, the committees comprise some 25 people. The appellant confirmed that she is not on the committee which is regarded as the highest in the United Kingdom for the



MDC but reminded Ms Isherwood that the committee which she is on is one at provincial level.

- (v) The appellant confirmed that the people with whom she is in communication in Zimbabwe are on about the same level as the chairman (of the Youth Committee) and referred again to the fate suffered by Solomon Madzore who had been put in prison on false allegations and that he had been cleared on his release a few months ago.
- (vi) With reference to Solomon Madzore, the appellant understood that he had been through court procedures in Zimbabwe and that she thought that he had been cleared. She liked to think that he had got on with his life although it had been a while since she had spoken to him. As to when there had last been Skype communication, the appellant explained that she would need to “come back” to Ms Isherwood on that. As to how often she speaks to people in the MDC and Zimbabwe, the appellant stated that she did not talk to them, explaining that it was their chair who spoke mostly. He attends the Provincial Committee meeting.
- (vii) The criterion for membership of the Youth Assembly is 35. There are some 500 in the UK, fewer than the adult members. The appellant believed they all had MDC cards.
- (viii) The appellant further clarified that there were about eight or nine districts of the MDC in the United Kingdom and that each has about 50 or 60 Youth members.
- (ix) As to why the authorities would be interested in her, the appellant explained that besides mundane matters they organised fund raising. The committee does not meet as much any more, a chat room is used. The last important meeting was in December 2012. The appellant, however, saw members of the committee living in the West Midlands more often and the last meeting had been in June to set up a bank account for which ID was required. That fund raising was for MDC members displaced in Zimbabwe and for education.
- (x) The appellant also confirmed that she holds a position as treasurer at a local district level and the person she spoke to in that regard is the chair of the District Committee, the last conversation having been some three months ago. The level of funds under her charge is some £300. As to the Youth Committee, as soon as funds are raised they are sent and there is currently about £50 left. The amount sent this year was about £300. She referred to a function when fundraising in December last year or November being unable to remember the precise date. She referred to a meeting booked for January which had been cancelled.
- (xi) Otherwise the appellant explained that she was a kindergarten teacher at church. Her husband's family is from Hatfield and that she had been asked

once over to their house. She was unaware if they were still there. CC does not talk about any contact.

- (xii) Her immigration difficulties arising out of her unsuccessful Tier 4 Student application occurred when she was distracted by having given birth by Caesarean section. Her son had had breathing difficulties. The result in the change in the Rules was that she had to go back to Zimbabwe to make the application and she was too afraid to do so. Her father had worked as an insurance broker in Zimbabwe and her mother initially for the government in industry and commerce and then for the church.
- (xiii) As to her son's health, the appellant explained that he has asthma and eczema for which he needs an inhaler. She rated his asthma at a high level and that they had been to accident and emergency quite a few times.

- 20. Under re-examination the appellant clarified that the fund raising had been to help people under the MDC who had been affected politically, such as having their houses burned down, or having no clothes. She confirmed that the campaign was humanitarian in nature.
- 21. We indicated at the end of the appellant's evidence our view that the issue we were required to determine was whether the appellant's position in the provincial section was a high profile category identified in *CM (Zimbabwe)*. Accordingly we did not need to hear from the appellant's husband. We reminded the parties that the analysis would require examination of how the appellant would be perceived by ZANU-PF and the government and reminded them of the impermissibility of ascribing a rational approach to such a regime. It appeared to us that the appellant's case was the one which had more strength than the others before us, dependent upon the submissions that we received and our final conclusion.
- 22. Before hearing our submissions on the next hearing day we were provided with some new evidence by Mr Howard. This was in the light of our indication that it would be desirable to carry out searches on Solomon Madzore and the appellant herself. He provided us with a series of Google maps of Harare, the result of a search against SM (one of the other appellants) and BC as well as Wikipedia entries for Mabvuku and Glen Norah.

## COUNTRY GUIDANCE

- 23. In *CM (EM country guidance; disclosure) Zimbabwe* CG [2013] UKUT 00059, the Tribunal reviewed the authorities of *RN (Returnees) Zimbabwe* CG [2008] UKAIT 00083; *RT (Zimbabwe)* [2010] EWCA Civ 1285; *RS and Others (Zimbabwe - AIDS)* Zimbabwe CG [2010] UKUT 363; *HS (returning asylum seekers) Zimbabwe* CG [2007] UKAIT 00094 and in particular, the Country Guidance given by the Tribunal in *EM and Others (Returnees) Zimbabwe* CG [2011] UKUT 98 (IAC). The assessment in *EM* as to the position in Zimbabwe at the end of January 2011 had not been vitiated by the Tribunal's reliance on 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 only change to the *EM* Country Guidance relating to the position as at the end of January 2011 arose from the judgments of member of the Supreme Court in *RT (Zimbabwe)* [2012] UKSC 38.

24. The guidance as re-stated, with the appropriate amendments, was that, as a general matter, there was significantly less politically motivated violence in Zimbabwe, compared with the situation considered by the AIT in *RN*. In particular, the evidence did not establish that, in general, 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.
25. The position was, 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 might well find it difficult to avoid adverse attention, amounting to serious ill-treatment, from ZANU-PF figures in a position of authority or those whom they controlled. Such adverse attention might well involve demonstrating loyalty to ZANU-PF, with the prospect of serious harm in the event of failure.
26. In accordance with *RT*, persons not favourably disposed to ZANU-PF were and remain entitled to international protection, whether or not they could and would do whatever might be necessary to demonstrate such loyalty. However, the situation was not uniform across the relevant rural areas. For example, the evidence might disclose that, in the home village, ZANU-PF power structures or other means of coercion were weak or absent. That said, as a general rule, a returnee from the United Kingdom to rural Matabeleland North or Matabeleland South was highly unlikely to face significant difficulty from ZANU-PF elements, including the security forces, even if the returnee were a MDC member or supporter. (So, too, with a returnee to Bulawayo, who would not generally suffer any such adverse attention even if he or she had a significant MDC profile.) There might be exceptions: an individual might be able to show that his or her village or area was one that was, unusually, under the sway of a ZANU-PF chief or the like.
27. A returnee to Harare would 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 was more challenging, in general a person without ZANU-PF connections would not face significant problems there (including a 'loyalty test') unless he or she had 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.
28. In relation to internal relocation, a person's home for the purposes of internal relocation is a matter of fact, not necessarily determined by a person's rural

homeland. In most cases, it was unlikely that a person with a well-founded fear of persecution in a major urban centre such as Harare would have a viable internal relocation alternative to a rural area in the Eastern provinces. For example, relocation to Matabeleland (including Bulawayo) might be negated by discrimination, where the returnee is Shona. However, internal relocation from a rural area to Harare or Bulawayo was, in general, more realistic but, as the test was whether it was reasonable/not unduly harsh, consideration had to be given to the individual's social and economic circumstances.

29. So much was stated to be Country Guidance. In the course of *CM (EM country guidance; disclosure)*, the Tribunal (as at October 2012) made an assessment – albeit not in an authoritative capacity – of other evidence about Zimbabwe. The picture then presented by the evidence as to the general position of politically motivated violence in Zimbabwe did not materially differ from the position in *EM and others (Returnees)* decided on 14 March 2011. The fresh evidence regarding the position at the point of return did not indicate any increase in risk since *HS (returning asylum seekers)*; the evidence as to the treatment of those who had been returned to Harare Airport since 2007 meant there was no justification for extending the scope of those who might be adversely regarded by the CIO.
30. For our purposes, this summary of the Country Guidance is sufficient.

#### OUR CONCLUSIONS

31. In the course of her submissions specific to BC Ms Isherwood accepted that if she has a significant profile and that she is from a high-density suburb she would need protection. It was correct of her to do so as that is no more than the application of the country guidance. Taking into account all the evidence before us and the submissions specific to this appellant, we are satisfied that the BC and her husband would be perceived as having significant profiles. It was accepted by Miss Isherwood that BC and her husband hold posts as secretary and vice secretary of the Provincial Youth Assembly in the United Kingdom which has involved liaison with youth assembly personnel in Zimbabwe and included fundraising activities. Committee membership of the Youth Assembly, the Woman's Assembly and the Provincial executive in the United Kingdom is likely to indicate to the authorities in Zimbabwe that the person concerned is committed to the MDC cause and contributes in a meaningful way to the advancement of the parties manifesto. Persons with such posts are likely to be distinguished from the rank and file of MDC members in the UK and those with committee posts at branch and district level.
32. The evidence does not establish with any certainty whether Mandara is a high-density suburb. In arguing that it should be regarded as such, Mr Howard drew our attention to statistical data relating to the electoral role, the relative municipal ward populations and the location in Harare East of New Mabvuku.
33. According to a Zimbabwe Parliament research Department report on Harare Province the total population based on the 2002 Census of the city and rural areas

including Chitungwiza and Epworth was 1,896,134. Some 1,400,000 live in urban Harare. There are 29 House of Assembly constituencies in Harare province with a total of 766,478 registered voters. Harare East has the largest population and number of registered voters exceeded only by Mabvuku Tafara and Epworth which are regarded as high-density areas. According to chapter 3 of the report, “ The city historical background”:

“Harare then Salisbury was developed along racial lines with large open spaces. The reason is that the spaces were left as buffer zones in a bid to separate blacks and whites (Beacon Mbiba 2000). The whites were mainly found in the north and north-east and the blacks were found in the South. There was also an ethnic composition to the city with most Indians in Belvedere, Coloureds in Arcadia and Adebenie, mixed couples in West End near Kambzuma, rich blacks in Marimba near Mufakose and whites in the northern suburbs.

Thirty years after independence the spatial structure still has not changed. The change, however, has been on the racial composition which is now being replaced by economic stratification into the rich and the poor and others in the middle. The former white areas are now low density areas( 1000pple/km<sup>2</sup>) and the former Black area are now high-density areas( >2000 pple/km<sup>2</sup>). The current development is now infill residential development in open spaces, outward growth in areas of high rise development in the city centre.”

34. According to the Google maps we have been provided with, Harare East (as to be expected) is east of the centre. Mandara is between downtown and Harare East. BC's evidence is that she and her family lived on Eastern Road which is in Mandara and near to Mandara Shops and Mandara Seventh Day Adventist church. BC and her family belong to this church in the United Kingdom. In contrast with areas further east and south, Mandara is laid out with a generously sized street pattern and includes Borrowdale racecourse and country club golf course as well as, to the north, Ballantyne Park. This suggests a low density area and is consistent with the historic town planning described in the report above. Mandara does not have its own constituency and no map has been provided with the report to enable us to identify whether it comes within Harare Central or Harare East. We think it more likely to be Harare East. We note from the 2013 election results from a download from Nehanda Radio that Harare Central returned an MDC-T candidate with 6828 votes. The ZANU-PF candidate received 4974 votes. The MDC-T candidate for Harare East received 9538 votes and the ZANU-PF candidate got 8190. In contrast the combined MDC vote in Harare South was just over 1800 whereas ZANU-PF received 20,069 votes.
35. The relative street density beyond Eastern Road is greater than in the West. It may be that further east is a less desirable area but it does not necessarily follow that Harare East constituency comprises solely or is in large part a high-density area. It may be that more people wish to live in a particularly desirable area which might result in a higher density but it does not follow that such an area is of the kind the Tribunal had in mind in *EM*. The election results indicate a strong MDC presence. Although BC

describes Mandara as a relatively high-density area we find that it is not and are satisfied that the area in the immediate vicinity of where she once lived is not a high-density area comparable to those for example in South Harare and elsewhere.

36. This is not however a complete answer to the risk enquiry we must undertake. In *HS (Returning asylum seekers) Zimbabwe CG [2007] UKAIT 00094*, the Tribunal considered the risk on return at the point of re-entry by reference to *AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 ("AA(2)")* in which the Tribunal had heard oral evidence from Professor Terence Ranger, three witnesses who had worked at the old airport at Harare before it was replaced by a newer, larger one and two witness called by the respondent who were able to give evidence about the respondent's policy and procedures for enforcing removals of Zimbabwean asylum seekers whose claims had failed. The Tribunal had had a large array of documentary evidence about country conditions in Zimbabwe and the evidence of a number of NGOs who may or may not be expected to be aware of whether there was systematic ill treatment of deportees from the United Kingdom. The Tribunal in *AA(2)* had analysed of the evidence relating to 39 individual returnees and then set out its conclusions as follows:

244. A person who is returned involuntarily to Zimbabwe having made an unsuccessful asylum claim in the United Kingdom does not face on return a real risk of being subjected to persecution or serious ill-treatment on that account alone. That is so whether or not the removal is escorted. Each case must be considered on its own facts. We reaffirm the country guidance in *SM and Others (MDC - internal flight- risk categories) CG [2005] UKIAT 00100*. The evidence before us demonstrates that those at risk upon return to Zimbabwe continue to fall into the risk categories identified and set out in *SM*.

250. If...a political or relevant military profile is suspected, or if there are outstanding criminal matters to be resolved, the deportee will be taken away by the relevant branch of the CIO for interrogation. The evidence does not suggest that the CIO has any interest in manufacturing or fabricating evidence to create suspicion that is otherwise absent.

251. This second stage interrogation carries with it a real risk of serious mistreatment sufficient to constitute a breach of article 3. If the reason for suspicion is that the deportee has a political profile considered to be adverse to the Zimbabwean regime that is likely to be sufficient to give rise to a real risk of persecutory ill-treatment for a reason that is recognised by the Refugee Convention....Each case must be considered on its particular facts.

37. In *HS (Returning asylum seekers)* the Tribunal considered it significant [104] that the regime had invested considerable resources in seeking to infiltrate groups in the United Kingdom to identify those who support the opposition or who are '*activists in the country*'. The regime distinguished between those Zimbabweans present in the United Kingdom generally and those whom they are concerned to identify as activists. Having examined the evidence afresh it reinforced the finding that there was 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 would be taken for interrogation. At that second stage there is a real risk of serious harm, but not before.

38. The determination was made against the background of what it considered to be deteriorating country conditions, [264]. And the fact that the CIO had taken over responsibility for the operation of immigration control at Harare airport and immigration officers were being replaced by CIO officers. The Tribunal accepted [264] that one of the purposes of the CIO in monitoring arrivals at the airport was to identify those who are perceived to be politically active in support of the opposition. Deportees will have been identified in advance from the passenger manifest and the CIO will have formed a preliminary view as to which, if any, are of further interest, [265]. Those of interest would be distinguished from the run-of-the-mill forming part of nearly a quarter of the population of the Zimbabwe which had left the country. The Zimbabwean government and its agents were fully aware that the overwhelming majority of these were economic migrants. The vast majority of the 50,000 people travelling in and out of Zimbabwe each year would be regarded as ordinary passengers and would pass through the airport unhindered, [277].
39. According to *RN (Returnees) Zimbabwe* CG [2008] UKAIT 00083, those at risk on return to Zimbabwe on account of imputed political opinion are no longer restricted to those who are perceived to be members or supporters of the MDC but include anyone who is unable to demonstrate support for or loyalty to the regime or ZANU-PF.
40. In *EM and Others (Returnees) Zimbabwe* CG [2011] UKUT 98 (IAC) having noted at paragraph 51 that the Tribunal in *HS* had found that the well-resourced, professional and sophisticated intelligence service that comprises the CIO 'would distinguish, when dealing with those returning as deportees from the United Kingdom, between those deportees in whom there was some reason to have interest and those who were of no adverse interest simply on that account' it was noted that, according to the Tribunal in *RN*, there could be no doubt that those falling into the risk categories identified and reaffirmed in *HS* continued to face a real risk of persecutory ill-treatment on return. It therefore concluded that the country guidance regarding risk at the airport accordingly continued to be as set out in *HS (Returning asylum the seekers)* read with the findings on that issue in *SM and Others*.
41. Before the appellant is able to reach her home area where it is arguable that she will be safe despite her MDC profile, she must pass through the airport. The combined factors of her public MDC profile, the electoral complexion of her former address and her lengthy absence abroad in the United Kingdom makes it reasonably likely that the CIO will have already distinguished her before arrival as someone in whom they may have interest. This is likely to result in questioning during which the appellant will have to decide whether to be open about her political allegiances and why she is being returned to the United Kingdom or to seek to try and diminish the political profile. Were she to endeavour to do the latter, she may well be unsuccessful in the light of the public nature of her profile. Any attempt to downplay the role will be because she fears the consequences if she is perceived as someone who has been a

key player in the MDC at Provincial level in the UK. If the appellant elects to be open about what she has been doing in the United Kingdom it is reasonably likely that she will be subject to intense questioning and a risk of ill-treatment. That being so we are satisfied that she is in need of protection.

42. In the light of this conclusion we do not need to journey that article 8. Were they to do so, having regard to the length of the lawful residence in the United Kingdom, the absence of any immediate family members in Zimbabwe, the vulnerability of having a young child and one whose birth is imminent taken together create compelling factors that require particularly careful scrutiny of the proportionality of the Secretary of State's aim of maintenance of immigration control. Ms Isherwood acknowledged the force of these matters although did not concede the appeal on this ground.

## DECISION

The First-tier Tribunal made an error of law. We set aside the decision and remake it. We allow the appeal on Refugee Convention grounds.

A handwritten signature in blue ink, appearing to read "Dawson", with a horizontal line extending to the right.

UPPER TRIBUNAL JUDGE DAWSON.