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Zimbabwe Country Guidance 2

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On 14 March 2011, the Upper Tribunal (Immigration and Asylum Chamber) gave its decision in *EM & Ors (Zimbabwe)* [2011] UKUT 98 (IAC). This is the most recent country guidance from the Upper Tribunal on Zimbabwe. This information sheet provides information about this country guidance and how it may relate to the cases of Zimbabwean nationals. The decision is available at: www.bailii.org/uk/cases/UKUT/IAC/2011/00098_ukut_iac_2011_em_ors_zimbabwe_cg.html

Country guidance

A country guidance decision is one which sets out an assessment of the situation in the particular country (in this case, Zimbabwe), which immigration judges and the UK Border Agency must apply when deciding other cases unless either:

- the assessment is not relevant to deciding the particular case (e.g. because the Upper Tribunal's assessment does not cover the situation or facts in the case); or
- there is new evidence which shows that the Upper Tribunal's assessment must be reconsidered

Previous country guidance

The previous country guidance decision was the decision of the Asylum and Immigration Tribunal in *RN (Zimbabwe)* [2008] UKAIT 00083. The December 2008 "Zimbabwe Country Guidance" information sheet provided information about that country guidance decision. It is now replaced by what is said in *EM & Ors (Zimbabwe)*.

EM & Ors (Zimbabwe)

In *EM & Ors (Zimbabwe)*, the Upper Tribunal made the following general assessment about the situation in Zimbabwe:

- The risk of persecution, except in certain areas, has significantly reduced in Zimbabwe since the decision in *RN (Zimbabwe)*. It is no longer the case throughout Zimbabwe that anyone who cannot demonstrate loyalty to Mugabe/Zanu-PF is at risk of persecution. (paragraph 141)
- The rural areas of Mashonaland West, Mashonaland Central, Mashonaland East, Manicaland, Masvingo and Midlands province, however, remain areas in which someone who cannot demonstrate loyalty to Mugabe/Zanu-PF may be at risk of persecution. (paragraph 189)

- Generally, there is less risk of persecution in urban areas (e.g. Harare and Bulawayo) than in some rural areas. However, the general situation in high density urban areas (particularly such areas in Harare) is significantly worse than in low density urban areas. (paragraphs 198 & 200)
- Certain individuals remain at risk of persecution immediately on return to Zimbabwe at the airport. These may include those who have (or are perceived to have) a significant MDC profile, teachers (who may be perceived to be MDC supporters by virtue of their profession), those who have a military history of interest to the Zimbabwean authorities, those in respect of whom there are outstanding criminal issues in Zimbabwe and those associated with civil society organisations perceived to be opponents of Mugabe/Zanu-PF. (The Upper Tribunal confirmed that those considered in *HS (Zimbabwe)* [2007] UKAIT 00094 to be at risk continued to be at risk, paragraph 266)
- It is highly unlikely that someone at risk of persecution in an urban area can seek safety from persecution in a rural area. Someone at risk of persecution in a rural area may be able to seek safety in an urban area, but it might well be unreasonable to expect him or her to do so without having family or friends in that urban area. (paragraphs 221 & 223)
- There remains the potential for the risk of persecution to return to that identified in *RN (Zimbabwe)*. Particularly if fresh elections in Zimbabwe are called, the Upper Tribunal's general assessment may need to be reconsidered. (paragraphs 158 & 265)

The Upper Tribunal also set out important findings relating to Article 8 (private and family life) claims and cases involving children (information on Article 8 is available from the July 2008 "Article 8 Judgments" and August 2008 "Article 8" information sheets):

- The high priority placed on the welfare and best interests of children by the Supreme Court in *ZH (Tanzania)* [2011] UKSC 4 is not limited to cases involving British children (information about the Supreme Court decision is available from the February 2011 "ZH (Tanzania) Supreme Court Judgment" information sheet). (paragraph 308(vi))
- While the seven year child concession has been withdrawn, it remains relevant for decision-makers to consider the terms of that concession (information about the concession is available from the January 2009 "Withdrawal of Seven Year Child Concession" information sheet. (paragraph 308(viii))
- An unwillingness to return to Zimbabwe in recent years, whether or not the person can demonstrate he or she was at risk over that period, may well be "understandable". (paragraph 308(iv))

What does this mean for Zimbabwean asylum-seekers?

The Upper Tribunal's decision means the situation for asylum-seekers from Zimbabwe is much more complex than it was after the country guidance decision in *RN (Zimbabwe)*. Zimbabwean asylum seekers will need legal advice about their options. Advisers may need to investigate in detail such things as where someone comes from in Zimbabwe, and what has happened to the person's family and family home. Advisers will need to see all the papers, including all interview records (screening and asylum interviews), immigration decisions (e.g. refusal of asylum letters, adjudicator and tribunal determinations) and witness statements to establish the person's history and whether he or she is now at risk. Where children have been born in the UK or lived here for many years or there is other family life here, there may also be a strong Article 8 case to stay in the UK; and this may require detailed investigation of the situation of all the family members.