

Update on UK Border Agency policy and practice regarding Zimbabwe

1. In January 2002, the Home Office suspended all removals to Zimbabwe. That suspension remained in place until November 2004. After the lifting of the suspension a number of people were removed to Zimbabwe; and reports in the media suggested that some of these people had been harmed on their return. Following legal action in several Zimbabwean cases, the Home Office reintroduced the suspension on removals to Zimbabwe. The suspension remains in place, though the position of the UK Border Agency is that it intends to lift the suspension and wishes to do so at the earliest opportunity.
2. This note provides an update of the current situation. It sets out what is known of the current UK Border Agency policy and practice on Zimbabwe; and gives information about what has been happening during 2009 in Zimbabwean cases before the Asylum and Immigration Tribunal.
3. This note accompanies a presentation to be made at Praxis on Friday, 18th December.

Recent background:

4. In November 2008, the Asylum and Immigration Tribunal (AIT) made a decision in the case of *RN (Zimbabwe)*. The AIT issued this decision as country guidance for all Zimbabwean asylum claims. The AIT decided that not all Zimbabweans were at risk if returned to Zimbabwe; but that anyone who could not demonstrate loyalty to ZANU-PF was at risk and, therefore, entitled to asylum.
5. In December 2008, the UK Border Agency issued a policy (called an Operational Guidance Note or OGN) on Zimbabwean asylum claims. At the time, ILPA complained to the UK Border Agency that the OGN did not fully reflect the decision of the AIT. However, the OGN did indicate that many Zimbabweans (including many who had been refused asylum) were entitled to asylum; and ILPA (and others) demanded that the UK Border Agency take urgent steps to address the very many cases where someone had been refused asylum and it was now shown that he or she was entitled to asylum.
6. The UK Border Agency did begin to work through the many outstanding Zimbabwean cases. However, in March 2009 the UK Border Agency issued a new OGN. This remains the current UK Border Agency policy. It includes the following statement:

“Despite numerous ongoing incidents [in Zimbabwe], the widespread and seemingly indiscriminate attacks that led the AIT to conclude that anyone who was unable to demonstrate loyalty to ZANU-PF would be at risk have not been repeated since the summer of 2008...”

...The evidence of the past six months or so therefore no longer supports the contention that Zimbabweans are at risk merely because they would be unable to show support for ZANU-PF..."

7. ILPA does not accept this analysis; and has formally complained to the UK Border Agency about it. The AIT had considered evidence of the situation in Zimbabwe after summer 2008. While it is correct that the level of violence over the summer (at the time of elections) was significantly greater, it is not correct that the AIT's assessment of risk was simply based on that higher level of violence. The AIT took account of the reduced levels of violence since summer 2008; and the evidence does not show that there has been any further significant reduction in violence since then.
8. More importantly, the AIT's assessment of risk was founded on the upheaval in Zimbabwe which had led to ZANU-PF supporters being encouraged and permitted to drive out non-ZANU-PF supporters. The AIT concluded that these people acted with impunity and were now effectively out of control. The risk to many Zimbabweans was not, therefore, from the Government or from State officials like the CIO or police but from the ZANU-PF supporters who had been encouraged to form gangs and militias and subject opponents to serious violence. A key finding by the AIT in relation to this was that:

"Further international intervention or some unforeseen upheaval inside Zimbabwe itself may change the position, for example, by giving the MDC real control of the police. In such an eventuality it will be for judicial fact finders to determine the extent to which the evidence before them differs from that which is before us, pending fresh country guidance..."
9. The change the AIT referred to has not happened. The MDC does not have control of the police; and because of this it continues to be the case that the gangs and militias can act with impunity against anyone they consider to be an opponent.
10. Nonetheless, the UK Border Agency has indicated that it wishes to lift the suspension on removals. In October 2009, Phil Woolas MP, the Immigration Minister, announced that:

"We have announced today in a Written Ministerial Statement our intention to make changes over time to our returns policy to Zimbabwe, reflecting developments in Zimbabwe following the formation of the Inclusive Government led by Prime Minister Tsvangirai."
11. At that time, the UK Border Agency also introduced changes to the voluntary returns package offered to Zimbabweans. The changes are intended to persuade more Zimbabweans to volunteer to return.

Some facts and figures:

12. The following information is taken from the Home Office official asylum statistics. The figures all relate to claims for asylum by Zimbabweans. Included within the figure for grants of asylum are grants of refugee leave and grants of humanitarian protection. It should be noted that the various figures given in any particular quarter do not correlate – e.g. the grants and refusals of asylum in Oct-Dec 2008 may relate to claims made before that time.

	Asylum claims made	Grants of asylum	Refusals of asylum
Oct-Dec 2008	820	195	360
Jan-Mar 2009	2,925	810	285
Apr-Jun 2009	1,535	430	1,435
Jul-Sep 2009	525	240	1,685

13. The figures about asylum claims show that at the beginning of this year there was a very large increase in the number of asylum claims being made. The number of claims has steadily fallen. The figures also show that at the end of last year and the start of this year the UK Border Agency was receiving many more claims than it was deciding. Yet as the year has gone on, that has reversed so the UK Border Agency is now catching up on Zimbabwean claims that it had not dealt with. The figures also show that the UK Border Agency is now overwhelmingly refusing asylum claims by Zimbabweans – 82% of decisions made in Jul-Sep 2009 were to refuse asylum. This is broadly in line with asylum decisions for all countries: refusal rates in this period are high.
14. The following information is taken from the Home Office official asylum statistics. The figures all relate to appeals by Zimbabwean asylum-seekers. The various figures do correlate – e.g. the percentage of asylum appeals allowed and dismissed in Oct-Dec 2008 are percentages of the total appeals decided in that time. The reason the percentages do not add up to 100% is because some appeals are withdrawn. There may be different reasons for withdrawal – but one important reason is that an appeal is treated as withdrawn if the UK Border Agency decides that it was wrong to have refused asylum and now grants asylum.

	Appeals decided	Percentage of appeals allowed	Percentage of appeals dismissed
Oct-Dec 2008	755	32%	57%
Jan-Mar 2009	240	56%	31%
Apr-Jun 2009	580	44%	53%
Jul-Sep 2009	1,815	42%	53%

15. The figures about asylum appeals show that at the beginning of the year, the AIT decided very few Zimbabwean appeals. To some extent this reflects that the UK Border Agency was making less decisions in Zimbabwean cases. The figures show that as the year has gone on, the AIT has greatly increased the numbers of Zimbabwean appeals it is deciding. The figures also show that the AIT has throughout the year maintained a high rate of allowing appeals. By comparison, if Zimbabwean appeals are discounted, the percentage of all asylum appeals allowed in Jul-Sep 2009 was 23%.

Conclusion:

16. The following conclusions either may be drawn directly from the information in this note or are consistent with that information:
 - a. Following the decision of the AIT in *RN (Zimbabwe)* at the end of last year, there was a significant rise in the number of asylum claims by Zimbabweans.
 - b. Many of those claims may have been made by Zimbabweans who were already in the UK – including those who had either entered illegally or overstayed.
 - c. The UK Border Agency response to that increase in claims has been to deter people from claiming. The ways in which it has done this include:
 - restricting its policy on Zimbabwe (despite this being inconsistent with the AIT decision);
 - rapidly increasing the number of decisions (refusals) it is making once that policy has been put in place; and
 - publicly announcing that it intends to start removals to Zimbabwe.
 - d. Meanwhile, the AIT's position on Zimbabwe has not changed, and a high percentage of appeals continue to be allowed.
17. It is impossible to assess if and when the UK Border Agency will act on its stated intention to start removals to Zimbabwe. All that can be said is that, at the time of writing, the suspension on removals to Zimbabwe remains in force.

Steve Symonds
ILPA Legal Officer

16th December 2009