

## **New Hope for Zimbabwean asylum seekers: UK Court of Appeal grants permission to appeal the decision of EM and Others (Returnees) Zimbabwe.**

It is significant and pleasing to note that the court of appeal has granted permission to appeal against the current Zimbabwe Country Guidance case which had brought so much misery to Zimbabweans who have been seeking permission to regularise their stay in the UK. The decision known as **EM and Others (Returnees) Zimbabwe** which was decided as a country guidance case was being heavily relied upon by the UK Border Agency to deny appeals and applications made by Zimbabweans. This case deemed it safe for Zimbabweans to return to most parts of the country.

In a new decision, **JG and CM (Zimbabwe)**, just published on the 11<sup>th</sup> January 2012, the Court of Appeal concluded that there was an arguable error of law in the Tribunal's country guidance. The Tribunal had erred that there had been a well established and durable change for the better in Zimbabwe since the previous country guidance in RN. The court of appeal allowed the application for permission to appeal mainly because the government had not disclosed all the necessary evidence to allow for a fair determination. Furthermore, the government in the case of EM Zimbabwe relied on anonymous evidence which has been rejected by the Court of appeal.

When the country guidance case of EM Zimbabwe was heard, the appellant had applied for full disclosure of documents which was to be relied upon which related to the assessments made by the foreign office of the political situation in Zimbabwe. The government had not fully disclosed all the necessary documents but the Tribunal had dismissed the concerns of the appellants with regards to this disclosure and this is the basis upon which the court of appeal decided to allow the application for permission to appeal. Basically, at some point during the permission to appeal application, the government solicitors apparently conceded that not all relevant documents had been disclosed which aspect has necessitated the need to have the country guidance case to be revisited.

In a leading judgment by Sullivan LJ, the court of appeal observed that the government had failed to disclose various documents identified in previous proceedings. The court held that

***... [I]t is at least arguable on the material we have now seen that there was a failure to make proper disclosure to the Tribunal for whatever reason. In very brief summary, it is argued that the FCO material illustrates concerns about a limited window of opportunity to return Zimbabweans to Zimbabwe and this view is prevalent throughout the FCO papers - limited because elections were anticipated within 12-18 months and because there is a real likelihood of violence at those elections. It seems to me that the material already seen - starting with the report dated 9 March 2010 and concluding with the letter dated 12 October 2010 from the FCO to the Home Office - was arguably relevant and might have impacted upon the critical conclusions of the Tribunal that the evidence produced a picture that was too obscure [to accept a real risk of ill-treatment based on the forthcoming elections]. It is arguable that the additional materials might have persuaded the Tribunal otherwise.***

The court of appeal also granted the application for permission to appeal mainly because the Tribunal had relied on anonymous evidence which is in the Fact Finding Mission to Zimbabwe which took place in August 2010. The court of appeal has decided that it was improper for the Tribunal to rely on anonymous evidence. On that issue the court ruled that:

Sullivan LJ held that:

***It is arguable that the Tribunal's starting point in light of Sufi should have been that substantial weight should not be attached to the FFM where the information was based upon anonymous sources, that is to say, not merely the individuals but the organisations they represented were anonymous. There is clearly an issue as to whether the decision in Sufi goes simply to weight or whether it requires a more principled approach as to the weight that may be given as a matter of law to anonymous evidence. The difference in the two approaches is perhaps illustrated in AMM, subsequent country guidance of the Tribunal. In essence, Mr Henderson's submission is that the starting point should have been that the anonymous evidence should not be given substantial weight. That was not the Tribunal's approach.***

The Court of Appeal has directed that an interim hearing of the appeal be listed this month and a full hearing to follow soon thereafter.

It is now hoped that with the current serious talk of pending elections in Zimbabwe the revisiting of the country guidance case on Zimbabwe would bring much needed hope to Zimbabweans based in the UK, many who had lost all hope with their cases to regularise their stay particularly in the current environment.

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