



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉS)

IN PRIVATE
HUIS CLOS
TA1-21612
TA1-21613
TA2-06960

CLAIMANT(S)

DEMANDEUR(S)

XXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXX

DATE(S) OF HEARING

DATE(S) DE L'AUDIENCE

22 August 2002

DATE OF DECISION

DATE DE LA DÉCISION

9 September 2002

CORAM

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S.E. Kitchener

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

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XXXXXXXXXXXX, 27, the principal claimant, is a citizen of Zimbabwe. She claims to have a well-founded fear of persecution by reason of her membership in a particular social group, namely women who refuse to follow traditional practices, and on her perceived political opinion. On the former ground, she fears persecution at the hands of members of her own and her husband's family, from whom no state protection is available. On the latter ground, she fears persecution at the hands of agents of the government of Zimbabwe.

XXXXXXXXXXXXXXXXXXXX, 4, a citizen of Zimbabwe, claims to have a well-founded fear of persecution based on her identity as the minor female child of her parents. She fears persecution at the hands of her grandparents, from whom state protection is unavailable to her and at the hands of agents of the government of Zimbabwe.

XXXXXXXXXXXXXXXX, 30, the male claimant, also a Zimbabwean citizen, claims to have a well-founded fear of persecution by reason of his political opinion. He fears persecution at the hands of agents of the government of Zimbabwe.

Summary of allegations, principal and minor claimant

The principal claimant alleges that, in 2000, her then husband, XXXXXXXXXXXXXXXX, facing persecution for his political beliefs, disappeared. As a result of his disappearance, she was forced into a levirate marriage with his brother by her own and her husband's parents, following tradition. Her prior refusal to comply and pleas to police for assistance met with no success.

Her new husband proved to be a brutal man who mistreated her emotionally and physically, issuing death threats against her and once even holding a knife to her throat to force her submission to him. Fearing for her life and her daughter's well-being, she took the child into hiding until arrangements were completed for their departure from Zimbabwe.

Summary of allegations, male claimant

The male claimant alleges that, because he was a member of the opposition Movement for Democratic Change (MDC) and was employed by a well-regarded non-governmental organization (NGO) doing community-related work, he received death threats and became the target of government agents. He escaped the fate of five MDC members who were killed by fleeing into hiding, having been tipped off by community members. At this point he lost contact with his family. Government agents tracked him

down and beat him to unconsciousness. MDC members rescued him and took him to a hideout where he remained until they completed arrangements for his departure from Zimbabwe.

Determination

The Refugee Protection Division determines each of the claimants to be a Convention refugee because each has a well-founded fear of persecution.

Preliminary matters

As a preliminary matter, I note that the principal claimant acted as designated the representative of the minor claimant after establishing that she was the child's mother and would act in her best interests.

I note as a further preliminary matter, that the principal claimant and the minor claimant arrived in Canada and claimed Convention refugee status prior to the male claimant. Their Personal Information Forms¹ (PIF) identified him as husband and father, respectively and indicated that his whereabouts were unknown. The three claims were joined after the male claimant made his claim.

I note that neither of the two counsels (one representing the principal and minor claimants and the other the male claimant) objected to the joinder. I note as well, that,

¹ Exhibits C-1, C-2, C-3.

after the joinder, no separate file screening form for the male claimant had been prepared and that his counsel triggered his Notice to Appear by calling the Division to advise that he had received none. Counsels had not disclosed all the relevant documents concerning their clients to each other and appear not to have contacted each other in that regard. Nevertheless, with the cooperation of counsel and the assistance of the Refugee Protection Officer (RPO) in arranging the photocopying of numerous documents and counsels being allotted time to peruse them, the hearing was completed.

Finally, I note that written observations from the RPO were received by the August 26, 2002 due date, with written reply by counsel for the principal and minor claimants being received on August 30, 2002, and a document requested from counsel for the male claimant was received August 23, 2002.

Analysis

In considering the claims of the principal and minor claimants, I have borne in mind the Chairperson's guidelines regarding female² and minor claimants.³

² Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65 (3) of the Immigration Act, IRB, Ottawa, November 25, 1996.

³ Child Refugee Claimants: Procedural and Evidentiary Issues, Guidelines Issued by the Chairperson Pursuant to Section 65 (3) of the Immigration Act, IRB, Ottawa, September 30, 1996.

The determinative issues in this matter are the identity of the claimants, including political identity for the male claimant and the subjective and objective bases for a well-founded fear of persecution for all three claimants.

Identity: Principal claimant and minor claimant

Based on their valid passports, I accept that the principal claimant⁴ and minor claimant⁵ are who they say they are and are citizens of Zimbabwe. Based on the minor claimant's birth certificate,⁶ I accept that the principal claimant and minor claimant are mother and daughter.

In light of the principal claimant's passport indication that her occupation is civil servant and her University diploma in Education⁷ I am satisfied that she was as she stated, a teacher employed by the Zimbabwean Ministry of Education.

Identity, male claimant

Documents corroborative of the male claimant's identity,⁸ including his Certificate of Birth,⁹ school documents,¹⁰ his university diploma¹¹ and his photo ID national identity

⁴ Exhibit M-1, Zimbabwe passport, valid to XXXX 2004.

⁵ Exhibit M-2, Zimbabwe passport, valid to XXXX 2005.

⁶ Exhibit C-6, Zimbabwe, Certified Copy of an Entry Registered in the District of Bulawayo, dated XXXX/98, p. 3.

⁷ Ibid., University of Zimbabwe, Diploma in XXXXX, dated XXXX/00, p. 7.

⁸ Exhibit C-5.

card,¹² Zimbabwe National Registration¹³ are before me. Based on them, and a balance of possibilities, I accept that he is who he says he is and is a citizen of Zimbabwe. I accept based on the principal claimant's credible testimony that she and the male claimant were married in a XXXXX 1998 traditional ceremony. I also accept, based on the minor claimant's birth certificate¹⁴ and the observable familial similarity, that he and the minor claimant are father and daughter. Further documentary corroboration of the male claimant's identity is a letter tendered post-hearing confirming his employment.¹⁵

The male claimant tendered no documentary evidence of his MDC activism. He was knowledgeable about MDC and its activities in his stated constituency. However, without the principal claimant's corroborative evidence in this regard, certain credibility concerns canvassed below might have led me to question whether his knowledge came from direct experience. For the reasons below, I am satisfied that the male claimant was an active opponent of the government of Zimbabwe, based on the principal claimant's PIF mention of his political persecution.

⁹ Ibid., 1973, p. 2.

¹⁰ Ibid.

¹¹ Ibid., University of Zimbabwe, p. 3.

¹² Ibid.

¹³ Ibid., p. 4.

¹⁴ Exhibit C-6, Zimbabwe, Certified Copy of an Entry Registered in the District of Bulawayo, dated XXXX/98, p. 3.

¹⁵ Exhibit C-7, Letter, Plan International, Zimbabwe, undated.

I accept that, when the principal claimant signed the PIF in October 2001, she had no expectation of seeing the male claimant again, having had no word of him for over a year and a half. She makes no allegation that either she or her daughter risk persecution because of his political activities. Rather, she bases her claim on gender, including being forced into a levirate marriage because of her then husband's lengthy disappearance. I read her mention of the male claimant's political problems as incidental, included solely as a possible explanation for his disappearance. Given the circumstances of their claims, I see no other benefit of such mention to her or her daughter. I accept, based on her PIF narrative, and a balance of probabilities that the male claimant was an active government opponent. As well, I accept that he was an MDC activist, based on the principal claimant's credible oral evidence.

Credibility, principal claimant

In my view, the principal claimant was a credible witness. Her oral and written stories were, on balance, mutually consistent.

I accept that she remains very angry with the male claimant, missing for 1 ½ years, for not somehow contacting her in Zimbabwe to let her know he was still alive and that she blames his failure to do so for the persecution that befell her. I accept too, that she knew nothing of his arrival in Canada until a mutual acquaintance advised her of it; that

they have always lived separately here and that she has no intention of reuniting with him.

The principal claimant did hesitate when asked whether her fear of persecution might be removed if she and the male claimant together presented themselves to their parents. In my view, her hesitation was not evasion but rather resulted from her deliberating about the appropriate response, since she had already put aside all consideration of reconciliation or reuniting with him. I found her manner of testimony to be generally straightforward, particularly in light of the claims being heard together.

I accept as reasonable her explanation that she went to South Africa in search of her missing husband after being told that he was there and, failing to find him after two months, returned to Zimbabwe, the problems with his family having not yet surfaced. Her evidence in this regard was detailed and, to my mind spontaneous. I believe her. In my view, her return did not constitute reavailment.

The principal claimant was able to offer a satisfactory explanation for the significant discrepancy with the Port of Entry notes.¹⁶ Her forced marriage, her fear of her own and of her husband's family, including his abusive brother, now her husband, are omitted in the story recorded by the Immigration Officer. The principal claimant's explanation for the omission was that, although she had attempted to communicate her

¹⁶ Exhibit M-1, Officer Notes, p. 11.

whole story, the Immigration Officer advised that it was too long and that the claimant could fill out the details for her claim after seeing a lawyer. I find her explanation reasonable for the following reasons. The Immigration Officer has noted as the first item in the claimant's account the claimant's separation from her husband and the difficulty of raising a child alone. I find this to accord with her oral evidence of ostracization as a means of forcing levirate marriage. I do not doubt that the account the principal claimant gave the Immigration Officer was long and complicated or that the story might have been confused given the claimant's exhaustion after traveling for hours with a 3-year old. I note that the Immigration Officer has attempted to assist by posing questions to the claimant. However, I note as well, that all of the questions regarding Zimbabwe relate to the claimant's relationship with her husband. I am satisfied that these key omissions are the result of the context of the interview rather than an attempt to mislead on the part of the claimant or inaccuracy on the part of the Immigration Officer.

I find credible the principal claimant's testimony that, with her husband's disappearance, her attempts (noted earlier) to find him and with no word of him for 1½ years, he was presumed dead by her and his parents. Her evidence regarding her forced marriage to the claimant's brother was detailed and, to my mind, credible. Furthermore, her evidence regarding the customary practice of levitate marriage in Zimbabwe is

consistent with the documentary evidence.¹⁷ It shows¹⁸ that, despite legal prohibitions, women are still vulnerable to entrenched customary practices, including the forcing of a widow to marry her late husband's brother.

¹⁷ Exhibit R-1, U.S. Department of p. 16.

¹⁸ Ibid.

Moreover, I am satisfied that the threat of ostracization by both families if she refused the levirate marriage was effective because of the economic consequences for her and her daughter. The documentary evidence¹⁹ reports that women married under customary law are not allowed to own property jointly with their husbands. Although the claimant was employed as a teacher, I accept that this posed insufficient security for her as the mother of a young child. The documentary evidence shows escalating violence against teachers by government agents²⁰ and increasingly widespread economic chaos. I find the claimant's testimony credible in this regard.

As well, the documentary evidence²¹ is supportive of her allegation that she was unable to gain protection from her new husband's brutality. Spousal abuse is reported as endemic in Zimbabwe with society generally accepting of it and police not responding to women's requests for assistance.²²

In light of all of the above, I find the principal claimant to be a credible and trustworthy witness. I believe her account.

¹⁹ Ibid., p. 16.

²⁰ Ibid., p. 34.

²¹ Ibid.

²² Ibid.

Credibility, male claimant

Numerous credibility and plausibility concerns remain in my mind about the male claimant's evidence. For example, I find not plausible his testimony that, because he did not want to jeopardize her safety, he failed to get word to his wife of his welfare. He spent his lengthy time in hiding on the outskirts of Bulawayo, the city where she lived. He was in contact with MDC members who were apparently sufficiently competent in underground work to hide him and then to get him out of the country. I do not know why he did not send some sort of message to her, but I find not credible the reason he gave.

Nor am I satisfied that his emergence in Canada only weeks after his wife and daughter arrived in this country was entirely coincidental. To my mind, his testimony that he did not know they were in Canada before he came to this country strains credulity.

However, there was one aspect of his testimony about which I have no doubt, namely that his wife will not forgive him and will not reconcile with him. His evidence in that regard was blurted out and his repeated supplications that it should be possible to put the past behind them lent credence to his testimony about their relationship, in my opinion.

Regardless of my outstanding concerns about the trustworthiness of the male claimant's testimony, I have accepted that he is who he says he is; that he was an MDC member and an anti-government activist.

Objective basis for a well-founded fear of persecution, principal claimant

In my opinion, the principal claimant has established an objectively well-founded fear of persecution on a Convention ground. As noted earlier, the documentary evidence is supportive of her allegation that forced levirate marriage is a customary practice in Zimbabwe and that state protection is unavailable to her either from her parents, her in-laws or from her abusive second husband.

I have accepted that she will not reconcile with the male claimant, who because of his failure to contact her, she holds responsible for her past persecution. However, even in that unlikely event, no evidence is before me that the stipulated agents of persecution would change their minds about the legitimacy of her levirate marriage.

Given all of the foregoing, I find her fear of persecution in Zimbabwe to be objectively well-founded.

Objective basis for a well-founded fear of persecution, male claimant

For the following reasons, I find the male claimant has established an objectively well-founded fear of persecution based on his political opinion. The documentary evidence²³ reports state-sanctioned attacks by government supporters such as war veterans

²³ Ibid., p. 31.

and members of the ruling ZANU PF party against political opponents and perceived opponents, with army and police lending assistance to those conducting such violence and knowingly permitting such activities. The documentary evidence shows numerous instances of such attacks particularly on members of the opposition MDC, including beatings and torture²⁴ and violent beatings resulting in death.²⁵ I have accepted that the male claimant is an MDC activist. In my view, his fear of persecution by reason of his political opinion is objectively well-founded.

Objective basis for a well-founded fear of persecution, minor claimant

I find the minor claimant has established that her fear of persecution as the minor female child of her parents is well-founded on an objective basis. I accept the principal claimant's evidence that the minor claimant was at risk of emotional harm because of the brutality of the step-father with whom she and the principal claimant were forced to live lest they be ostracized from both families. The documentary evidence reports the deprivation suffered by women in such circumstances²⁶ and the dire consequences suffered by children who are without economic support.²⁷ Moreover, as the daughter of a

²⁴ Ibid., abduction, p. 32.

²⁵ Ibid., p. 34.

²⁶ Ibid., p. 45.

²⁷ Ibid., p. 46.

government opponent and a member of MDC, the documentary evidence²⁸ shows that the minor claimant is at risk of persecution at the hands of government agents.

In my opinion, each of the claimants has an objectively well-founded fear of persecution on a Convention ground. I conclude that there is more than a mere possibility of persecution were any of the claimants to return to Zimbabwe.

Accordingly, the Refugee Protection Division determines XXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX to be Convention refugees.

"S.E. Kitchener"
S.E. Kitchener

DATED at Toronto this 9th day of September, 2002.

²⁸ Ibid., p. 34.

KEYWORDS - REFUGEE PROTECTION DIVISION - PARTICULAR SOCIAL GROUP - GENDER-RELATED PERSECUTION - WOMEN REFUGEES - FORCED MARRIAGE - POLITICAL OPINION - CREDIBILITY - POSITIVE - FEMALE/MALE - ZIMBABWE

The female claimant alleged a fear of persecution by reason of her membership in a particular social group, women who refuse to follow traditional practices, and her perceived political opinion. The male claimant alleged a fear of persecution by reason of his political opinion. After the male claimant, facing persecution for his political beliefs, disappeared, the female claimant was forced into a levirate marriage with his brother against her will. Her new husband mistreated her and threatened to kill her. The male claimant was a member of the opposition Movement for Democratic Change and was employed by a non-governmental organization doing community-related work. He went into hiding after five MDC members were killed. The evidence of the female claimant regarding the practice of levirate marriage was consistent with the documentary evidence, which shows that, despite legal prohibitions, women are still vulnerable to entrenched customary practices, including the forcing of a widow to marry her late husband's brother. Spousal abuse is endemic in Zimbabwe and the police do not respond to requests for assistance. As for the male claimant, the documentary evidence contains numerous instances of violent and sometimes fatal attacks on MDC members. Both claimants had a well-founded fear of persecution. **RPD TA1-21612 et al., Kitchener, September 9, 2002.**