

**Date: 20080116**

**Docket: IMM-860-07**

**Citation: 2008 FC 53**

**Ottawa, Ontario, January 16, 2008**

**PRESENT: The Honourable Mr. Justice Kelen**

**BETWEEN:**

**CHARLES BRIGHTON CHAVI**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated February 7, 2007 concluding that the applicant, a citizen of Zimbabwe, is not a Convention refugee or a person in need of protection.

**FACTS**

[2] The applicant, a 51-year-old citizen of Zimbabwe, seeks refugee protection on the basis of persecution for opposing the Government of Robert Mugabe.

[3] The applicant, a member of the opposition party called Movement for Democratic Change (MDC), claims to have been harassed by the Zimbabwe African National Union – Patriotic Front (ZANU-PF) militia. Examples include:

1. on November 29, 2004 the ZANU-PF militia accused the applicant of being a MDC member and began pushing him around and punching him;
2. on March 5, 2005 a ZANU-PF youth member wrote graffiti on the outside wall of the applicant's house, which subsequently led to frequent telephone calls demanding that the applicant "quit the MDC"; and
3. on February 9, 2006 the applicant was arrested by the Central Intelligence Organization (CIO) of the Government, and held for five weeks at the Manyame Airforce Base until March 16, 2006, during which time he was interrogated and tortured about his knowledge regarding illegal arms sales. In his Personal Information Form (PIF), the applicant states that the torture methods included:

... being put in a coffin; having a sack placed on my head and my head dunked in water; having the soles of my feet beaten with a rubber truncheon; and having a small gun put to my head and trigger pulled (Russian roulette).

[4] The applicant states he was only released from CIO custody upon the intervention of a childhood friend who was a military operative. Upon release on March 16, 2006 (after five weeks), the applicant learned that the CIO's suspicion of him arose because of frequent meetings he had with the MDC Area Chairman, Mr. Roland Nindi. Mr. Nindi, in turn, was involved with a Mr. Peter Hitschmann, an individual accused of possessing illegal arms and who was later arrested on illegal

arms charges in March 2006. The applicant states that after his release, the CIO followed him and monitored his activities.

[5] After being released from detention and learning about why he was detained, and after being followed and monitored by two or three people whenever he left his home, the applicant decided to leave Zimbabwe on April 5, 2006. He flew to the United States (he had a visa that he had obtained sometime before and he had a contact in the United States). An organization helped him come to Canada to claim refugee status.

[6] When questioned about how he was able to leave Zimbabwe if he was of interest to the CIO, the applicant answered that his brother made arrangements for him to leave the country by bribing the appropriate people. The bribe was 15 million Zimbabwe dollars, which is \$30 Canadian, and is a significant amount of money in Zimbabwe.

[7] On May 22, 2006, the applicant arrived in Canada and advanced his claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

## ISSUES

[8] At the hearing the applicant raised the following issues:

1. the material finding of fact by the Board that the applicant would not have been able to bribe someone to leave Zimbabwe was not supported by any reasons and is a breach of natural justice; and
2. the material finding of fact by the Board that the applicant's alleged MDC membership by itself was not sufficient to place him at risk of serious harm is contrary to the objective documentary evidence from the U.S. Department of State. Accordingly, the Board erred in law by not explaining why this important, relevant, and contradictory evidence was rejected.

## STANDARD OF REVIEW

[9] The failure to provide reasons is a breach of natural justice and is subject to review on a standard of correctness. The second issue raises the question of the Board's failure to explain relevant and important contradictory evidence, which is an error of law also subject to review on a standard of correctness.

## ANALYSIS

**Issue No. 1: The material finding of fact by the Board with respect to whether the applicant was able to bribe someone to leave Zimbabwe was not supported by any reasons.**

[10] The Board held at page 3 of its decision:

... Yet it is the claimant's evidence that he was able to bribe someone to leave the country. I do not believe his evidence but before making

a definitive finding in this critical area I assess further evidence below.

However, the Board does not in fact assess any further evidence relevant to whether the claimant was able to bribe someone to leave the country.

[11] The applicant submits that the Board is obliged to provide clear, precise, and intelligible reasons to allow the Minister or the person making the claim to understand the grounds upon which the decision is based and to allow the reviewing court to understand the basis for the decision or the material finding. This is trite law. See *Canada (Minister of Citizenship and Immigration) v. Shwaba*, 2007 FC 80, [2007] F.C.J. No. 119 (QL) per Mr. Justice de Montigny at paragraphs 14-15. In this case, the Board failed to provide reasons, let alone adequate reasons, for its conclusion that the applicant would not have been able to bribe someone to leave Zimbabwe.

[12] The respondent submitted that the Board's decision was reasonable considering that Zimbabwe has exit controls so that the applicant would not be able to leave if he was a person of interest to the CIO. However, there is no issue as to exit controls. The applicant testified that he bribed the officials with 15 million Zimbabwe dollars so that he could leave, obviously thereby avoiding exit controls. The applicant was examined by the Board member about the bribe. I am satisfied the applicant clearly showed that he did pay this bribe and that this bribe was a significant amount of money in Zimbabwe. Accordingly, the respondent's position that the applicant could not have left Zimbabwe because of the exit controls does not overcome the uncontradicted documentary evidence that corruption amongst government officials in Zimbabwe is rampant. Accordingly, it is quite plausible that an official could be bribed to allow the applicant to leave Zimbabwe regardless

of whether there were exit controls. For these reasons, I agree with the applicant's submission that the Board failed to provide any reasons with respect to this material fact, and this is a breach of natural justice and an error of law.

**Issue No. 2: The material finding of fact by the Board that the applicant's alleged MDC membership is not sufficient to place him at risk of serious harm is contrary to the objective documentary evidence from the U.S. Department of State, and the Board erred in failing to explain why this important, relevant, and contradictory evidence was rejected.**

[13] The Board found at page 5 of its decision that the applicant's "MDC membership by itself is not sufficient to place him at risk of serious harm." The objective documentary evidence from the U.S. Department of State with respect to Zimbabwe in 2004 speaks about the serious human rights abuses by President Mugabe and his party in order to maintain political power. At page 131 of the applicant's record, the U.S. Department of State Report is quoted and includes:

... a systematic, government-sanctioned campaign of violence targeting supporters and perceived supporters of the opposition continued during the year ... Security forces, government-sanctioned youth militias, and ruling party supporters tortured, raped and otherwise abused persons perceived to be associated with the opposition ...

[...]

... all of those killed in political violence were MDC activists or supporters ...

[...]

... security forces were involved in incidents of political violence ... particularly in areas suspected of heavy support for the opposition.

In the case at bar, the CIO allegedly suspected the applicant of being involved with a group of MDC members obtaining illegal arms and planning a coup. While the applicant states that this link is untrue, he did have connections with MDC members who were suspected of being involved with illegal arms. This is a plausible reason why he was arrested, and why he was being followed and monitored after his release from detention.

[14] The U.S. Department of State Report is objective evidence that membership in the MDC is sufficient to place a person at risk of harm. The applicant was a supporter of the MDC, and was perceived to be a supporter of individual MDC members engaged in illegal arms. The security forces in Zimbabwe do not first read a person his rights before abusing a person perceived to be associated with the opposition. The failure of the Board to consider this important objective evidence suggests that the Board did not have regard for the evidence in finding that mere membership in the MDC is insufficient to place the applicant at serious risk of harm. As Mr. Justice Evans held in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, the Board has a burden of explaining why it did not consider the U.S. Department of State evidence when it appears squarely to contradict (the Board's) finding of fact. The Board was silent on the U.S. Department of State evidence pointing to the opposite conclusion that membership in the MDC may be perceived by the security forces to warrant abuse and violence. The U.S. Department of State reports widespread state-sponsored violence and repression of the political opposition by Robert Mugabe's Government. The Court considers that the failure of the Board to explain this important and relevant objective evidence, which contradicts the Board's finding, to be an error of law.

[15] The respondent submitted that the Board's conclusion that the applicant's alleged arrest did not occur and that the CIO was not interested in the applicant is supported by the following reasons in the decision:

1. his passport was never confiscated;
2. the newspaper articles did not mention the applicant by name and would have if he was a high-profile member of the MDC connected with the incident for which the respondent says the applicant was arrested;
3. the applicant's clearance by the Zimbabwe criminal investigation department was not revoked after his arrest;
4. it was unreasonable that the CIO officials who were allegedly following and monitoring the applicant after his release would not have re-arrested him;
5. if the CIO were monitoring the applicant, it is unreasonable that he would have been able to bribe someone to get out of Zimbabwe; and
6. the applicant did not obtain any corroborating evidence from the MDC that the CIO was interested in him.

[16] I have considered the evidence with respect to each of these issues and I have concluded that none of them have sufficient weight to override the errors referred to above. The practice of the government to confiscate the passport of a significant opposition member does not mean that every low level MDC member who the CIO is monitoring will have his passport confiscated.



[17] The newspaper article referred to high-profile MDC members who were arrested for having illegal arms in their homes and for planning a coup. These arrests took place after the applicant was detained on February 16, 2006. Accordingly, the applicant was not directly involved and even if he was, he was not a high-profile MDC opponent of the government. Accordingly, it makes sense that he would not be mentioned in the newspaper article.

[18] The applicant's clearance from the Zimbabwe State Police again was not revoked because the applicant was not a high-profile person. Just because the CIO officials were following him and monitoring him does not mean that they would re-arrest him. They would only re-arrest him if they found that he was doing something that confirmed their suspicion.

[19] There was no corroborative evidence from the MDC because anyone writing such a letter in Zimbabwe for the MDC would be subject to detention, abuse, and possibly torture or death. The applicant did provide corroborative evidence in the form of medical evidence confirming the injuries that he received when tortured were consistent with the torture he endured while detained for five weeks. The applicant also produced his MDC membership card, which no one suggested was not authentic. In fact, the Board member made mention of the medical evidence and the MDC card but dismissed this corroborative evidence because the applicant was found not credible on other issues such as the Board's finding that the applicant would not have been able to bribe officials to exit Zimbabwe if the CIO was interested in him.

[20] For all of these reasons, the Court will allow this application for judicial review. Both parties advised the Court that this application does not raise a serious question of general importance that should be certified for an appeal. The Court agrees, so no question will be certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

This application for judicial review is allowed, the decision of the Board dated February 7, 2007 is set aside, and the applicant's refugee claim and claim for protection is referred to another panel of the Board for redetermination.

\_\_\_\_\_  
"Michael A. Kelen"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-860-07

**STYLE OF CAUSE:** CHARLES BRIGHTON CHAVI v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** January 10, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** KELEN J.

**DATED:** January 16, 2008

**APPEARANCES:**

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Ms. Janet Chisholm FOR THE RESPONDENT

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