

1112328 [2012] RRTA 279 (1 May 2012)

DECISION RECORD

RRT CASE NUMBER: 1112328

DIAC REFERENCE(S): CLF2010/159415

COUNTRY OF REFERENCE: Zambia

TRIBUNAL MEMBER: Catherine Carney

DATE: 1 May 2012

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Zambia, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] February 2009 and applied to the Department of Immigration and Citizenship for the visa [in] November 2010. The delegate decided to refuse to grant the visa [in] November 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] November 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

7. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
8. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
 9. owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

19. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
20. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
21. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

22. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Application for Protection Visa

23. The applicant lodged an application for a Protection visa [in] November 2010. In that application he stated that he was born on [date deleted: s.431(2)]. He was born in [Zambia]. He speaks English and Bemba. He flew out of Lusaka International airport [in] February 2009. He entered Australia on a Student visa. He has had fifteen years

education. From 2000 until August 2008 he lived at the same address in Zambia. He claims that he left Zambia as he feared being persecuted. He claims that if he returns he will be put to death by the entire community of the village. He claims that the entire community will harm and mistreat him. He claims they have people planted all over Zambia and there is no area in Zambia where he would be protected. He claims that evidence of the death of his two [siblings] and his mother is the reason that his life will not be spared. Attached to his application was the statement set out below:-

My name is [name] a student of [education provider], [City 1] Australia. I arrived in Australia [in] February 2009 with a student visa and I have undertaken my studies since I arrived.

Prior to lodging my application for a student visa in Zambia my life was in danger as my family members are bent on terminating my life. My father was the royal chief of the local deity in my village and every five years, he is expected to make a human sacrifice with one of his children. And he who would be used for the sacrifice would be determined by the god after due consultations by my father.

July 11th 2008, was the day marked for the consultation by my father to know who would be next as the sacrifice for the fifth year was in June 2009. After the consultation the sacrifice of human being to the deity fell on me.

My father was married to several wives and my mother was the last of the six and she was the one that had male children for my father. After the oracle had destined me, my mother become nervous and sought to avert the impending death penalty on me. She advised me to leave the village and relocate to Lusaka while she go pleaded with her nephew [Mr A] who is the director at [business name] to send me overseas in whatever means to save my life.

[Mr A] agreed to send me to overseas for studies and consent to take responsibility. He began to process for my studies with [an education provider] in [City 1].

After my arrival there has been intense pressure on my parents to produce me for the sacrifice otherwise they would face the wrath of the gods and the village community at large. Having pointed several fingers on my mother that she was behind my missing, she was persecuted [in] August in 2010. While two of my [siblings] died in their sleep [in] September 2010. My two sisters left by themselves after the death of my mother and two [siblings], were attacked at night by criminals. The criminals raped both sisters of mine and took all house belongs. As a result my sisters left flee to unknown location.

My has (sic) been held hostage and warranty declared to get me dead or alive in my village. My studies have been completed and

was almost time for me to go back home but the situation on the ground would not grant my safety if I should go back.

24. The delegate interviewed the applicant [in] October 2011.

25. A summary of the interview is as follows:-

The applicant stated that he is single and has no children. He is a Zambian citizen. His father is a polygamist with many children. He has four [siblings] from his mother. He claims his sisters are alive but he does not know where they are. He claims his mother died in August 2010 and [two siblings] in September 2010. He said he has one person he keeps in contact with in Zambia. He states he is a family friend who informed of the present situation.

He said an agent prepared his papers to enable him to come to Australia. He said that he was just called to come and collect his visa. He claims he obtained his passport legally. He claims that his friend [Mr B] collected his new passport for him as he was out of Zambia and in Australia.

He states he never travelled outside Zambia before. He travelled from Zambia to [Australia]. He states he is a Christian, a Jehovah's Witness. He said his mother would take him to services when he was a child.

He said his father is still in Zambia. His father is a chief and he claims he last had contact with him somewhere before June 2008 before he left the country. He claims he has not spoken to him since. He said his father has many wives. He said his religion is Christian. He said he last spoke to his sisters before his mother passed away in February/March 2009. He said he was speaking to his mum and he spoke to his sisters when they came to visit her. He said he flew out of Lusaka airport when he left Zambia.

He said he wrote in his application that he had a right to reside in any commonwealth country as that is what it says on his passport.

He stated that he cannot go back to Zambia because he is going to be killed. He said that according to religious and tribal customs he was offered as a sacrifice. He said that previously it was not a practice he took personally but his mother told him to take it seriously.

He said that as a result of witchcraft he lost his mother and [two siblings]. He said that his tribe, father and the whole Lunda tribe will look for him. He said that there are maybe 800,000 people in the tribe however he is unsure of the total population. He said he was selected as a human sacrifice because his father is the Chief of the tribe. He said he did not know the procedure of selection but there was a group of eight men and Chiefs who made the choice of him. He said this happened in August/September 2008. He said he left for the Capital Lusaka in November 2008.

He said he did not report concerns to Zambian authorities as no one can support him because his father is a Chief and according to Zambian law a Chief cannot be prosecuted in a court of law.

He said that when a Chief dies they appoint a new Chief and they sometimes use witchcraft to kill each other. He said his father was appointed as a Chief in 1998. He said he is the Chief of the whole Lunda tribe.

He said that [Mr B] told him that his [siblings] died in their sleep in September 2010. He said it is general knowledge that witchcraft was involved. He said that his [siblings] died of heart failure and his mother of cardio vascular due to trauma. He said that he waited nearly a year before lodging a protection application because he was forced to come to Australia, he said he came to realise his hat life was in danger when his two [siblings] and mother passed away. He said his uncle paid for everything and was supporting him due to his mother's influence however now his uncle has stopped supporting him and he is in fear. He said he did not get on well with his father.

He said he was unable to live in Lusaka safely as anybody who saw him would report him. He said he would still be subject to witchcraft. He said his father would put pressure on others for him to be killed. He said the sacrifice was for a good harvest. He said that his two [siblings] were killed because he was not there. He said if he went back he would just disappear and his body parts would be taken.

He said that human sacrifice is a common practice; he said his mother brought him up to be different. He said sacrificial killing sometimes occurred in a road accident however it was intentional. He said that when he came to Australia everything was ok but things changed when his mother passed away. He said that [Mr B] obtained the medical certificates for him from the hospital.

He said that all three death certificates were handed to [Mr C] as he was the uncle related to his mother. He said there is no protection in Zambia as the government does not interfere. He said they would only interfere if the killing was done in public. He said he did not know how his mother found out that he was to be offered as a sacrifice. He stated that it could be because she knows tribes and has connections to elders.

He said he does not know where his sisters are, he claims they were attacked and raped one [night] so they fled. He said that his father does not hold any public office in Zambia. He said he is not a member of any political party.

26. [In] November 2011 the delegate declined to grant a protection visa to the applicant. Part of his decision is set out below:-

CLIENT HISTORY/MIGRATION HISTORY

17/06/2007 Zambian passport issued (expiring [June] /2017)

15/01/2009 Application for Student (Temporary) TU 573 visa commenced

20/01/2009 Student (Temporary) TU 573 visa granted

06/02/2009 Arrived in Australia

22/06/2009 Second Zambian passport issued (expiring [June] /2019) [November] /2010 Protection visa application commenced

30/11/2010 Student TU 572 visa ceased

I have carefully considered the applicant's claims and am not satisfied that what he claims to fear can be said to be for reason of any one of the grounds enumerated in the Convention. His fear of harm is private harm stemming from a decree by members of his tribe. Any threat to his life would not be for any Convention reason.

In making this assessment, I have considered whether his fear of harm could be categorised under the ground of 'particular social group'. I find no cognisable group that he is a member of that would be the reason for him facing harm. The harm he claims to fear is disinterestedly individual. I therefore find that his claimed fear of persecution is not for reason of his membership of a particular social group or for any Convention reason.

27. [In] November 2011 the applicant lodged an Application for Review with the Tribunal.
28. [In] November 2011 the Tribunal acknowledge receipt of the application. The Tribunal invited the applicant to provide any further information he considered relevant.
29. [In] March 2012 the Tribunal invited the applicant to attend a hearing. The Tribunal again invited the applicant to provide any additional information he wished the Tribunal to consider.
30. No further information was provided.
31. The applicant appeared before the Tribunal [in] April 2012 to give evidence and present arguments.
32. The applicant stated his name and date of birth for the record. The Tribunal then went through the introduction. The Tribunal explained the purpose of the hearing was to determine whether the applicant was a refugee. The Tribunal referred the applicant to the definition of refugee in front of him and read out the definition. The Tribunal further explained that the complementary protection limb for the grant of a protection visa is met if there are substantial grounds for believing that there is a real risk the applicant will suffer significant harm if returned to another country. The Tribunal then read out the definition of significant harm. The Tribunal explained that it may put adverse information to the applicant and that if it did this it was giving the applicant the opportunity to comment on that information. The Tribunal further stated that it would explain the significance of the information and the applicant could request further time to consider his response including requesting an adjournment.
33. The applicant indicated he understood all this.
34. The Tribunal asked the applicant if there were any witnesses or further information to be provided. He responded there was not.
35. The Tribunal then asked the applicant where he lived in Zambia. The applicant said that his address in Zambia was [Town 2]. He said he lived there from 1999 to 2001. He stated he then was sent to school in [Town 3] for about a year. He then moved to [Town 4] for two years. He then went and stayed with a friend for a [short period] then back to [Town 2]. He said he went to Lusaka in 2008 shorting before coming to Australia. He said he was there from about August 2008 to February 2009.
36. The Tribunal asked him about his family in Zambia. He said his father was the Chief of the Tribe known as Bemba or Lunda tribe. He said his name was [name deleted: s.431(2)].
37. He said he had two sisters in Zambia who he was not in contact with. He said he had a lot of step sisters and step mothers as his father was a polygamist.

38. He said [two siblings had] passed away. He said they died in their sleep and he was not there. He said he thinks their deaths had something to do with witchcraft however he cannot confirm this.
39. The Tribunal asked what his father did to earn a living. He said his father lives in an area surrounded by a fence and people come to him to resolve their issues. He said that before he was chief he worked in [labouring]. He said his father is about [age deleted: s.431(2)] years old.
40. He said his mother was be-headed. He said he was told it was because she helped him come to Australia. He said she was not on good terms with his father because he was suspicious that she helped the applicant disappear.
41. The Tribunal asked the applicant how he found out she had been be-headed. He said there is only one person who knows where he is and that is his friend [Mr B]. He said he speaks to his friend [Mr B] on his mobile phone.
42. The Tribunal then asked the applicant why he cannot return to Zambia.
43. The applicant said that he fears they will sacrifice him. The Tribunal asked who “they” were. He replied they were the whole community of the Lunda tribe.
44. The Tribunal asked why they would sacrifice him. He said there was this ritual that had been going on for ages. He said they pray to God to sacrifice a human being and they get blessed with a good harvest. He said they do this secretly.
45. He said he was chosen to be the sacrifice and that is his fear.
46. The Tribunal asked why they would choose him. He said he was not sure, but because of what he was taught, he said his mother told him about what was happening.
47. The applicant said that he believes his [siblings] were sacrificed as it was too much like witchcraft. He said that to be a chief you have to be like a witch. He said you have to influence people through your powers.
48. The applicant asked if his father was politically active. He replied he was not and that he had no profile outside his tribe.
49. The Tribunal asked who funded the applicant to come to Australia. He said he was funded by his mother’s nephew. He said that his name was [Mr A] and was working and living in the capital city. He said he had wealth and when his mother told him about the applicant’s situation he decided he would help him. He said he told him (the applicant) he would fund him and he used his [company] to do this. He said he went to an agent who lodged the application.
50. The Tribunal pointed out that earlier he had said that [Mr B] was the only one who knew he was in Australia however it appears that his mother’s nephew knew also as he arranged his student visa. The applicant responded that his mother’s nephew does not want to be involved and that is why he did not mention him. The Tribunal asked if his mother’s nephew would protect him if he returned as he appears to be in the city in a privileged position. The applicant replied that he only did everything to help and protect his mother. The Tribunal then asked why his mother did not seek refuge in the

city with her nephew when he says she was persecuted. He replied because she pretended not to know.

51. The Tribunal clarified that he only had sisters and step sisters left in Zambia. The Tribunal then asked why his father who was a Chief and lived in a society that valued male children would kill all his sons. The applicant replied that he cannot answer that as Chiefs are very different and have so much power.
52. He said that his family live a traditional life and his Mother used to take them to school he said that the tribe's mentality is remote.
53. The Tribunal then asked the applicant if he felt that his fear fits within the definition of refugee. He replied that he could not say.
54. The Tribunal asked if he went to the authorities for help. He said that in Zambia the Chiefs have their own jurisdiction in their areas. He said the government does not interfere with them. He said they would just kill him in a private manner. He said the government does not interfere with Chiefs. He said they have their own jurisdiction he said there is not much government presence in rural areas they are only in the cities.
55. The Tribunal asked if he could return to live in the city as he had previously done. He said that he may bump into some-one who knows him. The Tribunal pointed out that he had just said that there is police in the cities and they could offer some protection. He said that is not adequate as "they" will use witchcraft against him and he does not feel safe. The Tribunal pointed out that he is currently in Australia and no witchcraft has happened to him. He said he could not explain that.
56. The Tribunal then turned to the death certificates he had provided with his application. The Tribunal said that the death certificates look like copies. The Tribunal said that the certificates issued for one [sibling] and his mother are on different dates but look identical down to the same ink with identical handwriting. The one written for the other [sibling] who was meant to have died on the same day as his [other sibling] is different with different writing. The applicant said they were sent to him by [Mr B]. The Tribunal stated that the certificates state they were issued to [Mr C]. He said that was his mother's nephew. The Tribunal said that the certificates list his address as [Town 2] Zambia however earlier the applicant had told the Tribunal that the mother's nephew lives and works in the city. The applicant stated that this could be the same place he lived. The Tribunal asked the applicant if he was sure the certificates were genuine. He said they were sent to him and he thinks so.
57. The applicant confirmed that he came to Australia in February 2009 on a student visa. The Tribunal asked when he stopped studying. He said he was nearly finished when his mother's nephew stopped funding him. He said he did not have any money to continue studying. He said this happened about three months before his student visa ceased. He said his student visa ceased in November 2010. The Tribunal said that it appears he put in an application for protection as soon as his student visa ceased. The Tribunal indicated that the timing of his application could cause concern about the genuine nature of his claim. He said that at the time he was desperate because he did not have any money he said he did not even have enough money to buy a ticket back home.

58. The Tribunal asked why he did not put in a claim for protection as soon as he entered Australia as he said he fled due to the fear he was in. He said that he did not know about protection visas. He said his mother's nephew did not tell him. He said that he only learnt he was in danger after the death of his [siblings].
59. The Tribunal then asked if there was anything further he wanted to say about his claims. He replied that there was not.
60. The Tribunal then showed the applicant a photograph of Chief Kashiba which was on a government website. The Tribunal asked the applicant if that was his father. The applicant inspected the photograph and said it was not his father. The Tribunal pointed out that the person in the photograph is the Chief of the Lunda people. The applicant replied that there are many Chiefs and sub-Chiefs. The Tribunal pointed out that the applicant had earlier told the Tribunal that his father was the Chief of the whole Lunda Tribe and is now telling it that this photograph from an independent Zambian government site is not his father. The applicant said there are twenty two Tribes and there are many juniors.
61. The Tribunal pointed out that earlier he said that the Chiefs cannot be prosecuted by authorities as they have their own jurisdiction yet independent information indicates that they can be prosecuted and the Zambian authorities specifically set out in laws that govern the Chiefs that Chiefs can be charged and convicted of an offence. The information further indicates that in March 2012 a Chief was arrested and detained.
62. The applicant replied that they will do things in private. The Tribunal then indicated that where there have been reports of suspected ritual killings they involved young children or girls.
63. The applicant said that "they" did not present to him that he was chosen to be sacrificed his mother just told him this would happen.
64. The Tribunal then said that it has a list of the Lunda Hierarchy which is on a Zambian website. The Tribunal said his father's name does not appear on that list. He replied that there are many Chiefs. The Tribunal then showed the list to the applicant he said that his father was listed as Chief Kashiba which was the middle name he gave to the Tribunal. The Tribunal then pointed out that there was a photograph which was of Chief Kashiba and the applicant had just told the Tribunal that it was not his father. The applicant replied there are many Chiefs of different tribes.
65. The Tribunal then asked how long he had lived with his mother's nephew in the city. He said he lived there while his student visa was being processed. He said he was unsure of the dates and could not be specific.
66. The Tribunal then stated that pursuant to s424AA it had some information which it was going to put to the applicant. It said this information was significant because it reflected on his credibility. The Tribunal said that if it found that his evidence was not credible then it would cause the Tribunal to not believe his claims are genuine. The Tribunal stated that before answering or discussing the issues he could seek further time to consider his response including an adjournment.

67. The Tribunal stated that it had listened to the tape of his interview. It stated that during that interview he had stated that his father was the Chief of the whole Lunda tribe who numbered over 800,000. The information just put to him above indicates that this is not true. He stated that Chiefs could not be prosecuted for any crime as they are protected by Zambian law. The Tribunal indicated that this contradicts the information just put to him. The Tribunal said that he has given different versions of his mother's death. He referred to be-heading in the hearing and this was noted in a letter he provided from [a] Mental Health Centre. However in other information he provided in his claim he refers to her been persecuted.
68. The applicant elected to answer at the hearing. He stated that the number of the Lunda population was just something he said as he felt he was interrogated by the delegate. He said many live in rural areas and they have boundaries and only 20% live in the city areas he said in the rural areas it is boundless. The Tribunal then asked if he wanted to comment on his claims that Chiefs cannot be prosecuted by law in Zambia. He said that he personally has never seen a Chief prosecuted.
69. He said that he gave differing versions of his mother's death because he did not know about be-heading; he said he was not there and he just got this impression from hearing about her death.
70. The Tribunal asked if he had anything further to say. He replied that he did not.

INDEPENDENT COUNTRY INFORMATION

Please provide any reports of human sacrifice in Zambia in last six years.

71. Reports were found on local Zambian news websites of suspected human sacrifices, but none of the reports describe circumstances where the victim was the child of a chief. One report was located quoting a Senior Lunda Chief who appealed to the public to report ritual killings to the police. A search of sources that describe rituals and traditions of the Lunda tribe did not reveal any references to human sacrifices or ritual killings.¹
72. The following reports of human sacrifices in Zambia were located:
73. An incident was reported in April 2011 where three men suspected of carrying out ritual killings were attacked by villagers in Mansa, Luapula Province.² When a local radio station broadcast rumours that business people were carrying out ritual killings, villagers began rioting, targeting several business owners and killing three men.³ Police refuted the rumours of ritual killings.⁴ The Senior Lunda Chief of Luapula Province, Mwata Kazembe,

¹ The following source describes chiefly succession rites but does not mention human sacrifices: Roy, C. undated, 'Lunda Tribe of Africa: African Tribal People', *Gateway Africa*, http://www.gateway-africa.com/tribe/lunda_tribe.html – Accessed 22 March 2012; See also: Pritchett, J.A. 1996, 'Lunda', *Encyclopedia of World Cultures*, <http://www.encyclopedia.com/topic/Lunda.aspx> – Accessed 22 March 2012

² 'Zambia: Deadly Riots 'Send a Bad Signal'' 2011, *All Africa*, 20 April <http://allafrica.com/stories/201104200805.html> – Accessed 23 March 2012

³ 'Zambia: Deadly Riots 'Send a Bad Signal'' 2011, *All Africa*, 20 April <http://allafrica.com/stories/201104200805.html> – Accessed 23 March 2012

⁴ 'Zambia: Deadly Riots 'Send a Bad Signal'' 2011, *All Africa*, 20 April <http://allafrica.com/stories/201104200805.html> – Accessed 23 March 2012

condemned the violence and also stated that if villagers had genuine complaints about ritual killings they should report the suspects to the police.⁵

74. Similar to above incident, *Africa News* reported in April 2011 that a 25 year old man was 'beaten by an angry mob for allegedly trying to abduct a boy for a ritual killing' in Mansa, Luapala Province.⁶
75. *Lusaka Times* reported in April 2011 that the body of a three year old girl was found in Northern Province. Due to the manner in which her body had been mutilated, it was suspected her death was the result of a ritual killing.⁷
76. In a 2011 report on human sacrifices and ritual killings in Africa, *The Zimbabwean* noted that '[i]n Zambia, there have been cases where people's heads were found in Asian-owned shops'⁸ No further details of these cases were mentioned in the report.
77. *Lusaka Times* reported in 2009 that the body of a teenage girl had been found with her left arm missing and her right hand broken in a suspected ritual killing in Eastern Province, sparking fears that 'the recent suspected ritual killings reported in [the nearby town of] Chipata could spread to Chadiza'⁹

Is any information about the applicant's [father] being Chief of the Lunda Tribe?

78. While no sources were found referring to [the applicant's father], several sources were located referring to a Chief Kashiba.
79. A presidential campaign website for Rupiah Banda, a former Zambian President, includes a 2011 article referring to 'Chief Kashiba of the Lunda people in Mwense district of Luapula province',¹⁰
80. The website of the Zambian National Constitutional Conference, a committee launched by the President of Zambia in 2007 to oversee the adoption of a new constitution, lists the Conference members. Among the list is 'HRH Chief Kashiba', whose profession is 'traditional leader' and 'diplomat'¹¹ His photo is provided below.¹²

⁵ 'Mwata Kazembe condemns recent Mansa riots' 2011, *Lusaka Times*, 15 May

<http://www.lusakatimes.com/2011/05/15/mwata-kazembe-condemns-mansa-riots/> – Accessed 22 March 2012

⁶ Mukuka, A. 2011 'Ritual Killings in Luapula Province of Zambia', *Africa News*, 18 April

http://www.africanews.com/site/list_message/34134 – Accessed 21 March 2012

⁷ 'Nchelenge minor found dead in suspected ritual murder' 2011, *Lusaka Times*, 13 April

<http://www.lusakatimes.com/2011/04/13/nchelenge-minor-dead-suspected-ritual-murder/> – Accessed 21 March 2012

⁸ 'Breaking the silence on ritual killings' 2011, *The Zimbabwean*, 27 September

<http://www.thezimbabwean.co.uk/human-rights/53150/breaking-the-silence-on-ritual.html> – Accessed 19 March 2012

⁹ 'Teenage girl murdered by suspected ritual killers' 2009, *Lusaka Times*, 2 July

<http://www.lusakatimes.com/2009/07/02/teenage-girl-murdered-by-suspected-ritual-killers/> – Accessed 21 March 2012

¹⁰ 'Chief Kashiba is happy with the Government' 2011, *Banda4Zambia*, 30 May

<http://www.banda4zambia.com/inthenewsshow.aspx?id=585> – Accessed 22 March 2012

¹¹ 'Gallery of NCC', undated, National Constitutional Conference, <http://www.ncczambia.org/gallery.php> – Accessed 22 March 2012

¹² 'Gallery of NCC', undated, National Constitutional Conference, <http://www.ncczambia.org/gallery.php> – Accessed 22 March 2012

[photo removed]

81. Figure 1 HRH Chief Kashiba

A website dedicated to the Lunda celebration of Mutomboko, an annual event hosted by the Lunda Royal Establishment, includes a page on the Lunda hierarchy.¹³ This page lists a number of chiefs, including Chief Kashiba.

Is there any law in Zambia which states that Chiefs cannot be prosecuted in a court of law?

No information was found stating that chiefs cannot be prosecuted in a court of law; to the contrary, two laws were found referring to the capacity of chiefs to be sued or convicted of an offence.

Article 128 of the Zambian Constitution states that the institution of chief is an individual corporation 'with capacity to sue and be sued'.¹⁴ The Article states in full:

128. The following concepts and principles shall apply to Chiefs:

- (a) the Institution of Chief shall be a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned;
- (b) nothing in paragraph (a) shall be taken to prohibit a Chief from holding any asset or property acquired [sic] in a personal capacity; and
- (c) a traditional leader or cultural leader shall enjoy such privileges and benefits as may be conferred by the Government and the local government or as that leader may be entitled to under culture, custom and tradition.¹⁵

With regard to paragraph (c) of the above article, a search of Zambian legal websites did not retrieve any information stating that one of the 'privileges and benefits' conferred by the Zambian Government was the inability to be prosecuted.¹⁶ Additionally, a law was located that provides for chiefs to be charged and convicted of an offence. Under Article 12 of Zambia's *Witchcraft Act 1994*, '[a]ny chief or headman who directly or indirectly permits, promotes, encourages or facilitates the commission of any act punishable by this

¹³ 'Lunda Hierarchy', undated, <http://mutomboko.org/> – Accessed 22 March 2012

¹⁴ 'Chiefs and the Law in Independent Zambia' 2008, *Zambian Economist*, 15 August <http://www.zambian-economist.com/2008/08/traditional-authorities-part-2-chiefs.html> – Accessed 21 March 2012

¹⁵ *Constitution of the Republic Of Zambia 1991* (Zambia), art 128, (amended 1996), The Zambian Parliament, <http://www.parliament.gov.zm/downloads/VOLUME%201.pdf> – Accessed 26 March 2012

¹⁶ Searches were conducted of Zambian legal websites as well as the following specific Acts: *Penal Code Act 2005* (Zambia), The Zambian Parliament, <http://www.parliament.gov.zm/downloads/VOLUME%207.pdf> – Accessed 27 March 2012; *Criminal Procedure Code Act 2005* (Zambia), Southern African Legal Information Institute, http://www.saflii.org/zm/legis/consol_act/cpca211/ – Accessed 27 March 2012; *Chiefs Act 1994*, Southern African Legal Information Institute, http://www.saflii.org/zm/legis/consol_act/ca65/ – Accessed 27 March 2012

Act', or does not report an act of which they are aware to the relevant authorities, 'shall be liable upon conviction to a fine or to imprisonment with or without hard labour for any term not exceeding three years'.¹⁷

One report was located of a chief being arrested in March 2012. No reports were located of a chief being prosecuted. The *Times of Zambia* reported that 'acting Chief Ngabwe of Kapiri-Mposhi District was yesterday detained by authorities after he was allegedly found with assorted types of game meat, including that of an elephant'.¹⁸ The arrest was reportedly confirmed by the Zambia Wildlife Authority (ZAWA) and the Central Province commissioner of police.¹⁹

It may be of note that there are numerous reports describing the ineffectiveness of the Zambian police force due to inadequate training, under-staffing, lack of communication facilities, resource shortages and poor accommodation. These reports are provided in *Country Advice ZMB39468* (dated 31 October 2011).²⁰ There are also reports that 'filing complaints at police stations is a complicated and even dangerous exercise as one can end up being detained instead'.²¹ It is possible that while chiefs may be legally prosecuted or sued, the avenues for redress of crimes committed by chiefs may be hampered by the ineffectiveness of the Zambian police force and the unwillingness of citizens to report crimes for fear of being detained.

FINDINGS AND REASONS

82. The applicant travelled to Australia on a valid Zambian passport and claims to be a national of Zambia. The Tribunal accepts that the applicant is a national of Zambia and has assessed his claims against Zambia as his country of nationality.
83. The applicant claims that he cannot return to Zambia as he is in danger of being sacrificed by his Tribe. He claims his father is a royal Chief. He claims [two siblings] have been killed by witchcraft and his mother was be-headed. He claims his sisters were attacked and have fled to an unknown place.
84. The Tribunal found the applicant to be a witness who lacked credibility. The Tribunal found the applicant to be inconsistent, implausible, confused and non-responsive in the way direct questions were answered. The Tribunal has the following concerns about the applicant's evidence which cause the Tribunal to find that the applicant lacks credibility:-
85. At the hearing the applicant was vague and unable to give detail about his claims. He could not give any adequate or convincing response as to why his father would kill his only sons. He claimed that only his friend [Mr B] knew he was in Australia however

¹⁷ *Witchcraft Act 1994*, (Zambia), art 12, The Zambian Parliament,

<http://www.parliament.gov.zm/downloads/VOLUME%207.pdf> – Accessed 27 March 2012

¹⁸ 'Kapiri Chief Nabbed Over Game Meat', 2012, *Times of Zambia*, 20 March <http://www.times.co.zm/?p=1613> – Accessed 21 March 2012

¹⁹ 'Kapiri Chief Nabbed Over Game Meat', 2012, *Times of Zambia*, 20 March <http://www.times.co.zm/?p=1613> – Accessed 21 March 2012

²⁰ RRT Country Advice 2011, *Country Advice ZMB39468*, 31 October

²¹ Zambia Human Rights Commission 2008, *State of Human Rights Report in Zambia*,

http://www.hrc.org.zm/media/annual_state_human_rights_in_zambia_2008_report.pdf - Accessed 25 October 2011

later in the hearing spoke about his mother's nephew urgently organising him to get a student visa so he could escape to Australia. The Tribunal put to the applicant that in a report he provided from [a] Mental Health Centre it states his history as told by him that his mother was be-headed and in his statement he simply said she was persecuted. Later at the hearing he stated he had just assumed that was how she died. In the history and statement he gave detail of his time with his Uncle's friend while his visa was processed and explained how he was chosen as it had to be a child of the Chief. At the hearing he stated he did not know why he was chosen. He did not know how long he stayed with his Uncle who was actually his mother's nephew. When he was asked about his mother's death and why the details of her actual death changed in his evidence he said that this was because he was not sure how she died and he assumed it was be-heading. He had no response to other inconsistencies. At the hearing he stated that he did not know where his sisters were, he did not expand on this or explain why they had fled. The applicant stated that his [siblings] died in their sleep. When asked to expand on this he stated that he thinks it was witchcraft involved. He could not explain why his father who was a Chief and in his words "old" would continue to seek to kill his remaining and now only son. The applicant in the hearing gave significantly different addresses for where he lived in Zambia to those in his application. At the hearing he stated he resided in the cities of [Town 4] and Lusaka. At the hearing he said he would not be safe in those cities as someone would recognise him and he would be subject to witchcraft. He said there was no protection from the authorities however in the hearing he stated that there was a police presence in the cities and not in the rural areas. He said he could not explain why witchcraft had not been perpetrated on him in Australia.

86. He claimed that his father was the Chief of the whole Lunda Tribe but when he was shown a photograph as set out above in Independent Country Information he said it was not his father. When he was shown a list of names he pointed out the name of the Chief in the photograph who he had earlier said was not his father. At the hearing he stated that the Chiefs have their own jurisdiction and the authorities would not interfere with whatever they do. He stated in his interview that he could not seek any protection from Zambian authorities because Chiefs according to Zambian law cannot be prosecuted. When it was put to him that this was not the case, he simply replied that he had not heard of one being prosecuted. When the information was put to him that his father was not on the list of Lunda Chiefs he stated that there are many Chiefs and then referred to his father as a sub-Chief. The Tribunal does not accept that the applicant's father is a Chief or sub-Chief of the Lunda Tribe.
87. He provided three death certificates from Zambia. Those death certificates state that the mother died from Cardi Vascular Accident due to trauma. She was [age deleted: s.431(2)] years of age. The person who was given the certificate was [Mr C]. The applicant stated that he was the mother's nephew. The death certificate stated that [Mr C] lived in [Town 2]. When it was put to the applicant that he had given evidence that his mother's nephew lived in the city and ran a successful company and was wealthy, he gave a confused reply. The other death certificate relating to his [sibling] was written in identical handwriting with the same ink. The deaths were stated to have occurred one month apart however on the face of them were written in identical ink with the same signature for the Doctor. At the place of the death certificate which states "For cases in which the medical attendant is unable to certify that death was due to natural cause see over" there was nothing noted. The cause of death for all three

death certificates was accident due to trauma and heart failure. There was nothing to indicate any foul play involved in the death of the applicant's mother or [siblings]. The Tribunal after considering the applicant's evidence and the documents themselves is not satisfied they are genuine documents. When this was put to the applicant he responded that they were the ones given to him by his friend [Mr B] and he believed they were genuine. Given the Tribunal has already found that the applicant lacked credibility the Tribunal does not accept the documents as genuine and therefore disregards them.

88. The applicant arrived in Australia in February 2009 however did not put in an application for a protection visa until November 2010. The applicant's student visa expired in November 2010. He did not put in his application for a protection visa until after his student visa expired. The applicant responded at first that his Uncle did not tell him about protection visas when he fled Zambia. Later in the hearing he stated that he only knew he was in danger after the death of his [siblings]. This does not accord with his evidence that he fled Zambia with the assistance of his mother and her wealthy city-dwelling ,company-owning nephew as his life was in danger. This is a further inconsistency in the applicant's evidence to the Tribunal and further undermines the credibility of his claims. The Tribunal does not accept that he did not know about protection visas when he came to Australia. He would have mixed with overseas students. He has been studying in Australia and was able to deal with immigration and continue studying until just before his visa expired. The Tribunal finds that the applicant's delay in putting in an Application for a Protection Visa until after his student visa had expired indicates that he did not have a genuine subjective fear.
89. For these reasons, and the Tribunal's finding about the applicant's general lack of credibility apparent from the applicant's evasiveness, lack of detail, inconsistency and ineffective response to Tribunal's questions, the Tribunal finds that the applicant has been untruthful in his claims to the Tribunal. The Tribunal rejects that the applicant is the son of the Chief or sub-Chief of the Lunda Tribe. The Tribunal rejects the claim that he is at risk of human sacrifice. The Tribunal rejects the applicant's claim that his mother was be-headed and his [siblings] killed by witchcraft because he had fled to Australia.
90. After considering the applicant's claims individually and on a cumulative basis, the Tribunal finds that if the applicant returns to Zambia now or in the reasonably foreseeable future, there is no real chance that he will be persecuted for the reason of her political opinion, membership of a particular social group or for any other Convention reason. As the Tribunal does not accept any of the applicant's claims, the Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk the applicant will suffer significant harm as a necessary and foreseeable consequence of his being removed to Zambia.

CONCLUSIONS

91. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

92. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.