

AT AUCKLAND

Appellant:	AB (Ghana)
Before:	A N Molloy (Member)
Representative for the Appellant:	The appellant represented himself
Counsel for the Respondent:	No Appearance
Date of Hearing:	10 June 2011
Date of Decision:	27 June 2011

DECISION

INTRODUCTION

[1] The appellant is a national of Ghana. He claims that if he were returned to Ghana he would be seriously harmed because of his political profile, because he has publicly supported the rights of the gay and lesbian community in Ghana, and because of historic ethnic-based violence.

[2] He appeals, under section 195(1) of the Immigration Act 2009 (the 2009 Act), against a decision of a refugee and protection officer to refuse to consider a subsequent claim by the appellant to be recognised as a refugee under section 140(1) of the 2009 Act.

[3] This is the appellant's third claim for refugee status in New Zealand. His first two claims were determined under the Immigration Act 1987 (the 1987 Act). The relevant provisions of the 2009 Act came into force on 29 November 2010. The appellant's current appeal relates to a third claim for refugee status that he lodged in March 2011, under the 2009 Act.

[4] At the same time as he lodged his further claim for refugee status in March 2011, the appellant lodged his first claim for protected person status. The protected person claim arises from the same evidence and was heard contemporaneously with the third refugee appeal.

[5] As this is a subsequent claim for refugee status, the appellant must establish, as a preliminary issue, that the Tribunal has jurisdiction to hear his refugee appeal. That issue does not arise in connection with his protected person claim.

[6] The Tribunal will address this issue first.

JURISDICTION TO HEAR SUBSEQUENT CLAIM UNDER THE 2009 ACT

[7] Where a refugee and protection officer has refused to consider a subsequent claim, section 195(1) of the 2009 Act provides that the person may appeal to the Tribunal.

[8] Where, as here, the decision to refuse to consider the subsequent claim was made under section 140(1) (on the ground that there is no significant change in circumstances) and the person has then appealed under section 195(1)(a), section 200(1) provides:

Where an appeal is brought under section 195(1)(a), the Tribunal must first consider —

- (a) whether there has been a significant change in circumstances material to the appellant's claim since the previous claim was determined; and
- (b) if so, whether the change in 1 or more of the circumstances was brought about by the appellant —
 - (i) acting otherwise than in good faith; and
 - (ii) for a purpose of creating grounds for recognition under section 129.

[9] If these requirements are met then, pursuant to section 200(6), the Tribunal will conduct its orthodox enquiry into whether to recognise the appellant as:

- (a) a refugee under the Refugee Convention (section 129); and
- (b) as a protected person under the Convention Against Torture (section 130); and

- (c) as a protected person under the International Covenant on Civil and Political Rights (ICCPR) (section 131).

[10] The provisions of the 2009 Act dealing with subsequent claims are different from those in the 1987 Act in various ways. First, an appellant is no longer required to establish a change of circumstances in his or her home country. Section 200(1)(a) of the 2009 Act simply requires the Tribunal to focus upon whether there has been a change in circumstances that: is significant; post-dates the determination of the previous claim and; is material to the claim.

[11] If these criteria are met, section 200(1)(b) provides that the Tribunal must then address whether the change in circumstances was brought about by the claimant acting other than in good faith and for the purpose of creating grounds for recognition as a refugee under section 129.

[12] The approach adopted by the Refugee Status Appeals Authority to subsequent claims brought under the 1987 Act was that, in comparing the subsequent claim with the previous claim, it was only necessary to consider whether the second claim, as asserted, disclosed the requisite changed circumstances. It did not require consideration of the appellant's credibility.

[13] However, the Tribunal intends to first determine the credibility of the appellant's account in this instance because he relies upon the same assertions in support of his claim for protection under sections 130 and 131, and the assessment of those claims is not subject to the preliminary jurisdictional threshold that arises in respect of the appellant's subsequent refugee appeal.

[14] In order to assess its jurisdiction the Tribunal will first set out the appellant's previous claims and appeals, and the decisions made in respect of those claims and appeals. It will then outline the appellant's account presented for the purposes of his subsequent appeal before assessing the credibility of that account.

The Appellant's First Claim for Refugee Status

[15] The appellant claimed that he was from a well-known family from the Kusasi tribe. They lived in northern Ghana. An outbreak of inter-communal violence between the Kusasi and Manprusi tribes in early 2008 led to the murder of his father. The appellant subsequently witnessed the murder of the leader of his local mosque by three Manprusi tribesmen, one of whom he recognised. That led to the rape and murder of the appellant's wife and the appellant was forced into hiding.

[16] The appellant made his way to New Zealand, where he claimed refugee status for the first time in late 2008. His first claim was declined in April 2009, by an officer of the Refugee Status Branch of the Department of Labour.

First Appeal to Refugee Status Appeals Authority

[17] The appellant subsequently appealed to the Refugee Status Appeals Authority (the Authority), the statutory body then responsible for considering such appeals. The Authority comprehensively rejected the appellant's credibility and declined the appeal: *Refugee Appeal No 76350* (12 August 2009). It found that it could not rely upon any part of the appellant's account, save that his name and nationality were found to be genuine.

[18] The Authority found that the appellant knowingly produced a number of false documents; noted the lack of corroborative evidence for the circumstances in which the appellant's father, an allegedly famous politician, died; found that country information contradicted the appellant's evidence about the man he claimed to be his father; noted inconsistencies between evidence given by the appellant and a written statement provided by a supporting witness, and found various aspects of the appellant's claim to be implausible.

The Appellant's Appeal to the Removal Review Authority

[19] Following publication of the decision of the Refugee Status Appeals Authority, the appellant's permit to be in New Zealand was revoked. He appealed to the Removal Review Authority against that revocation.

[20] In support of that appeal the appellant effectively repeated the basis of his first claim for refugee status. However, he also advanced new evidence that he had not advanced for the purposes of his refugee claim. He said that during the 1990s he had acquired a profile as a politician.

[21] The appellant claimed that he had been an active member of the National Convention Party (NCP) in Ghana. In that capacity he organised a large demonstration in 1995, condemning the then-ruling National Democratic Congress government. He then stood as a candidate (unsuccessfully) in the 1996 general election.

[22] The appellant claimed that, as a result of his profile, he was invited to appear on various political platforms. While doing so he criticised then-President

Rawlings after his party illegally detained and mistreated the former partner of the President's daughter. He later participated in a radio programme urging the then-President Kaffour to prosecute former President Rawlings, following a report in a Norwegian magazine in 2007 that he had accepted bribes.

[23] The appellant's claims were rejected in *Removal Appeal No 47275* (29 January 2010). The Removal Review Authority adopted the findings of the Refugee Status Appeals Authority with respect to the appellant's credibility, and also rejected his claims of political notoriety. It noted that the appellant had never previously referred to his political activities. On the contrary, when asked by the Refugee Status Branch in January 2009, the appellant had denied that he had ever been a member of a political party in any country. The Removal Review Authority found at [28]:

The Authority is satisfied that the appellant is a most unreliable witness. Anything he says about his background, including his family background, and the documents he produces, have to be treated with extreme caution. There is no reliable evidence from which the Authority can conclude that he is at risk of being seriously harmed on his return to his home country.

The Appellant's Second Claim for Refugee Status

[24] Approximately a fortnight after the Removal Review Authority delivered its decision, the appellant lodged a second application for refugee status with the Refugee Status Branch. He effectively repeated the claims made to the Removal Review Authority, with the added claim that, as a result of his political activities, he had been the subject of an attempted poisoning in 1998 or 1999.

[25] After interviewing the appellant in March 2010, a refugee status officer of the Department of Labour issued a decision dated 23 April 2010, in connection with the appellant's second application for refugee status. The Refugee Status Branch found that it had no jurisdiction to consider the appellant's second claim. Because it relied upon events in Ghana in around 1999 (to which the appellant had made no reference during his first claim for refugee status), it was not based on a change in circumstance since the final determination of his first claim in August 2009.

[26] After lodging a second appeal to the Refugee Status Appeals Authority at the end of April 2010, the appellant then withdrew his second appeal in a letter dated 19 August 2010. His letter states (verbatim):

I believe now is an appropriate time to withdraw my refugee claim since am submitting a new partnership and work permit application for the Immigration NZ.

[27] If that residence application was ever lodged, it presumably failed.

The Appellant's Third Claim for Refugee Status

[28] In February 2011 the appellant was taken into custody by the Department of Labour, on the basis that he was in New Zealand unlawfully. He lodged a claim for refugee and protection status in early March 2011. This was his third claim for refugee status and his first claim for protected person status.

[29] After interviewing the appellant, a refugee and protection officer of the Refugee Status Branch issued a further decision in respect of both claims in May 2011. The officer found that there had been no change in circumstances such that he had jurisdiction to consider the appellant's subsequent claim for refugee status. He also found that the appellant was not a protected person within the meaning of sections 130 or 131 of the 2009 Act.

[30] The appellant appeals from those decisions.

The Appellant's Account on his Third Appeal

[31] The appellant maintains that the accounts he has previously advanced are true, and says that additional matters relevant to his claims for refugee or protected person status have arisen since the final determination of his previous claims for refugee status. His further account is summarised below. Its credibility will be assessed later.

Tribal difficulties

[32] The appellant claims that he will continue to be at risk as a result of the inter-ethnic violence upon which his first application for refugee status was based.

Past political profile

[33] The appellant explained that, as he had acquired a political profile in the mid-1990s, he had been invited to participate in various public discussions about political affairs. He was involved in organising a demonstration in 1995 and his subsequent criticisms of President Rawlings led to two attempts on the appellant's life in around 1998 or 1999.

[34] On the first occasion, various people followed the appellant in a motor vehicle. He believes that if he had not been able to contact friends, who came to his assistance, an attempt would have been made on his life. On the second occasion he spent three days in hospital in a coma after drinking a cup of coffee that had been poisoned. He attributes both attempts on his life to the supporters of the Rawlings regime.

[35] Former-President Rawlings' party is again in power, having won the general election at the end of 2008. Accordingly, the appellant claims that he is at risk again because of his history of opposition to that party.

The appellant's expression of support for gay rights

[36] The appellant was listening to a Ghanaian radio station in New Zealand in June 2010 when he heard a report of an anti-homosexual rally that had taken place in Ghana. The appellant felt strongly that it was time for Ghanaians to respect people's right to do whatever they want as long as it is not unlawful. He telephoned the Ghanaian radio station and expressed his opinion to that effect on-air.

[37] Although he did not know it at the time, the appellant's comments provoked outrage in Ghana. The following morning, the appellant was telephoned by his brother in Ghana. When the appellant's name was disclosed on air, several people recognised him because of his past profile. They made their way to the home of his mother, looking for the appellant. In the appellant's absence, the people turned upon his mother and sister, beating them and vandalising their property. They made threats about the appellant and said that his life was in danger if he ever came back to Ghana. The mother and sister spent two weeks in hospital recovering from their injuries. They have subsequently moved away from Accra.

Involvement with the Non-voters' Party

[38] Around August 2010, the appellant began to consider returning to Ghana. He believed that he could do so if the political system was fundamentally changed. After speaking to a friend in Ghana, it was agreed that they would form a new political party called the "Non-voters' Party". The premise for the party was that a change would be made to the electoral system, by which the vote of anyone eligible to vote at a general election, who did not register a vote, would

automatically default to the Non-voters' Party. The appellant calculated that, as approximately 30 per cent of voters abstain, his party stood to gain a significant foothold in the electorate.

[39] The friend in Ghana engaged the support and assistance of several members of the military and the police. The appellant helped draft a manifesto for the party, but efforts to register the party with the electoral commission were stymied when the government got wind of these developments. The appellant's friend was detained and the members of the military and the police force, who had been associated with the party, were directed to take leave from their posts.

[40] Because the appellant is currently in custody he has been unable to obtain any further information.

General unrest before the 2012 election in Ghana

[41] The appellant claims that the general election scheduled for the end of 2012 in Ghana is likely to create widespread social unrest fomented by the opposition party. This will arise, he claims, as they square off with the government over lucrative deals with foreign nations seeking to exploit reserves of oil discovered in Ghana in recent years.

Material Received

[42] On the day of the hearing, the appellant lodged a handwritten statement, together with 10 pages of country information downloaded from the internet.

ASSESSMENT OF THE APPELLANT'S THIRD APPEAL

[43] The Refugee Status Appeals Authority and the Removal Review Authority both rejected the appellant's credibility. His claims with respect to the death of his father and the threat to his life by members of the Manprusi tribe were disbelieved. The Removal Review Authority also rejected his claim to have been at risk because of his political involvement during the 1990s.

[44] These findings are relevant because section 231 of the 2009 Act provides that the Tribunal may rely on any finding of credibility or fact by any appeals body and any previous appeal or matter involving the appellant.

[45] The appellant has not provided any evidence that persuades the Tribunal that the findings of the Refugee Status Appeals Authority and the Removal Review Authority should not be followed. The credibility assessments in those decisions are cogent and persuasive and the Tribunal determines that it should exercise its discretion to rely on them. Further, the evidence given during the appellant's third refugee appeal emphasises that he is an unreliable, dishonest witness. The basis for that further finding is now outlined.

The Incremental Disclosure of his Political Profile

[46] The appellant claims that his political activities led to him being the subject of two attempts at assassination in 1998 and 1999. He told the Tribunal that he had been forced into hiding, in fear for his life, while the government of the day was in place. It was only after the change of government brought about by the election in 2000 that he felt safe enough to come out of hiding. The appellant said that he anticipated further difficulties once the party of the former President Rawlings came to power again following the election in Ghana in December 2008.

[47] Given the express rejection of the truth of his claim to a political profile by the Removal Review Authority, this claim is rejected. As the Removal Review Authority noted, the appellant made no reference to any political profile when the Refugee Status Branch interviewed him in late January 2009, or in support of his appeal to the Refugee Status Appeals Authority in July 2009.

[48] In an attempt to explain what had already been rejected by the Removal Review Authority, the appellant told the Tribunal that he had not referred to his profile early on because, in 2008, his father forced him to swear on the Koran that he would never mention his political activities to anyone because it was so dangerous for him to do so.

[49] The Tribunal rejects that entirely self-serving answer and does not accept that the appellant had any such profile. The appellant's failure to make any earlier reference to these matters is inconsistent with their truthfulness and he has provided no independent country information to support his claim to have been an outspoken political activist.

[50] It is also telling that his supposed political profile has been revealed incrementally. Having made no reference to it for the purposes of his first refugee claim, he introduced it for the first time before the Removal Review Authority. When that proved to be insufficient for his purposes, he embellished his account

further by claiming, for the purposes of his second refugee appeal, that he had also been the subject of assassination attempts.

[51] The Tribunal also notes a further discrepancy. The appellant informed the Tribunal that he called for President Kaffour to investigate allegations of corruption against President Rawlings in 2000, very soon after Kaffour came to power. However he had stated, in a detailed response to a query made by the Removal Review Authority in 2009, that he had urged President Kaffour to do this after reading a report published in a Norwegian magazine in 2007. The timing is irreconcilable.

The Claim to have Supported Gay Rights

[52] The Tribunal does not believe the appellant's claim to have spoken out, on live radio, in support of gay rights.

[53] First, the appellant's claim that listeners to the radio station immediately identified who he was and made their way to his family home is implausible: particularly given that the Tribunal has rejected his claim to have a political profile.

[54] Further, his evidence in this respect has been inconsistent. When giving evidence before the Refugee Status Branch in April 2011 the appellant referred to a specific anti-gay march in a specific city. He claimed that the march, and his resulting telephone call to the radio station, occurred in November 2010. The refugee and protection officer interviewing the appellant pointed out that, according to country information, the march had taken place in June 2010, not November as he claimed. By the time he gave evidence before the Tribunal, the appellant had amended his account so that his recollection coincided with the report that the march took place in June 2010. The Tribunal does not accept that the discrepancy of some five months is attributable to a simple lapse in memory as the appellant now claims.

[55] The appellant's claim to have been the subject of clear and explicit threats against his life in June 2010 is also inconsistent with his decision to withdraw his second appeal to the Refugee Status Appeals Authority in August 2010. If the appellant had in fact been threatened because he expressed support for gay rights in Ghana, it is inevitable that he would have sought to bring that to the attention of the Authority in connection with his second appeal. He did not do so, even though his claim was not withdrawn until August 2010, some two months later.

Non-voters' Party

[56] The appellant's account of a new political party is also rejected. He has provided no evidence of its existence. If, as he claimed, he contributed to the drafting of the party manifesto, it is inevitable that he would have retained copies of the drafts, or at least some of them. He is unable to provide any such documents. He also claimed that there would be no reference to the party on the Internet because the government had suppressed any information about the party.

[57] The premise of the proposed party is also implausible. The appellant expressed his strong view that the Ghanaian electorate would get behind such a system and claimed that the government acted to suppress the party out of fear that it would become popular. However this ignores the fact that the means of securing votes by default could only be achieved by a change in the law, which would require the support of the government.

Ethnic Violence

[58] The appellant maintains his claim that he is still at risk because of inter-ethnic violence. In a robust and thorough decision, the Refugee Status Appeals Authority expressly rejected that aspect of his claim; *Refugee Appeal No 76350* (12 August 2009) at [33]. The Tribunal relies upon and adopts that finding.

General Unrest

[59] The appellant has failed to establish his claim that he would be at risk of being harmed because of general unrest in Ghana arising out of disputes over oil. This aspect of his claim is entirely speculative and is unsupported by any country information.

CONCLUSION ON JURISDICTION

[60] The appellant is a deceitful and dishonest witness. He has consistently advanced false claims over a period of three years. The Tribunal rejects the account he has advanced in respect of these appeals in its entirety. The only residual aspect of his claim that is accepted is his name and that he is a national of Ghana.

[61] For the reasons given the Tribunal finds that there has been no significant change in the circumstances material to the appellant's claim since the Refugee Status Appeals Authority determined his previous claim in August 2009. Accordingly, it has no jurisdiction to consider the appellant's third refugee claim.

[62] The Tribunal turns to consider the appellant's claim for protection as a protected person under sections 130 and 131 of the 2009 Act.

THE CONVENTION AGAINST TORTURE – THE ISSUES

[63] Section 130(1) of the 2009 Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

Assessment of the Claim under the Convention Against Torture

[64] While the Tribunal has no jurisdiction to consider the appellant's third claim for refugee status, its findings with respect to the credibility of the appellant's account are relevant to its assessment of his claim for protected person status under section 130(1) of the 2009 Act.

[65] For the reasons already given, and having taken into account all of the appellant's circumstances, the Tribunal finds that there are no substantial grounds for believing that he would be in danger of being subjected to torture if deported from New Zealand. Accordingly, the appellant is not a protected person under section 130(1) of the 2009 Act.

THE ICCPR – THE ISSUES

[66] Section 131(1) of the 2009 Act provides that:

"A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

Assessment of Claim under the ICCPR

[67] The Tribunal's findings with respect to the credibility of the appellant's account are relevant to its assessment of his claim for protected person status under section 131 of the 2009 Act.

[68] For the reasons already given, and having taken into account all of the appellant's circumstances, the Tribunal finds that there are no substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. Accordingly, the appellant is not a protected person under section 131 of the 2009 Act.

CONCLUSION

[69] The Tribunal finds that:

- (a) it has no jurisdiction to consider the appellant's subsequent claim for refugee status;
- (b) the appellant is not a protected person within the meaning of the Convention Against Torture;
- (c) that the appellant is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[70] The appeal is dismissed.

"A N Molloy"

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