

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76350

AT AUCKLAND

Before: B L Burson (Member)

Counsel for the Appellant: I Uca

Appearing for the Department of Labour: No Appearance

Date of Hearing: 22 July 2009

Date of Decision: 12 August 2009

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Ghana.

INTRODUCTION

[2] The appellant claims to have a well-founded fear of being persecuted on account of his having witnessed the murder of an elder of his tribe by a member of a rival tribe. The central issue to be resolved is the credibility of the appellant's account.

[3] What follows is a summary of the evidence given in support of the appellant's claim. An assessment follows thereafter.

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THE APPELLANT'S CASE

[4] The appellant was born in June 1969 in Accra, into the Kusasi tribe. He lived in Accra until he was aged approximately 10 years old at which time he, along with his parents and two brothers named B1 and B2, moved to a village called X which is situated in the northern region of Ghana. A sister, SS remained in Accra in the care of one of the appellant's paternal aunts, and has remained living in Accra ever since.

[5] The appellant's father was a person of prominence in Ghana. [...]

[6] Because of his background, the appellant's father became an elder of the Kusasi tribe in X. He was an important person in the tribe. [...]

[7] The Kusasi tribe was one of any number of tribes inhabiting the northern region of Ghana. The Kusasi had since the late 1960s been locked in a conflict with a rival tribe called the Manprusis over chieftaincy and land in the region. Both claimed the right to control land and exert tribal rule over the people in the villages.

[8] During his life in X there were episodic outbreaks of inter-communal violence in which many people were either murdered or raped. Houses and other property were also destroyed during such episodes of conflict. However, despite suffering the general feelings of insecurity which affected the community during these bouts of inter-communal violence, the appellant's family encountered no particular difficulties until late 2007 and 2008.

[9] Prior to this, in 2000, the appellant married. He and his wife have two children, a son born in 2003 and a daughter born in 2008.

[10] In approximately November 2007, the appellant's father was driving home when he became very concerned about a suspicious vehicle following him. The appellant's father was forced to drive to a police station in X and was given a police escort home.

[11] In early 2008 communal violence again erupted in the X area between the Kusasis and Manprusis. A number of homes were destroyed in this outbreak of violence. A curfew was imposed.

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[12] In February 2008, the spiritual leader of the community, AA, appointed the appellant to be the spokesperson for the Kusasi Youth Association. His main duties were to mobilize the Kusasi youth in the village to protect the Kusasi community and its property.

[13] The appellant's family suffered no particular harm during this outbreak of violence until May 2008 when violence flared again. On 2 May 2008 the appellant's father was murdered while working on his farm. This incident was witnessed by a Kusasi man who farmed neighbouring land and who noticed the tribal markings on the faces of the assailants identified them as Manprusis. This man came to the appellant's family compound in X and informed them of what he had seen. The appellant and the neighbour then went to see the Kusasi elders in X and informed them what had happened. The appellant and the elders then went to the local police station to report the incident. The elders informed the local police of what had happened. The man who had witnessed the attack begged the elders not to mention his name because he did not want to be in trouble. The elders did not inform the police that they had a witness.

[14] The police informed the elders that they would look into the matter. Approximately a week later, having received no information from the police, the appellant and the Kusasi elders returned to the police station. They were told that the investigation was ongoing and that the police would be in touch. This, however, was all that they were told. They were never given any details about what investigations had taken place which made them suspicious that the police were not doing anything. The appellant explained that all of the senior police officers in the X police station (and in the region generally) were Manprusis. Although there were Kusasi police officers, all senior positions were held by Manprusis. The elders returned to the police station on a weekly basis thereafter but were always only told that the investigation was ongoing.

[15] In early June 2008, the appellant was at his local mosque praying with approximately 50 other people at around 6.30pm. The appellant was sitting in the first row listening to AA when three people from the Manprusi tribe burst into the mosque, one of whom proceeded to shoot and kill AA in front of the congregation. The appellant recognised the gunman as being a man called BB. BB sold herbs in

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the area in which the appellant had his own landholding which was situated some 20 or 30 minutes drive away from X itself. The appellant's and BB's eyes met and they recognised each other. The assailants then fled.

[16] The appellant went to the *imams* and together they went to see the Kusasi elders. After a discussion it was agreed that they would report the incident to the police but that prior to doing so they would confront the elders of the Manprusi tribe in X. The following morning the appellant, along with the Kusasi elders, went to the Manprusi elders. The Kusasi elders told them what had happened and that they would be reporting the slaying of one of their senior tribal members by a Manprusi to the police. The Kusasi elders mentioned that the appellant had witnessed the event and had identified the gunman as being BB. From there the appellant and the elders proceeded to the local police station and the elders informed the police of the incident. The police asked the appellant to write a statement as to what he had seen, and he did so.

[17] Later that day, at approximately 11pm, BB and two associates entered a room in the family compound without warning. They proceeded immediately to bind and gag the appellant and his wife. The appellant's two children were asleep in another room. BB ordered his associates to rape the appellant's wife in front of him as he wanted the appellant to see this before he died. The associates proceeded to do what BB had instructed. After witnessing this, the appellant was then struck about the head with a blunt instrument causing him to become unconscious. He regained consciousness some time thereafter and saw his brother B1 in his room with his wife. B1 said while he had left his own room in the compound to go to the toilet he had heard some noises and called out the appellant's name. This had caused the assailants to flee. The appellant and his family were taken to his mother's room in the compound where she administered traditional medicines to him. The appellant indicated to the Authority that he now has a permanent scar on the back of his head as a result of this attack.

[18] The following morning the elders of the tribe were informed about the attack and a complaint was made that day to the X police station regarding the attack on the appellant and his wife. Again the police said they would investigate the matter and get back to him. The appellant remained in his mother's room in the

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compound convalescing for approximately a week. For security, the appellant's uncle stayed in the same room with them. The family recognised this was not a sustainable solution as they could not live on an indefinite basis in this one room. After a week, a meeting was held with the Kusasi elders who decided that the appellant should leave for a safer location while they made arrangements of him to leave the country.

[19] The elders took the appellant to stay with a Kusasi person in Y. The appellant knew this person because he was also part of the Kusasi Youth Association. At the time he moved to Y the elders had told him that he would need to leave the country and that they would make all the necessary arrangements. During this time he kept in contact with the elders. Approximately a week after going to Y he was informed that his wife had been killed. He was taken from the safe house back to the family compound and informed of what had happened. He was told by a Kusasi woman who witnessed the incident that while fetching water from a nearby river in the early morning to perform the household chores she had been killed by BB. The appellant and the elders then reported this incident to the police who again said they would investigate the matter. The appellant sent his two children to stay with his sister and returned to his hiding place in Y.

[20] In July 2008, while still in hiding in Y, he was informed that his farm had been burnt by BB. He knew this was an attempt to try and coax him out of hiding so he did not venture from his hiding place to go and inspect the damage. He remained where he was. After being there for approximately one month the owner of the house where he was staying informed him that some Manprusi people had been asking in the area about his whereabouts. They had heard that he was living in the area although did not know the exact house. It was then decided that the appellant would move to another location in Y. He remained at this second safe house in Y for approximately two months before travelling to Accra.

[21] While in hiding an acquaintance of the elders visited him and took his photograph and made all the necessary arrangements for him to be issued with a Ghanaian passport. This was issued in late June 2008. The appellant remained in hiding while sufficient funds were raised to enable him to leave the country for an extended period.

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[22] In October 2008 the appellant travelled to Accra where he stayed with his sister. Three days after arriving he left for South Africa using the passport which was issued in his true name. He wanted to spend some time with his children before leaving the country, but he did not stay in Accra any longer because he was concerned that this was not safe for him. At the time he married his wife, who was from Accra, the marriage ceremony was held in his sister's home. A large number of people travelled from X to Accra for the wedding and her address would be known to people in the village.

[23] The appellant rang his sister from South Africa, three days after arriving. She informed him that two or three days after he had left she was visited by some Manprusis who had threatened that she would suffer the same fate as the appellant's wife if she did not tell them where the appellant had gone. She said she began screaming very loudly which forced her would-be assailants to flee.

[24] While in South Africa the appellant learnt via a Kenyan man that it was possible to obtain a visa to enter New Zealand to be a spectator at an international sporting occasion. The appellant applied for and was issued with a visa for New Zealand for this purpose. He arrived in New Zealand on 7 November 2008.

[25] After arriving in New Zealand the appellant has kept in contact with his sister. In conversations he had with her in November 2008 he learnt that both his brothers, B1 and B2, had disappeared from the family home.

[26] Approximately two weeks prior to the hearing, the appellant learnt that his sister had returned to X in order to obtain statements from various people in support of the appellant's appeal and to retrieve a copy of his son's academic record from his previous school. In this telephone conversation the appellant's sister told him that while she was there she had fortuitously met B2 who had returned to X. He was informed by his sister that B2 had told her that he and his wife had been threatened by BB and his associates, that they would suffer the same fate as the appellant and his wife if they did not divulge the appellant's whereabouts. He was also told that his daughter had died.

Documents and submissions

[27] Throughout his claim before the RSB the appellant was represented by Ms Chorao of Ryken & Associates. Ms Chorao filed the notice of appeal on 6 May 2009. However, by letter dated 29 June 2009, Ms Uca advised the Authority that she was now representing the appellant.

[28] By letter dated 16 July 2009, the Authority received from Ms Uca a memorandum of counsel of the same date and a schedule of documents containing a further 24 documents. These documents included:

- (a) A supplementary statement by the appellant dated 15 July 2009;
- (b) Various items of country information relating to Ghana;
- (c) An affidavit submitted by the man who assisted the appellant in obtaining his passport;
- (d) Various photographs of the appellant's family including photographs of the persons said to be the appellant's half-siblings by his father's first marriage.

[29] On 22 July 2009, the Authority received a letter dated 21 July 2009 from Ms Uca enclosing further documents namely:

- (a) Photographs of graves said to be those of the appellant's father, wife and AA;
- (b) A copy of a pupil report sheet for the appellant's son.
- (c) Statement dated 19 July 2009 from the appellant's sister corroborating the main points of the appellant's evidence;
- (d) Statement from the person whom the appellant first stayed with in Y confirming that the appellant had gone into hiding at his house to avoid harm at the hands of BB;

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- (e) Statement from a representative of ABC Law Firm, said to be the lawyer engaged by the Kusasi elders regarding the appellant's refugee claim. In this document, the lawyer states that he enquired of the X police station in respect of the statements made by the appellant in respect of the deaths of his father, wife and AA. The lawyer further states that the police gave him a short period of time to look at the file and he confirmed the existence of reports by the police in respect of the various incidents upon which the appellant relied.
- (f) Statements from five other persons from the village collectively referring to the death of the appellant's father, AA and the threats to the appellant from BB and his associates.

Ms Uca made opening and closing submissions. At the conclusion of the hearing counsel was provided with the following pieces of country information by the Authority:

- (a) United States Department of State *Country Reports on Human Rights Practices for 2008: Ghana* (25 February 2009);
- (b) "Conflict in North Could Threaten Elections" *Africa News Service* (27 June 2008);
- (c) [...];
- (d) "Four killed in Ghana tribal clash" *BBC News* (6 May 2008);
- (e) [...].

[30] On 3 August 2009, Ms Uca filed further written submissions. All of Ms Uca's submissions have been taken into account by the Authority when reaching this decision.

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THE ISSUES

[31] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[32] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[33] For the reasons that now follow, the Authority has no doubt that the appellant's claim is not a truthful one. All that the Authority accepts is that the appellant has given his correct name and nationality. All other claims advanced by the appellant and, in particular, his claim to be related to the persons said to be his father and half-siblings and claim to be at risk from Manprusis, is expressly rejected as not credible.

Knowing submission of fraudulent documentation

[34] In support of his claim before the RSB, on 10 March 2009, the appellant filed three documents purporting to be genuine death certificates issued in respect of his father, wife and AA. The RSB requested an outside agency to conduct a verification exercise as to the *bona fides* of the three death certificates. The outside agency was also requested to advise whether M N Kofon and Mensah

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Kwame, the persons named in the certificates as being respectively the current Registrar and Assistant Registrar at the date of issue of the certificates held these positions. By email communication dated 23 March 2009 the outside agency in Accra replied (*verbatim*):

“The attached three death certificate has been verified and it was confirmed to be Fraudulent by Mr. William Randolph (Assistant Registrar) of Birth and Death Registry, Accra.

...Secondly M.N. Kofon is not the current Registrar and Mensah Kwame is also not the current assistant Registrar.

Currently the action Registrar of Births and Death is called (Stephen Kwaku Amoah).”

The outside agency attached a copy of the procedure for registering births and deaths in Ghana, also requested by the RSB.

[35] On 27 March 2009, the RSB disclosed the outside agency’s reply to the appellant and invited his comment on its contents. By letter dated 17 April 2009 via his then solicitors, the appellant responded. He did not dispute the false nature of the documents as indicated by the outside agency, but maintained that he had submitted them on the understanding they were genuine documents. He claimed that following his RSB interview he had telephoned a “trusted friend” in Ghana whom he asked to approach the department responsible for registering births and deaths in X and obtain the death certificates. According to the appellant, a few days later his friend called him and explained that when he (the friend) attended the relevant office, he was advised by an official that senior staff members had been removed because of allegations of corruption and the department was awaiting new staff members and instructions. Accordingly, there was no one in X who had the authority to provide certificates. This officer then advised the appellant’s friend that “for a fee” he would approach the Department of Births and Deaths in Accra and try to obtain the relevant death certificates. This was done and the documents were obtained and forwarded to the appellant. This was also the explanation that the appellant provided to the Authority.

[36] This explanation is rejected. Its convoluted nature evidences its essential untruthfulness. Furthermore, if the deaths of these persons actually took place in the circumstances claimed by the appellant but the certificates were issued by a person who had no authorisation to do so, there is no credible reason why the

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office in Accra approached by the outside agency did not make this point clear to the outside agency. Instead, each document in its entirety (including particulars of the deaths purportedly recorded therein) has been stamped by a genuine government official as being fraudulent.

[37] Finally, the Authority notes that the contents of the documents are strongly suggestive of the appellant's knowing participation in their production. In each certificate, the cause of death is recorded not in any sensible medical terms as one would reasonably expect, but rather is recorded in terms which can only have been designed to bolster the appellant's evidence of the circumstances of the claimed deaths. Thus, the death certificate issued in respect of the person claimed to be his father states the cause of death as being: "he was kill in his farm" (*sic*). In other words, the "cause" of 'his father's' death is identified in the somewhat medically unrevealing terms of his being killed. Equally unhelpful is the certificate issued in respect of his wife's claimed death which identifies her "cause" of death as being "she was kill by the riverside in X (*sic*)". The certificate produced in respect of the claimed death of AA fares a little better in this regard in that it at least states he was shot but, as implausibly as the other documents, nevertheless states "he was shot in the Mosque".

[38] Other features of these documents reveal them to be a grossly unsophisticated attempt to buttress a false claim for refugee status by the appellant through the production of false documents. The Authority has no doubt that the appellant was a knowing and willing participant in this process.

Further doubt as to his claimed father's death

[39] Further doubt is cast upon the death of the appellant's claimed father by a failure of the appellant to produce any country information confirming that this person died in the circumstances claimed by the appellant. Had the appellant's father been this famous person and died in the circumstances the appellant claimed, this is something which can reasonably be expected to have been reported in the Ghanaian press. Indeed, in her closing oral submissions Ms Uca acknowledged that this evidentiary lacuna was "surprising" given the profile the appellant claims his father had.

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[40] It is not just the lack of corroborative evidence that casts doubt of the veracity of the appellant's claims to have been actually related to this person as opposed to fortuitously sharing the same family name however. This is because what country information the appellant himself submitted flatly contradicts his account of 'his father's' death. While the report establishes that the person he claims to be his father was [famous for the reasons the appellant stated], it states that, contrary to the appellant's evidence, this [person] "died at the age of 100 last year in Accra".

[41] The appellant's explanation for this is that while the media did come to interview the family after the father's death, no information was made public. The family feared an outbreak of violence locally and indeed in other parts of Ghana given his father's profile. The appellant further claims that while his father was killed in X, the festivities were held in Accra and this is why Accra is mentioned in the report he submitted. This fanciful explanation is rejected. According to the appellant's own account, both the Kusasi and Manprusi elders were aware of the death which is claimed to have taken place in the context of more widespread inter-communal violence at the time. Quite how reporting his death could have enflamed this situation is unclear. Furthermore, the media who the appellant alleges came to visit the family must have heard of his father's death from somewhere. Given the prominence of this man, it is implausible that having learnt of his death, the simple fact of this taking place in X would not have been reported even if other particulars were not mentioned.

[42] Finally, the Authority notes that the appellant stated in his confirmation of claim form and statement that his father was born in 1930 and died in May 2008. The person identified in the report [...] is stated as dying [...] in 2006 and not 2008 as the appellant claims. Furthermore, the person claimed by the appellant to be his father is reported as dying aged 100. This makes this person's date of birth as being 1906, making this person some 24 years older than what the appellant indicated his father to be. The appellant gives no explanation for these significant discrepancies between his evidence in support of his refugee claim and the country information he submitted to support it.

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[43] These factors raise serious doubts as to the veracity of the appellant's account to have been related to his person at all. While he has produced photographs of persons said to be his father, half-brother and half-sister, there is no credible evidence that the persons identified in the photographs are related to him as he claims. His evidence in this regard is also rejected.

Contradictory and mobile evidence

[44] The appellant's various accounts in relation to his movements following the claimed death of his wife and assault on him and his wife was contradictory and mobile. In a statement dated 16 December 2008, filed in support of his refugee claim, he states that one hour after his wife had gone to fetch water he was informed by the witness that his wife had been killed. The appellant's account of going into hiding in Y comes after being told of his wife's death. However, in his RSB interview, the appellant asserted that he went to Y after the attack on himself and his wife in the compound – in other words – prior to her being killed. Asked to explain this discrepancy by the RSB, the appellant replied via his then solicitors that after his wife and he were attacked, he “sometimes” went to stay in Y “just as a safety precaution”. It just so happened that on the day that his wife was killed he was in Y. He went on to state that it was only after his wife's death that he had:

“...no doubt that he had to go into hiding as his life was clearly at risk and he then made the decision to go into hiding in Y permanently.”

[45] Yet before the Authority the appellant's evidence was different again. While he maintained his evidence that he had gone into hiding after the attack on his wife he now stated that he first went into hiding in Y in the week prior to the death of his wife and he knew then that he had to go into hiding on a permanent basis. This was because the Kusasi elders had advised him *at that time* that nowhere was safe for him in Ghana and that he would have to leave the country. He had no credible explanation for this mobility in his evidence.

[46] Furthermore, the appellant told the RSB that he had remained in hiding with his friend for about a month. It was at this time that his friend informed him that Manprusis were looking for him in the area and that he would have to find elsewhere to stay. He repeated this to the Authority but now introduced for the first time an account of going into hiding in Y at a second location where he claims

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to have remained for a further two months before travelling to Accra. However, this further version of his movements is contradicted by a statement received on 22 July 2009 purporting to be from the person whose house the appellant first hid at in Y. The person making this statement asserts that the appellant “*spend some months with me in my house hiding at Y*” (*sic*). Again, the appellant had no credible explanation for this discrepancy.

Implausible evidence

[47] The appellant’s evidence was also implausible in other places. First, the appellant was keen to emphasise that he could not find protection from BB and his associates in Accra despite it being a city of over two million inhabitants. Although he told the RSB that he was married in Y, the wedding celebration, according to his evidence before the Authority, actually took place at his sister’s house in Accra. The celebration was attended by many people from X. His sister’s address in Accra was well-known amongst inhabitants of X and, consequently, readily discoverable by BB. However, despite the months he claims to have spent in hiding, neither BB nor anyone associated with him attempted to contact the appellant’s sister to ascertain if the appellant was in hiding with her or whether she knew where he was. He could offer no explanation for this delay. This is implausible. If his sister’s address in Accra was so readily discoverable and these persons so intent on finding and harming him as he claims, it is implausible that it would take such a long time for them to check with his sister. In fact, the appellant claims that fortuitously, BB’s associates only contacted his sister in Accra a couple of days after he had departed Ghana. The fortuitous nature of his evidence when considered alongside its implausibility further undermines his credibility.

[48] Finally, the appellant was clear that if the Kusasi elders had not named him as the witness, he would not have faced the problems he claimed he did. Yet the appellant could not credibly and consistently explain what the Kusasi elders were trying to achieve by visiting the Manprusi elders prior to reporting the murder of AA to the police in the first place. He initially suggested this was done to let the Manprusi elders know that the Kusasi elders knew it was BB who shot AA. When the Authority questioned why they did not simply go directly to the police in that case, the appellant changed his evidence to suggest that the reason the Manprusi

elders were visited was because the Kusasi elders were trying to have peace making with the Manprusi elders. Finally, the appellant suggested that the Kusasi elders wanted to take the matter “to the next level” such as writing to the President or taking it to court and wanted to let the Manprusi elders know that they knew who shot AA and this is what they were going to do. The mobility in his evidence underscores the implausibility of it.

Conclusion on credibility

[49] There were other matters in the appellant’s evidence which simply did not have the ‘ring of truth’ about them. In particular, the appellant did his best to paint a picture of a government and police force which was dominated by Manprusis and which failed to intervene to quell any attacks on Kusasis. This hands-off approach is inconsistent with the country information. It is not, however, necessary to take this point any further. This is because the matters outlined in detail above, weighed cumulatively, leave the Authority in no doubt that the core elements of this claim are false.

[50] Although the appellant has filed a number of written statements by persons purporting to be from his village and purporting to be his sister, they are unconvincing. Indeed, Ms Uca in her closing submissions acknowledged that the witness statements taken as a whole were “problematic in that they used repetitive phraseology”. Although no weight is placed on these documents given the Authority’s credibility finding above, the Authority observes that the statements have a manufactured quality to them and seem to have been written with a checklist of having somebody state each significant component of the false claim being put forward by the appellant.

[51] They are of a generally very poor quality. While Ms Uca stressed in her closing submission that this poor quality might be consistent with them in fact being made by persons of low socio-economic status and rural backgrounds, even the document purporting to be from the lawyer is replete with spelling mistakes and grammatical errors. For example, the letter from the lawyer reads at one point (*verbatim*):

“I am one of the kusasi lawyers and am acting on there behalves.

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The police actually give me only five mins to read the statement and the details is as follow.”

[52] Although medical evidence in the form of a letter dated 7 July 2009 from Dr Wansbrough has been filed confirming the appellant does have a scar on the back of his head which could have been caused in the circumstances he claimed, Dr Wansbrough is plainly not in a position to say that it, in fact, was. Having rejected the appellant’s underlying account, this letter does little to establish his claim.

[53] For these reasons the first principal issue is answered in the negative. The need to consider the second does not, therefore, arise.

CONCLUSION

[54] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

“B L Burson”
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Member

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