

0901064 [2009] RRTA 373 (4 May 2009)

DECISION RECORD

RRT CASE NUMBER: 0901064

DIAC REFERENCE(S): CLF2008/146138

COUNTRY OF REFERENCE: Cote D'Ivoire

TRIBUNAL MEMBER: R Mathlin

DATE: **4 May 2009**

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 Cote D'Ivoire, arrived in Australia [in] September 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] October 2008. The delegate notified the applicant of the decision to refuse to grant the visa and her review rights by letter [in] January 2009. The applicant applied to the Tribunal [in] February 2009 for review of the delegate's decision.
3. The Tribunal is satisfied that it has jurisdiction to review the decision

RELEVANT LAW

4. 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
5. Section 36(2)(a) of the Act 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 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).
6. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

7. 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:
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.
8. 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 and *Applicant S v MIMA* (2004) 217 CLR 387.

9. 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.
10. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
11. 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.
12. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
13. 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.
14. 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 persecution 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.
15. 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.

16. 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.

CLAIMS AND EVIDENCE

17. The Tribunal has before it the Department's file relating to the applicant, and the Tribunal file. The applicant's claims to refugee status have been presented in the protection visa application form; in a statement dated [in] October 2008 submitted with the application; in an interview conducted with an officer of the Department; in a second statutory declaration dated [in] March 2009, which was prepared with the assistance of her adviser; and in her oral evidence at the Tribunal hearing held [in] April 2009, which was conducted with the assistance of an interpreter in the French and English languages, and which was attended by the applicant's registered migration agent. The applicant also presented a report dated [in] March 2009 prepared by [a] Clinical Psychologist.
18. The applicant's central claims have been presented fairly consistently, and are summarised below. Areas about which inconsistent claims have been presented are identified.
19. The applicant is in her late twenties. She holds a tertiary qualification in child care and was employed in a child care centre for five years. She has two [information deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant] children, her younger brother, and her niece.
20. In 2004 she commenced a de facto relationship with [Person A], a[n] [employee of] the Ivoirian army based at [Place 1]. The applicant's [deleted: s431(2)] children lived with them. They lived in military housing [deleted: s431(2)].
21. On a number of occasions in 2007 [Person A] asked the applicant to deliver packages to his friend, [Person B] at [Place 2], on her way to work. The last occasion on which she did this was in September 2007. At the Tribunal hearing she described in some detail the route she ordinarily took to work, and the route she took when she delivered the packages to [Person B]. While at the Departmental interview she appears to have indicated the delivery point was located next to her workplace, she said at the hearing that this was not the case. She could not remember what she had said at the interview, but did not think she would have said that [Place 2] was next to the crèche where she worked. At the hearing she provided comprehensive information about the location of [Person B's workplace], and how she reached it, without hesitation.
22. I asked the applicant about the procedure by which she gained access to [Person B] when she went to [Place 2]. She said that there were officers posted at the entry gate; she would tell them who she wanted to see. Sometimes they would call [Person B] and he would come to the gate; sometimes she was allowed to go in to meet him. I put to her a number of times that it seemed surprising that if [Person A] was giving secret documents to [Person B], he would choose this manner in which to do so - where there were army witnesses to the handing over, who would potentially be able to link the documents back to [Person A] via the applicant. The applicant did not seem to understand my concerns about this; she repeated that she did not know what was in the packages, and that when she asked [Person A] why he did not give the packages to

[Person B] himself (who he saw frequently), he told her that she did not understand, and the country was at war.

23. [In] 2008 [Person A] was arrested at their home by four men, three soldiers and a military policeman. After work she went to [Place 1a] to try to see [Person A] . (At the Tribunal hearing it emerged that several references to [Place 1a] in the statutory declaration of [deleted: s431(2)] March 2009 are in fact misinterpretations of [Place 1]) The applicant was allowed into [Place 1] but she was not allowed to see [Person A]. However, she was told that he had been arrested because he was accused of plotting against the army.
24. The following Saturday she returned to [Place 1] and was again refused permission to see him. Meanwhile she tried to contact [Person A's] army friends, but none of them wanted to talk and she felt they were trying to distance themselves from [Person A]. At the hearing I asked the applicant whether she had attempted to speak to [Person B] following [Person A's] arrest She said that he had already left to join the rebels in November 2007. She said that [Person A] knew this because he was in the military. I asked her about [Person A's] demeanour when he told her about [Person B] – for example, did he seem surprised, or concerned. She said that she could not describe what his demeanour was like. She said that she was not concerned about any repercussions for her husband flowing from [Person B's] defection; she said that [Person B] was from the north and it was fairly common for northerners to leave the army and join the rebels.
25. [In] 2008 she was told that she had to leave the army apartment. She found another apartment with the help of a friend, but when she tried to withdraw money from her joint account, she found that it had been frozen.
26. [In] 2008 she was allowed to see [Person A]. In her written statement she said that it was during this meeting that he told her that [Person B] had deserted and joined the rebels, and that army documents were missing. He said that the military believed that he had passed information about planned attacks on the rebels to [Person B], who had passed the information on to the rebels. As noted above, she stated in oral evidence at the hearing that she was already aware that [Person B] had joined the rebels in November 2007.
27. After this visit, the applicant continued to return to [Place 1] but was never allowed to see [Person A] again.
28. I asked the applicant some questions about [Place 1]. She said that she could not say much about it because she had not been inside, and it is huge. She then said that she had been inside, to visit [Person A]. The Tribunal noted that she had claimed in her statement that she had attended a [function] there She said that the [function room] was close to the entrance; the military buildings were further away. She said that as a civilian, she was not allowed to look around freely. The Tribunal read out her claim at paragraph 19 of her statement, in which she said that the soldiers at the gate permitted her to enter [Place 1] and once inside she asked where she might be able to inquire about [Person A]. The Tribunal noted that this suggested that she had been allowed to enter [Place 1] and walk around freely, which sounded unlikely. She said that she asked some officers where she might find [Person A]: they directed her to an office where she

could ask about him. She said that [Person A] was well known, and they knew who she was.

29. [In] 2008 the applicant was arrested at work by two officers from the Ivoirian army. She was taken to [Place 1] where [Person A] had been held. She was interrogated and the officers were not happy with her as she could not tell them much. They asked about documents, plans and envelopes. She told them (at the hearing she said that in the end she confessed) that she had delivered packages for [Person A] but she did not know what was in them. [Later] that day she was transferred to [Place 3], about an hour's drive from [Place 1].
30. She was detained at [Place 3] until August 2008. She claims that she was only interrogated during the first week. However after that she was seriously mistreated and tortured. In particular she was subjected to prolonged [deleted: s431(2)] violence [deleted: s431(2)] multiple times each day.
31. The Tribunal did not ask her at the hearing about her experiences inside [Place 3]. In her statements she claimed that at the beginning of August she stopped eating to try to stop the abuse. When she became quite sick she was seen by a doctor, [in] 2008. Several days later a soldier threw a scrunched up note into her cell. It told her to stay strong.
32. [In 2008] at 1am someone unlocked her cell door. Later in the morning two people dressed as nurses entered her cell and took her out to a waiting ambulance. She was put in the back. They drove for a long time and at about midday, arrived at [Place 4]. The applicant was taken from the ambulance and transferred into a car driven by [a person]. [The driver] told the applicant that her friend [name deleted: s.431(2)] had arranged her escape. [Her friend worked for the] military [position deleted: s.431(2)]. After two hours they arrived at [another location]. [The driver] gave the applicant her passport, which she assumes was retrieved from her home by [her friend], and some money. He said that she was going to be taken to Ghana. At about 8pm a young man arrived and smuggled her across the border. They took a bus to Accra, arriving at about 11am. The young man introduced the applicant to a man who she assumed was a travel agent, [name deleted: s.431(2)]. He arranged a plane ticket to Singapore via Germany.
33. I asked how she was able to provide the precise dates of events during her detention, in particular the date she received the note and the date she escaped. She said that inside her cell she was aware of events that took place on Independence Day, 7 August. She was thereby able to work out the dates on which subsequent events occurred. Also, when she got to Ghana she became aware of the date, and was able to work backwards and ascertain the dates of previous events.
34. The applicant left Ghana [in] 2009 and flew to Germany with two other women. After a stopover they flew on to Singapore, arriving [in] 2009 I asked her about the other women with whom she travelled but she said that she did not really talk to them.
35. I asked the applicant whether she had been thinking about what she would do when she arrived in Singapore. She said that when they landed she felt panicky. She was not really thinking ahead because all she knew was that she had to leave Cote d'Ivoire. If she had the choice she would have gone to Europe where she could speak French.

36. She said that they arrived in Singapore [in] 2009. [Person C] met them at the airport He took their passports and took them to a house where there were a number of other women. The applicant felt uneasy and when she spoke to [Person C] he told her that she was expected to work for him [work information deleted: s.431(2)]. The applicant refused but he said that she had no choice. I asked her how the women with whom she had travelled reacted to events in Singapore, and she said that she thought they knew why they were really there.
37. The applicant returned to the other women and asked if they could direct her to the French consulate. They said that they knew of a restaurant frequented by French people, and they would take her there when [Person C] was not around. [In] September, [day of week deleted: s.431(2)], they were able to leave the house and go to the restaurant. The applicant met a black French speaking woman. She explained what had happened and asked if she knew where the French consulate was. The girl asked the applicant whether she wanted to buy a ticket to Australia. She said that her money and credit cards had been stolen and she offered the applicant her French passport containing a visa for Australia, and her ticket. She asked the applicant to post the passport back to her when she arrived.
38. I asked the applicant how she could have passed through immigration at Singapore and Sydney airports so easily, given that the photo in the passport she claimed to have used looked nothing like her. She said that in Singapore she went to a male officer thinking that he would be less rigorous than a female. In Sydney, the Australian visa in the passport was loose; she thought that this seemed to distract the officer who was more concerned with the visa than with looking at the photograph. She said that really she was just extremely lucky to get through without difficulty.
39. I asked the applicant why she had obtained her passport two years prior to her departure. She said that because of the security situation in Cote d'Ivoire, everyone who could get a passport did so, in case they needed to leave quickly. She obtained passports for her children and her younger sister at the same time.
40. I asked whether the applicant had spoken to [her friend who helped her escape] since she left Cote d'Ivoire. The applicant said that she had spoken to her twice. The first time all her credit was used before they had a chance to speak. The second time, after a brief conversation, [her friend] had asked her not to call.
41. I asked the applicant about the arrest warrant she had submitted. The arrest warrant, issued [in] 2008 states that the applicant has been charged with "crime against national defence", stated to be an offence provided for and punishable under Articles 145 and 157 of the Cote d'Ivoire Penal Code. The Tribunal has obtained the relevant sections of the Penal Code, which appear to relate to the type of offence with which the applicant is purportedly charged.
42. The applicant said that her younger sister copied the warrant after it was served, and emailed it to her. It had been served on her sister by soldiers who had regularly been back to the applicant's apartment. Her sister cannot send her the original document because if she does not have it to show the soldiers, they will assume that she is in contact with the applicant. Then she will get into trouble.

43. I put to the applicant that she had told the Department that her girlfriend had sent the warrant to her. She said that her girlfriend had seen the warrant and told the applicant about it. She said that she has called home several times to ask her friends to help with her children; it was in one of these calls that her friend [name deleted: s.431(2)] told her about the warrant. [Her friend] told the applicant that she was starting to be scared and warned her to be careful.
44. The applicant's sister has sent a copy of her Ivoirian driver's licence, and an extract of her birth certificate. The birth certificate was found by the Department's Document Examination Unit not to contain the security features which would be expected in a document of this type, although the examiner had no original document with which to compare it. I noted that, according to the birth certificate, she does not have the same family name as her parents. She said that it is common in Cote D'Ivoire for children not to take their parents' name; her mother and father have the same family name, but this was coincidence.
45. I discussed with the applicant some aspects of her account which I found implausible. Firstly, it was hard to believe that if [Person A] was transferring sensitive military documents to [Person B], he would do so in the manner described by the applicant – which would allow the transaction to take place in full view of soldiers at [Place 2] where [Person B] worked, and which would link [Person A] to the delivery.
46. I also advised the applicant that it was difficult to believe her account of her travel to Australia, in particular, that a stranger would lend the applicant her passport and give her an airline ticket for one thousand euro.

Delegate's decision

47. The application was refused by the delegate, who essentially did not believe the applicant's account. In the first instance, while making no finding as to the applicant's identity, she considered that the applicant's account of the way in which she traveled from Singapore to Sydney, and entered Australia on a passport loaned to her, was not credible. She considered that the applicant's apparent lack of honesty in relation to this issue reflected poorly on her overall credibility.
48. The delegate also considered that there were several areas of significant inconsistency between her written claims and the information she provided at interview. These were the exact location at which she was given her passport by [Person C]; and whether she had been told by her interrogators when she was arrested that she had been seen giving envelopes to [Person B] and if not, why she had volunteered this information to them. The delegate also found it implausible that the applicant would have been arrested [some] months after [Person A].

Psychologist's report

49. [The psychologist's] report was prepared after six clinical sessions with the applicant, who was referred to [a] Mental Health Service by a psychologist at [a refugee] Centre. The interviews were conducted by [the psychologist] in French. The account of the events leading to the applicant's departure from Cote D'Ivoire which is set out in the report was obtained from the applicant orally and from her written statements. It is essentially consistent with that set out above. The applicant reported to [the

psychologist] that she currently experiences difficulty sleeping; changes in appetite; nightmares based on her experiences [deleted: s431(2)] in prison; difficulties concentrating; increased arousal with increased heartbeat and irritability; intrusive thoughts and images about her mistreatment in prison, which may be triggered by, for example, references to Africa; panic feelings when she sees a man in uniform; severe anxiety about telling her story, and distress afterwards; and feelings of anger and isolation, including anger towards [Person A] who involved her in carrying documents to [Person B] without her knowledge.

50. [The psychologist] reported that the applicant presents with clear symptoms of Post Traumatic Stress Disorder, with the stressor being her imprisonment and torture. She considered that the applicant's history indicated that, prior to these events, she had been a well adjusted, mature and happy adult. She reported that the applicant's presentation was consistent with her account of events, and that her condition was exacerbated by "culture shock" and concern for her children and dependents in Cote d'Ivoire. She noted that PTSD can cause sufferers to forget some details of their experiences and gradually remember others; and can result in memories becoming jumbled, condensed or difficult to retrieve.

Post hearing submission

51. [In] April 2009 the Tribunal received a submission from the applicant's adviser which addressed the issues raised by the Tribunal at the hearing.
52. As to the means by which the applicant entered Australia, the applicant's adviser detailed attempts that she had made to contact the owner of the passport on which the applicant entered Australia. Despite finding a listing in the Paris telephone book which appeared to match the personal details contained in the passport, the adviser was unable to establish useful contact with anyone at that address. She submitted that the applicant's account of the means by which she traveled to Australia is plausible, and has been presented clearly and consistently at the Departmental interview and at the hearing.
53. As to the delivery of the packages, the adviser submits that the applicant had no idea, at the time of delivery, or now, what was in the packages, or why [Person A] asked her to deliver them to [Person B]. She can only speculate as to his possible motivation; one possibility is that he used her to avoid implicating himself.

Country of origin information

54. The delegate referred to two reports in her decision, the United States Department of State *Human Rights Report* on Cote d'Ivoire for 2007, and the Human Rights Watch *World Report* 2009. On the basis of these Reports, she found that there was a continuing political and military struggle between the Ivoirian government forces and New Forces rebels; that security forces often arbitrarily arrested and detained persons suspected of crimes; that security forces act with impunity in beating and abusing prisoners and detainees to punish them or extract confessions; and that women and girls are at high risk of rape and sexual abuse while detained or imprisoned. To this extent, she found the applicant's claims to be consistent with independent country information. The Tribunal has had regard to these reports in reaching its decision

55. The Tribunal has searched for publicly available information about the arrests of the applicant's partner and [Person B]. No reference to them was found, although there are references to the arrests in January 2008 of eleven people, who were accused of plotting against the government. Several of these were not citizens of Cote D'Ivoire. The eleven denied the accusations and had not been tried at the end of 2008.

FINDINGS AND REASONS

56. The applicant claims to be [name deleted: s.431(2)], a national of the Cote d'Ivoire. She claims to have entered Australia on a French passport in the name of [Person C]. Movement records show that this passport was used to enter Australia [in] September 2009, the day on which the applicant claims to have arrived. The photograph in the passport bears no resemblance to the applicant, so I am satisfied that she is not, in fact, [Person C].
57. The applicant has submitted a document which she claims is an extract of her birth certificate, and a copy of her driver's licence from Cote d'Ivoire. Both documents state that [the applicant] was born in Cote d'Ivoire; the licence shows a photograph which appears to be that of the applicant.
58. While DEU reported that the birth certificate did not have the security features expected of such a document, the Tribunal notes that it is an extract, not an original birth certificate; moreover, the DEU had no original document with which to compare it. The United States Department of State *Country Report* on Cote d'Ivoire for 2008 refers to mobile courts issuing birth certificates following a 2007 political agreement between the president and the FN leader. It is hard to imagine that such certificates would contain standard security features; it is also evident that there are problems with identity documentation in Cote d'Ivoire. In all the circumstances, I do not consider it possible to make a firm finding that the birth certificate submitted by the applicant is not genuine.
59. The applicant was able to answer a number of questions about her place of residence in Cote d'Ivoire fluently and apparently accurately. In all the circumstances, while I have some difficulty accepting the applicant's account of the manner in which she travelled from Singapore to Sydney, and entered Australia, I am prepared to accept that her identity and nationality are as she claims.
60. Accordingly, her claims to refugee status will be assessed as against the Cote D'Ivoire, as her country of nationality. There is no information before the Tribunal to suggest that the applicant has the right to enter or reside in any other country.
61. The applicant claims that she faces persecution in Cote d'Ivoire because of her association with her former partner, who in turn has been associated with the FN rebels. I am satisfied that the applicant thereby fears persecution on the basis of a political opinion imputed to her. She claims that if she returns to Cote d'Ivoire she will be detained, imprisoned and tortured.
62. Assessment of this application essentially requires an assessment of the credibility of the applicant's account of the events which led to her departure from her country of nationality and her claimed fear of return. As noted above, the application was refused by the delegate because she did not believe the applicant's account, primarily because of perceived inconsistencies between her written claims and what she said at the

interview with the delegate; and because aspects of her claims were considered implausible.

63. Having listened to the recording of the interview with the delegate, I do not share the delegate's concerns about the identified inconsistencies. Firstly, the written statement that was before the delegate was prepared by the applicant with the help of a friend who was neither a qualified interpreter nor a migration adviser. Secondly, in my view the quality of interpretation at the interview was not of a high standard, such that the quality of information obtained at the interview is compromised. Thirdly, I accept the psychologist's diagnosis of PTSD and accept that this may adversely affect the applicant's memory and her capacity to recount her experiences consistently. In so finding, I note that the applicant did not consult the psychologist solely so that a report could be prepared in support of her application; rather, she has seen [the psychologist] on a number of occasions for treatment. Fourthly, in my view the particular inconsistencies identified by the delegate, apart from the issue of the applicant's travel to Australia, are not significant. For these reasons, I place no weight upon them in assessing the credibility of the applicant's account, although there are other apparent inconsistencies, referred to below, which were of some concern to me.
64. As to the issue of the manner in which the applicant travelled to Australia, I have serious difficulty accepting that the applicant's account is truthful. It seems to me to be highly implausible that a stranger would lend her passport, and hand over a plane ticket in the circumstances described by the applicant. It also seems highly implausible that the applicant would have been able to pass through immigration controls in both Singapore and Sydney without detection, given that she looks nothing like the owner of the passport. However, even if the applicant is not telling the truth about the circumstances under which she travelled to Australia, in my view this is not a core or central element of her application. I am aware that there may be cogent reasons why a person would not wish to disclose details of their travel; for example, they may have been threatened by the agents who assisted them. While it is unfortunate if the applicant is not telling the truth about this matter, it is also understandable, and not incompatible with her being found to be truthful and credible in relation to the core claims that are central to the issue of whether she is a refugee. In any case, unlikely as the applicant's version of these events appears, I cannot dismiss the possibility that it is true.
65. As to her central claims – that she was the de facto partner of a military officer; that at his request she carried documents to his friend who subsequently joined the rebels; that her partner was arrested and accused of national security offences; that the applicant was also subsequently detained, apparently in connection with the same accusations; that she was detained without being charged or receiving any form of legal process for a period of four months, during which she was subjected to serious [deleted: s431(2)] abuse and physical mistreatment; and she was able to escape with the help of a friend who [worked for the military] – I consider that these have been presented consistently and coherently at all times, making allowances for the language barrier, and the applicant's psychological state, in relation to which I accept the diagnosis of [the psychologist]. I conducted a lengthy hearing with the applicant, at which she was cooperative and able to provide many credible details about aspects of her claims. While there were some matters of concern that she was not able to explain or clarify, these were generally matters about which she could not reasonably be expected to be able to provide an explanation. For example, it seemed to me to be somewhat

implausible that her partner would involve her in carrying documents to his friend in the manner she claims, and the applicant was not able to explain why he took this apparently risky course. However, I am unable to find with confidence that these events did not occur; and accepting that they did, the applicant cannot reasonably be expected to explain the reasoning process of her partner, to which she has consistently stated she was not privy. Similarly, the applicant cannot be expected to explain why she was detained three and a half months after her partner, a matter of concern to the delegate; however, the applicant cannot reasonably be expected to explain or account of the actions of the security authorities. Another inconsistency concerned her claim at the hearing that [Person B] had deserted in November 2007, whereas she had stated in the statutory declaration that [Person A] told her this when she saw him in prison. Again, in all the circumstances, I cannot conclude that this necessarily indicates that the applicant's account is not truthful.

66. The Tribunal's *Guidelines on Assessment of Credibility* state:

In relation to protection visa matters, if the Tribunal is not able to make a confident finding that an Applicant's account is not credible, it must make its assessment on the basis that it is possible, although not certain, that the Applicant's account of past events is true. If, on the other hand, the Tribunal is able to make confident findings as to particular events, it is not obliged to consider the possibility that its findings of fact may not be correct. The rejection of some of the evidence on account of a lack of credibility may not lead to a rejection of an Applicant's claim for refugee status. Even if an Applicant is disbelieved as to his or her claims, the Tribunal must still consider whether, on any other basis asserted, a well-founded fear of persecution exists.

However, the Tribunal does not need rebutting evidence before it can lawfully find that a particular factual assertion made by an Applicant is not made out.

67. In my view, the applicant's major claims have been presented coherently and consistently; any inconsistencies relate, in my view, to minor details and may be attributed to the particular difficulties which I am satisfied exist in relation to the capacity of this applicant to present her claims – mainly her psychological condition and language problems. Her account is broadly consistent with objective information about the political and security situation in Cote d'Ivoire. While elements of the applicant's account are, in my view, difficult to believe, they cannot be regarded as so inherently implausible that I am able to find with confidence that none of the key events took place, and that the applicant's account, in its entirety, is not true. I therefore accept the applicant's accounts of events which preceded her departure from Cote d'Ivoire. I accept that she currently remains under investigation, apparently in relation to national security offences, but that she has not been properly informed as to the basis of the accusations against her. I accept that should she return there is a real chance that she would again be detained. Based on the country information I am satisfied that such detention may be arbitrary, and that there is a real chance that the applicant would not have recourse to proper legal and judicial protections. I am further satisfied that were the applicant to be detained there is a strong likelihood that she would again be subjected to physical abuse, [deleted: s431(2)], which would amount to torture. I am satisfied that this is serious, systematic and discriminatory harm, and therefore persecution. I am satisfied that this mistreatment would be directed against the applicant for a Convention reason – that is, for reason of a political opinion imputed to her, namely support for the FN rebels. In these circumstances, I am satisfied that the applicant has a well founded fear of Convention persecution in Cote d'Ivoire.

CONCLUSION

68. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

69. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.
Sealing Officer's I.D. RCHADW