

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**AT AUCKLAND**

**REFUGEE APPEAL NO 76464**

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**Before:** C M Treadwell (Chairperson)  
D L Henare (Member)  
S A Aitchison (Member)

**Counsel for Appellants:** C Curtis

**Appearing for the Department of Labour:** T Thompson

**Dates of Hearing:** 17 May and 23 June 2010

**Date of Decision:** 28 June 2010

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**DECISION**

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[1] These are appeals by a woman from the Democratic Republic of the Congo (“the DRC”) in her early forties and her 10 year old daughter, against decisions of a refugee status officer under s129L(1)(b) of the Immigration Act 1987 (“the Act”), ceasing to recognise the grant of refugee status to each of them, following findings that such recognition may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereafter referred to as “fraud”).

[2] The mother is the responsible adult for the daughter, in terms of s141B of the Act. Because the factual background to the appeals is identical, the hearing of both was consolidated, with the evidence of the mother being taken as evidence in respect of both appeals. The daughter, aged only 10, did not give evidence and is, in any event, too young to speak to any of the material parts of the account.

**INTRODUCTION**

[3] The crux of the appeals is that, since being recognised as refugees by the United Nations High Commissioner for Refugees (“UNHCR”) in Thailand in 2005

and resettled in New Zealand under the Refugee Quota Programme in 2007 in reliance upon that recognition by UNHCR, it has come to light that the mother (on behalf of both appellants) gave false information to UNHCR, including the claim that they had left the DRC in June 2005 after the authorities raided prayer meetings being held by the mother and her husband and the mother had been arrested and raped. The mother withheld from UNHCR the information that they, together with the husband, had in fact left the DRC in 2000, had sought refugee status in Australia in 2001 (claiming to be Nigerian nationals) and had been living in various countries in Asia at the time of the claimed events in the DRC.

[4] The appellants admit that they gave false information and withheld information as aforesaid but say, in explanation, that they did so on the basis of poor advice. They say that they should nevertheless continue to be recognised as refugees because, prior to their departure from the DRC in early 2000, the authorities arrested the mother and her husband on suspicion of harbouring rebel soldiers at their guesthouse in Kinshasa and that the mother was raped by a soldier. The mother says that she briefly returned, alone, to the DRC in 2004 but was again detained and raped by police, this time in Butembo. Recognition of their refugee status ought, they say, to continue.

[5] The primary issue on these appeals is whether the refugee claims now advanced by the appellants are credible.

## **THE 'CANCELLATION' JURISDICTION**

[6] Section 129L(1)(b) of the Act provides that the functions of refugee status officers include:

...determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information and determining to cease to recognise the person as a refugee in such a case if appropriate.

[7] Thus, a refugee status officer has a duty to determine whether to cease to recognise a person as a refugee if it appears that the original grant of refugee status by the Refugee Status Branch may have been procured by fraud.

[8] Where a refugee status officer ceases to recognise a person's refugee status, that person may appeal to the Authority. Section 129O(2) of the Act provides:

A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision.

[9] There are two elements to the enquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud. If so, it must determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority's usual forward-looking enquiry as to whether, today, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the enquiry is engaged, however, only if the first element – that the grant of refugee status may have been procured by fraud – is established.

[10] The appellants admit that they gave false information to UNHCR and withheld information from them. They concede that the "may have been procured by fraud" threshold is met. That concession is noted, but is not determinative of the issue because the Authority must make its own finding. For the reasons which follow later in this decision, however, the Authority is satisfied that the threshold is crossed and it is necessary to proceed to determine whether it is appropriate to cease to recognise the appellants as refugees.

[11] In order to address both elements of the jurisdiction, it is necessary to record:

- (a) The grounds on which refugee status was granted by UNHCR;
- (b) The discovery of the false and withheld information and the appellants' response; and
- (c) The grounds on which the appellants say that their refugee status ought to continue to be recognised.

## **THE APPELLANTS' REFUGEE CLAIMS**

[12] The account which follows is a summary of the evidence given by the mother on behalf of both appellants to UNHCR in 2005, on which refugee status was granted.

### **The claim to UNHCR**

[13] In brief, the mother told UNHCR in Thailand in 2005 that she and her husband, AA, were both nationals of the DRC. Her husband was pastor of a church in the town of Butembo in the north east of the country, near the border with Uganda.

[14] On 20 April 2005, the mother and her husband held a prayer meeting which was raided by the police. They were arrested and taken to the police station. There, the mother was raped before being released after two days. She never saw her husband again. On 1 May 2005, the mother held a further prayer meeting which was again raided. She was detained and raped again.

[15] On being released from custody, the mother left Butembo on foot with her daughter and made her way to Uganda, where a benevolent man at a bus stop took pity on them and gave them shelter. He then arranged for them to travel with him on false documents to Thailand, where he left them. The mother told UNHCR that her husband's whereabouts were unknown and her son was missing in the DRC. In Thailand, she had become pregnant to a Liberian man and was expecting another child. Her baby, BB, was duly born in Thailand.

[16] UNHCR recognised the appellants as refugees on 7 June 2005.

### **Events after recognition as refugees**

[17] The New Zealand authorities accepted the appellants into the New Zealand Refugee Quota Programme on 10 May 2007 and accorded them special status as the victims of war and prioritised their re-settlement on the grounds that the mother was "a woman-at-risk and victim of sexual and gender based violence".

[18] A month after the appellants and BB arrived in New Zealand, the mother informed Immigration New Zealand that she had located her husband, living illegally in Vietnam. Steps were being taken to arrange his resettlement in New Zealand when Immigration New Zealand received information that the family had,

in fact, previously sought refugee status in Australia and that the account given by the mother to UNHCR might not be correct.

### **Notice of Intended Determination Concerning Loss of Refugee Status**

[19] On 30 April 2009, the appellants were served with Notices of Intended Determination Concerning Loss of Refugee Status. They advised the appellants that a refugee status officer intended making a determination which might result in the loss of their refugee status. The grounds relied upon were, in essence, that:

- (a) The appellants had advised Immigration New Zealand that they had never been deported, excluded or removed from any country but had, in fact, claimed refugee status in Australia in 2001 and had lived there at least until 2003, when the claims were declined;
- (b) The appellants had told UNHCR they had fled the DRC on 3 May 2005, after the mother had been arrested and sexually assaulted by government forces, because she and her husband had organised prayer meetings on 20 April and 1 May 2005. Information from the Thai authorities disclosed that the appellants had, in fact, been living in Thailand from 12 January 2005 to 3 May 2005, contradicting this;
- (c) The refugee claims in Australia had been brought on the grounds that the mother, her husband and the daughter were Nigerian nationals.

[20] Having interviewed the mother (and the daughter, briefly), the refugee status officer issued decisions on 10 December 2009, concluding that:

- (a) the appellants' refugee status may have been procured by fraud; and
- (b) he ought to cease to recognise the appellants' refugee status.

[21] The appellants now appeal against those decisions.

### **APPELLANTS' CASE ON APPEAL**

[22] The account which follows is a summary of the evidence given by the mother, at the appeal hearing, on behalf of both appellants. It is assessed later.

[23] The mother was born in Lubumbashi, in the south east of the DRC, but moved with her family to Bunia, in the north east, in 1976. She is of the Lendu tribe, as is her husband AA, whom she married in 1996. Her husband worked in the nearby town of Butembo, as a Christian pastor, for the Christ Alive Pentecostal Church.

[24] Because a DRC passport caused difficulties in travelling, AA was given a false Nigerian passport in about 1994, by a Nigerian pastor from his church. AA used it throughout the 1990s to travel to the Cameroons, to Nigeria, to South Africa and to Singapore.

[25] In 1998, the appellant and her husband moved to Kinshasa because of difficulties living in Butembo as a minority Lendu. They ran a guesthouse and supplemented their income by exchanging currency for travellers.

[26] In mid-1999, the mother travelled to South Africa to give birth to her daughter. She feared a difficult birth and wanted to have access to better medical facilities than were available in Kinshasa. Her daughter was born in July 1999 and the mother and daughter returned to the DRC in September 1999.

[27] One afternoon in January 2000, government soldiers raided the guesthouse. They accused the mother and her husband of harbouring rebel militia from the east of the country. The husband was taken away. The mother was raped at the guesthouse by one of the soldiers.

[28] The husband was released after two days' detention, during which he had been physically mistreated. The couple decided that it was unsafe to remain in the DRC and so they departed by air to Nigeria in early February 2000.

[29] After staying for some months in Nigeria, the family flew to Malaysia. They remained there for two months before travelling to South Korea, where they stayed for a month before returning to Nigeria in September 2000.

[30] Back in Nigeria, the mother paid an 'agent' 30,000 *naira* to arrange for a Nigerian residence permit to be inserted in her DRC passport.

[31] The couple rented a house in Lagos but, within a few months, their home was broken into at night by five unknown men. The men assaulted them, accused them of being foreigners and demanded money. The mother overheard them giving the name of the Nigerian pastor who had assisted the husband in the past.

The mother and her husband reported this incident to the police but no action was taken. They were treated at hospital for minor injuries suffered during the attack.

[32] Shortly afterwards, the husband saw policemen approaching the house. Neighbours warned him that the police were coming to arrest him as a “foreigner” and he would be badly mistreated in order to extract bribes. On their advice, he escaped through a window and stayed away until the police had gone.

[33] In June 2001, the family left Nigeria again, experiencing no difficulties in departing. They went to Malaysia, where they stayed a few weeks before travelling to Australia.

[34] In Australia, members of the Congolese community warned the husband that if he told the Australian authorities that he had travelled on a false passport, he risked being detained and he should pretend to be Nigerian. As a result, the mother and her husband were compelled to invent a false refugee claim, pretending that the husband had been a Nigerian pastor and that they had been forced to flee their home after conflict with Muslims in Kaduna, in the north of the country. After moving to Lagos, they falsely claimed, they had then been attacked by five men in their home.

[35] While awaiting the outcome of their refugee claims, the husband obtained a fresh Nigerian passport, issued in August 2002. At the same time, a Nigerian passport was obtained for the daughter.

[36] The family’s Australian refugee claims were declined in 2003 and they left Australia voluntarily for Singapore. From there, they went to Macau.

[37] In March 2004, the mother decided to return to the DRC to find out if it was now safe to live there. Leaving her husband and daughter in Macau, she flew to Nairobi and travelled overland by bus, through Uganda, to Butembo in the DRC. There, she stayed with friends who belonged to the Evangile Eternelle Church.

[38] Some ten days after her return to Butembo, the appellant attended a prayer meeting and night vigil at her friends’ house. The police arrived and claimed that the meeting was causing a disturbance. They accused the attendees of plotting attacks on other tribes and arrested six people, including the mother. The detainees were taken to the police station, where they were detained overnight. The mother was raped by the police commander.

[39] On being released the following morning, the mother was told to report daily to the police station. Fearing more mistreatment, she left Butembo by bus and returned, via Uganda, to Kenya where she caught a flight to Macau.

[40] Soon after the mother's return to Macau, the family returned to Thailand. They lived there for about a year, renewing their temporary permits by travelling to nearby countries, such as Malaysia and Cambodia, and returning to Thailand. In June 2004, however, the husband found that he could not renew his visa and was forced to travel to Laos, and then to Vietnam. The mother and daughter returned to Thailand.

[41] In Thailand, the mother was compelled to enter into an arrangement with a man, exchanging sex for money. This enabled her to provide for herself and her daughter.

[42] In June 2005, the appellants approached UNHCR and sought refugee status. They took the advice of a Congolese man in Bangkok, who warned them not to admit that they had been declined refugee status in Australia. In fear of UNHCR declining their claims, the mother invented an account in which she and the daughter had only recently left the DRC and the husband was missing.

[43] While in Thailand, the mother destroyed the daughter's Nigerian passport because she did not need it (the daughter being on the mother's DRC passport). The mother then had her own passport lost, or stolen, leaving both her and the daughter without travel documents.

[44] In December 2006, while awaiting a decision from UNHCR as to resettlement, the appellants went to Vietnam to visit the husband. The wife became pregnant on that visit, leading to the birth of her baby, BB, in Thailand, shortly before being resettled in New Zealand. As soon as they had reached this country, the mother informed Immigration New Zealand that she had "found" the husband in Vietnam, in the hope that he would be permitted to join her and the daughter here. That process, however, was halted when Immigration New Zealand became aware of the false information given to UNHCR and the husband has remained in Vietnam, illegally, to the present time.

[45] Since the arrival of the appellants in New Zealand, the mother has received a telephone call from her sister, CC, in Kinshasa, informing her that their father



had been killed by Hema tribesmen in Butembo. The mother does not know the circumstances.

[46] The appellants say that their refugee status should not be cancelled because:

- (a) They remain at risk from the authorities in Kinshasa following the accusation that they harboured rebel militia at their guesthouse in 2000;
- (b) They are at risk because of the wife's arrest in Butembo in 2004 and her failure to report to the police daily, as required;
- (c) As minority Lendu, they would be at risk of harm in the east of the country, as evident from the death of the mother's father in Butembo at the hands of Hema tribesmen;
- (d) They cannot live in Nigeria because they are not Nigerian nationals, the mother's residence permit is false (at least in the sense that it was obtained by bribery) and the husband's Nigerian passport is false;
- (e) Even if they could return to Nigeria, they are at risk of harm there as foreigners, as exemplified by the attack on them in their home in Lagos in 2000.

### **Documents and submissions**

[47] In support of the appeals, the appellants submit:

- (a) a copy of the first page and bio-data page of the husband's Nigerian passport, issued in August 2002, in replacement for his earlier Nigerian passport;
- (b) a copy of the husband's Vietnamese one-month visitor's visa, issued on 12 June 2004;
- (c) A copy of a Vietnamese Medical Certificate, dated 14 April 2010, from the Functional Recovery Centre in Ho Chi Minh City, together with translation, indicating that the husband suffers from "sciatic neuritis (L)/buffer hernia";

- (d) Two photographs of the husband, outside buildings in Ho Chi Minh City;
- (e) A Medical Appointment document, dated 24 February 2010, and translation, indicating that the husband is to undergo an MRI scan for “back pain for 7 months until current, which leads to pain in left leg;
- (f) A bundle of Western Union payment receipts, indicating that the mother sends payments regularly to the husband in Vietnam and, on one occasion in September 2009, the sum of NZ\$230 to a Congolese woman, DD, in London;
- (g) An undated letter from the daughter, explaining that she was not able to go to school in Thailand and enjoys school in this country. She loves New Zealand and wants her father to come here to join them.

[48] The respondent has provided the Authority and the appellant with a copy of the Refugee Status Branch file relating to the ‘notice of intended determination concerning loss of refugee status’, including a copy of the file relating to the appellant’s original claim for refugee status.

[49] Both counsel have made oral submissions and have tendered both opening and closing submissions in writing.

## **ASSESSMENT**

### **Whether recognition as a refugee may have been procured by fraud**

[50] The threshold of ‘may have been procured by fraud’ is a low one. It does not require the Authority to find that refugee status was procured by fraud. Instead, as was said in *Refugee Appeal No 75563* (2 June 2006), at [20]:

“...the term ‘may have been’ signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise.”

[51] The Authority finds that the ‘may have been procured by fraud’ threshold is met. The withholding from UNHCR of the fact that they were in fact in Thailand between 12 January 2005 to 3 May 2005 and the recounting of a false account of events in the DRC during that period prevented UNHCR from properly assessing

their true circumstances. To that, of course, can be added the withholding of the fact that they had unsuccessfully sought refugee status in Australia. The concession by the appellants that the jurisdictional threshold is met is appropriate.

[52] Given this finding, it is necessary to determine whether the appellants are, today, refugees.

## THE ISSUES

[53] 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.

[54] 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

[55] Before turning to the issues raised by the Convention, it is necessary to address the question of the credibility of the appellants' account. A number of concerns arise.

### *Nationality of the husband*

[56] The appellants say that the husband was born in the DRC and is a national of that country. His Nigerian passport is, they say, one obtained for him by bribery and, notwithstanding his possession of the passport, he is not a Nigerian national.

[57] The difficulty with the claim that the husband is not Nigerian is that there is nothing to support it and, further, such evidence as there is points to the opposite conclusion.

[58] The husband's 2002 Nigerian passport was issued on the strength of his earlier Nigerian passport (the one supposedly obtained by bribery). It states that he was born in Port Harcourt, Nigeria and bears his photograph. There is nothing about the passport to suggest that it is not genuine.

[59] Further supporting the suspicion that the husband is a Nigerian national is the fact that the refugee claims made in Australia were on precisely that basis – that the husband was a Nigerian national and that his wife, a DRC national, has a Nigerian residence permit as a result of their marriage.

[60] Further suspicion is raised by the fact that the husband's family name is Nigerian. According to the *African Book of Names* by Askhari Hodari (Florida, 2009), the husband's family name is from the Igbo language, from Nigeria. The mother's response was to assert, implausibly, that her husband's family name is actually a corruption of a different, but similar, Congolese name, caused by the husband's brother being unable to pronounce the name properly when he was young. A person might acquire a nickname for a first name by such a process but it does not explain why a family's surname, including official records such as a passport, would be changed, merely to reflect an infant's mispronunciation. The mother produced evidence to show that the name she asserts was originally the family name is in use in the DRC but the fact that it exists there does not explain why the appellant's husband's family would have changed their surname to match the inarticulate efforts of a young child. It is implausible.

[61] In spite of the issue of the husband's nationality being one of the concerns expressly raised in the Cancellation Notice over a year ago, they have produced no evidence to establish that the husband was born in the DRC. There is no birth certificate for him, no statements from any person who knew him there, no corroborative official records and no evidence from the church which is claimed to have had him as a pastor for many years and which held him in such high regard that it spent significant sums on his travel around the world, even to countries as distant as Singapore and the Netherlands.

[62] The appellant has produced a number of medical reports and related documents, indicating that the husband is suffering from sciatica in Vietnam and

has been in much pain. She says that he has been unable to have surgery until recently, because of his illegal status and his impecuniosity. She invites the Authority to have regard to the fact that her husband did not return to Nigeria to have surgery there as corroboration of his inability to do so because he is not a Nigerian national.

[63] We are prepared to accept that the husband did not return to Nigeria to have surgery but it does not follow that he did not do so because he is not a Nigerian national. Other reasons why he might not want to return to Nigeria, would include an inability to afford to do so, an inability to travel for medical reasons, being wanted by the Nigerian authorities for criminal activity or simply hoping that these proceedings might be resolved in a manner which would permit him to come to New Zealand – a prospect likely to be undermined by a return by him to live in Nigeria.

[64] Finally on this point, among the husband's medical records sent by email from Vietnam was a medical certificate with an English translation, which had been organised by the husband in Vietnam. The English translation includes, among the bio-data about the husband, that his nationality is "Congo-DRC". In fact, as was pointed out by the Authority to the mother, the original document in Vietnamese does not include any comment at all about the husband's nationality. Its presence in the translation is unexplained, but strongly suggests manipulation of the translation by the husband, in order to support the appellants' claims.

#### *Raid on guesthouse in 2000*

[65] It will be recalled that the appellants say that their guesthouse in Kinshasa was raided in 2000, resulting in the detention of the husband and the rape of the mother by a soldier.

[66] The primary concern as to the veracity of this aspect of the claim is that the appellants did not advance it to UNHCR in 2005. She says that she did not do so because she was warned not to let UNHCR know that the family had been in Australia from 2001-2003 and had been declined refugee status there. Even if the appellants did feel compelled to pretend that they had been in the DRC until 2005, it does not explain the failure to mention the events of 2000 to UNHCR. It will be recalled that the appellants gave UNHCR an account of the mother being arrested at a prayer meeting in Butembo in 2005 (which she now says happened when she returned alone from Macau). The transposition of that alleged incident from 2004

to 2005 did not in any way preclude the appellants from relating the events of 2001, in which she and her husband are said to have been suspected of harbouring rebels in Kinshasa and the mother raped by a soldier. It had no bearing on the family's time in Australia (where they presented a refugee claim based on events in Nigeria) and, if it had genuinely occurred, it is difficult to comprehend why the mother would not have told UNHCR of it.

[67] The mother's account of the period leading up to the raid on the guesthouse also casts doubt on its veracity. She initially told the Authority that she and the husband had been running the guesthouse for less than six months at the time of the raid and that both she and the husband had been there the whole time. When asked whether he had travelled during that period, however, she immediately modified her evidence, stating that he had, in fact, travelled to Singapore in September for about a month, for a conference. At the most, she said, it might have been for two months, but not more than that.

[68] When it was pointed out to the mother that the husband's passport disclosed that he had in fact been out of the DRC until mid-January 2000, the mother claimed, for the first time, that he had in fact been back and forth several times between September 1999 and January 2000, but that his passport did not always show his travel. This was the third version advanced by the mother to account for her husband's whereabouts, during a period in which they were starting to run a new guesthouse and she had a baby a few months old. We do not accept that she would have such difficulty in recalling her husband's whereabouts and movements at that time.

[69] The existence of the guesthouse itself is also undermined by the mother's evidence as to its location. Asked where she and her husband had lived in Kinshasa after moving there in 1998, the mother explained that they had lived at 141 XYZ Street, until moving to a different suburb, ABC, after the mother had returned from giving birth in South Africa in mid-1999. The guesthouse in ABC suburb was variously described by her as being in a street with no name, or in a street with a name which she could not remember. The guesthouse had been their residence until they left the DRC in early 2000.

[70] Asked why her daughter's birth certificate (obtained by the mother in the DRC in January 2000) gave the family's address as 141 XYZ Street – an address they had not lived at for nearly a year – the mother claimed that it had been given because it was a well-known address where they could receive mail, which would

be put up on a notice board for recipients to collect. Reminded that she had told the Australian authorities that their Kinshasa address had been a different address altogether, 1 DEF Street, the mother claimed that this had in fact been the address of her husband's church. Ultimately, the varying accounts of her address in Kinshasa in the second half of 1999 are suspicious and difficult to sensibly reconcile.

#### *Attack in Nigeria in 2001*

[71] According to the mother, the attack on them by five men who broke in, demanded money, and assaulted the husband occurred after their return to Nigeria in September 2000. Shortly afterwards, policemen were seen approaching the house and, on the advice of neighbours, the husband escaped through the window in order to avoid arrest as a "foreigner" from whom bribes could be extorted.

[72] The appeal hearing was the first occasion on which the account of the police coming to arrest the husband had been given by the mother. Asked why she had not mentioned it at her Refugee Status Branch interview or in her response to the interview report, the mother claimed to have forgotten it at the time. That explanation is surprising. The couple's inability to access the protection of the Nigerian state was supposedly central to their decision to leave the country in 2001.

#### *Return to the DRC in March 2004*

[73] The mother told the Authority that she returned to the DRC from Macau, alone, in March 2004 because she wanted to find out if it was safe for them to return. She stated that she flew to Nairobi, before travelling by bus across Uganda, to Butembo in the DRC.

[74] Asked to explain why her statement said that she had travelled from Kenya to the DRC via Rwanda, the mother had no sensible explanation.

[75] As to how she and her husband had managed to afford the cost of so much air travel, the mother claimed that her return ticket to the DRC had been paid for by a friend in Macau, for whom the mother had promised to explore the prospect of sourcing gold from the DRC for resale in Hong Kong.

[76] The claim to have returned to Butembo must also be viewed in context. The worst civil unrest in the DRC has, for many years, been in the east of the country, particularly in the region bordering Rwanda and Uganda. Militias and armed groups, both local and from Rwanda and Uganda, have operated with impunity in regions such as *Nord-Kivu*, where Butembo is located. There would be few regions of Africa as dangerous for a person to travel. See, for example, the United States' Department of State's *Country Reports on Human Rights Practices: Congo* (February 2005) for a blunt summary of the crisis in the east of the country, including:

The human rights record in areas under marginal government control remained extremely poor, and armed groups continued to commit numerous, serious abuses, particularly in North and South Kivu, Maniema, northern Katanga, and Ituri District in Orientale Province.... Armed groups committed numerous, serious abuses with impunity against civilians, including deliberate large-scale killings, the burning of villages, kidnappings, torture, rape, cannibalism, mutilation, looting, and extortion. Prison conditions, particularly in underground prisons, were life threatening. Arbitrary arrest and detention continued to be problems. Armed groups severely restricted freedoms of speech, the press, assembly, and movement.... Fighting in the Kivus and Ituri District of Orientale Province continued to result in large numbers of internally displaced persons (IDPs). Armed groups attacked local and international nongovernmental organizations (NGOs) and killed MONUC peacekeepers. Rape, violence against women and girls, and forced labor, including sexual slavery, were severe problems. Child labor, including the forced recruitment and use of child soldiers, was a serious problem.

[77] It is incomprehensible that the mother would have travelled alone, by bus, to Butembo as she claims to have done, when the alternative of flying direct to Kinshasa would have provided a significantly safer approach. The mother is a DRC national who grew up in the east of the country. It is inconceivable that she would have been unaware of the well-documented state of anarchy and extreme violence in the east which, as the Department of State report illustrates, was widely reported.

[78] There is no evidence before the Authority that the mother returned to the DRC at all in 2004. Her passport, she says, was unfortunately lost or stolen in Thailand. That misfortune must be viewed in tandem with the implausibility of her returning to the east of the country at all, and the suspicion inherent in her having had the misfortune to be detained in Butembo almost as soon as she arrived.

### **Conclusion on credibility**

[79] Taking the foregoing concerns into account cumulatively, we are satisfied that the appellants' account is untruthful. We do not accept that the evidence



establishes that the husband is from the DRC, that their guesthouse was raided in 2000 and the mother raped or that the mother returned to the DRC in 2004 and suffered detention and rape. We do not accept that the evidence establishes that the appellants were attacked in their home in Nigeria.

[80] We recognise that the appellants have presented false refugee claims twice in the past – to the Australian authorities and to UNHCR. Their willingness to advance false refugee claims as and when needed is well-established. Even so, we have approached their evidence on the present appeal with minds open to the possibility that their claims represent what has really happened to them. In the core aspects discussed above, we find that their claims are, again, untrue.

### **The facts as found**

[81] On the evidence before us, the wife is a national of the DRC. We are unable to say what tribe she is from (she has variously claimed to be Lendu and Kasai). The husband is a Nigerian national. He is presently in Vietnam. Like her father, the daughter is a Nigerian citizen, as her own Nigerian passport (since destroyed by the mother) demonstrated. She may also have the right to DRC citizenship by reason of her mother's nationality (she did appear on her mother's DRC passport).

### **Objectively, on the facts as found, is there a real chance of either of the appellants being persecuted if returned to the country of nationality?**

[82] These few facts which we accept as truthful do not establish that either appellant has a well-founded fear of being persecuted in the DRC. Nor, in respect to the daughter, does the evidence establish a real chance of her being persecuted in Nigeria.

[83] We do not overlook the mother's claim that, since her arrival in New Zealand, her sister has informed her that their father was killed by Hema tribesmen in Butembo. Even if such a claim is true, it does not establish that either appellant is at risk of serious harm. The mother could not say why her father had been killed. To assume that it was for reasons which would now place either of the appellants at risk of being persecuted is entirely speculative. Nor is there any evidence to establish that the tribal violence in the remote, rural east of the country would cause any difficulty for persons living in Kinshasa, in the west of the country.

[84] Given these findings, it is not necessary for us to address the question of whether the mother, who is clearly entitled to a Nigerian residence permit, would come within the definition of a Nigerian national for the purposes of the Convention.

[85] Because neither appellant has a well-founded fear of being persecuted as found, it is not necessary to address the ‘for reasons of’ issue raised by the Convention.

## **CONCLUSION**

[86] In view of the foregoing, the following determinations are made:

- (a) The evidence establishes that the grant of refugee status to each of the appellants may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information;
- (b) It is appropriate to cease to recognise the appellants as refugees.

[87] Consequent upon those findings, the Authority ceases to recognise each of the appellants as a refugee. The appeals are dismissed.

“C M Treadwell”

C M Treadwell  
Chairperson