

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76453

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	17 & 18 December 2009
<u>Date of Decision:</u>	14 January 2010

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 Nigeria.

INTRODUCTION

[2] The appellant claims to have a well-founded fear of being persecuted by reason of his political activities for the Alliance for Democracy, an opposition political party in Nigeria, and from his paternal uncle over a dispute surrounding a family inheritance.

[3] On 7 December 2009, the Authority received a letter of the same date from counsel requesting that the appellant have the assistance of a Yoruba-speaking interpreter at the hearing. However, it was not possible to arrange a Yoruba-speaking interpreter for the commencement of the hearing on 17 December 2009. On the morning of this date the Authority raised with counsel whether, in the absence of an interpreter, the appellant was making a request for an adjournment on the basis that he did not have sufficient proficiency in the English language to fairly conduct his appeal. The Authority served on counsel a copy of the

Authority's decision in *Refugee Appeal No 72752* (15 November 2001) [9]-[28]. After taking instructions from the appellant, Mr Mansouri-Rad confirmed that it was accepted that the appellant had sufficient proficiency in the English language and that no unfairness was caused to the appellant by conducting his appeal in English. The Authority agreed this was an entirely sensible view as the appellant had completed his RSB interview in English. He had also written a detailed seven page statement and one page reply in English. The Authority was fully satisfied the appellant was sufficiently proficient in the English language to allow the hearing to fairly proceed.

[4] The principal issue to be determined in this case is the credibility of the appellant's account. What follows is a summary of the evidence given in support of the appeal. An assessment follows thereafter.

THE APPELLANT'S CASE

[5] The appellant was born in the early 1980s in Z, a town in Y state in south-west Nigeria. His father was a wealthy businessman who often travelled abroad as a result of his business dealings as well as to seek medical treatment. The appellant was the older by three years of two sons born to his parents. His father was elderly when he married the appellant's mother. The appellant's mother was his father's fourth 'wife' although of his father's four spouses, he had only been legally married to his first wife.

[6] The appellant's father had other children by his other wives and, including the appellant and his brother, had some 13 children in total. The appellant and his brother were the youngest of his father's children. His half-brothers and sisters were in their 30s, 40s and 50s.

[7] While the appellant was growing up he was sent to boarding school in Lagos along with his brother. At the time his mother and father had their main residential house in Lagos although his father owned a number of properties including one in Z. In the early 1990s the appellant's father, by now very elderly, gave up day-to-day control of his business interests and semi-retired to their country property in Z. The appellant completed his high school education in the late 1990s and began attending university.

[8] In late 1999 his father died suddenly. Although elderly, his death was unexpected. The appellant was not at home when his father died although his

mother and brother were. However, neither was with the appellant's father when he passed away. A post-mortem revealed that the appellant's father had been poisoned. Upon discovering this, the appellant's mother enquired of the housemaid who informed her that a person called AA, who had visited the family home from time to time in the past, had made an unannounced visit to the family home on the day of his father's death. The housemaid told the appellant's mother that AA had been with the appellant's father at the time of his death and indeed had gone to the kitchen to fetch him a glass of water. This immediately raised the suspicion that AA had been the one who had poisoned the appellant's father. His mother, however, made no complaint to the police.

[9] The appellant's father was buried in early 2000. Prior to this there was a meeting with his father's lawyer and the appellant's father's wives and children about the burial arrangements. Many of the appellant's half-brothers and sisters had arrived from the United States and England for this meeting. His mother told him not to discuss anything about the inheritance due to him or anything to do with his father's property at this meeting but to simply agree with whatever arrangements were made in respect of the burial. He understood from a conversation he had with his father that of the appellant's 11 other half-brothers and sisters, some six or seven had been killed over the years as a result of manoeuvrings and tensions between the sets of children over who stood to inherit the father's property. Although the appellant was never made fully aware of the extent of his father's wealth, he understood that he was a rich man and he understood he was in line "inherit millions" in the Nigerian currency. The terms of the inheritance were not discussed at the meeting.

[10] Following his father's death, the appellant's mother suffered a nervous breakdown and had to be hospitalised. Her condition stabilised but, in May 2000, she decided to move to Lagos. The appellant did not wish to return to Lagos and so he remained living in Z with a close friend. His brother also wished to remain in Z and stayed living with him. The appellant now had very occasional contact with his mother although his brother did travel to Lagos relatively frequently to see their mother. The appellant found out from his mother that AA was now calling himself the younger brother of the appellant's father (the appellant's uncle) and requesting that his mother come and speak to him about the division of the appellant's father's property.

[11] The appellant had last seen AA ("the uncle") at the meeting to discuss the burial in early 2000. Although the appellant never saw his uncle again or had any

direct contact with him, his younger brother used to call him occasionally and ask the uncle for money.

[12] In mid-2003, the appellant's mother died in suspicious circumstances. The appellant was informed by people involved in a spiritualist church in Nigeria that his mother had died as a result of a voodoo attack. The appellant immediately suspected his 'uncle' as being the person behind this attack because he wanted the appellant's father's estate.

[13] By this time the appellant had begun attending meetings held by an opposition party, the Alliance for Democracy ("the AD party"). In Nigeria, political parties pay people to attend meetings and seeing this as a source of regular income, the appellant began attending meetings of this party. He earned more money if he encouraged people to attend the meetings. Although his motivation for attending these meetings were, initially at least, entirely financial, as he attended more of the meetings in his local ward the appellant became increasingly attracted to the AD party as a political party. He also discovered that he had a particular skill at speaking and encouraging people to get involved in the AD party.

[14] In early 2003, the local AD party ward leaders were preparing for a number of state level elections. The appellant was elected by popular vote to the position of youth leader. From this time on he became a full member of the party. It was his job to encourage youth in the ward to support the AD party and to mobilise them in support of the campaigns being mounted by the AD party in their ward and occasionally in other wards. The appellant was particularly responsible for ensuring that the youth were visible on the streets in the ward. He therefore organised many youth rallies and also provided youth for the crowd at other rallies held by the AD party in their area.

[15] Although the first elections held after his appointment as youth leader were the presidential elections, the AD party did not contest this election. It was widely assumed that then-president Obasanjo of the rival People's Democratic Party ("the PDP party") would win by way of electoral fraud and there was little point campaigning for this election. However, the AD party held the governorship of Y state along with five or so other states in south-west Nigeria. It also held a number of councillorships. The AD party decided to concentrate its efforts on the gubernatorial and local government elections that were being held later in 2003 and early 2004 respectively. The appellant organised the youth around these two elections.

[16] Relations between the youth members of the AD party and the rival PDP party were characterised by mutual antipathy. Each side was perpetually engaged in a campaign of verbally abusing and threatening the other. From time to time physical altercations of varying intensity occurred between the two rival sets of supporters and the appellant estimates that in total he was involved in physical altercations on some four or five occasions. The appellant recalls one particular incident before the governor elections which was particularly violent. Some days previously he had been warned by rival supporters of the PDP party that they “owned” the main street of the area and that the AD party supporters should not try and demonstrate in “their” area. Wishing to avoid trouble on this occasion, the appellant organised an AD party rally in another part of the ward. As they were travelling to this area they unfortunately encountered a youth rally being held by the rival PDP party. This led to a fight between massed members of the rival supporters.

[17] The appellant also recalls another incident that took place in the days after the local government elections. One of the members had been hospitalised and his mother laid a complaint with the police. The police approached them and they gave the name of one of the assailants. This person was arrested but released a few days later. The appellant believes this was because the PDP party had won the local elections and the PDP party councillors would have put pressure on the police to release their activists.

[18] The appellant explained that the AD party lost the governorship of Y state and the PDP also gained control of the local council in their area. Stung by these electoral defeats, the AD party resolved to redouble its efforts to regain control at the next elections. The appellant and other senior members involved in the AD party in their ward continued to organise members in their area as before.

[19] In late 2005/early 2006, the appellant came home to his friend's house to find the door to his room in his friend's house, where he had been staying since his mother departure for Lagos in mid-2002, had been damaged with an axe. His friend told him that some PDP party members had come to the house looking for him. Following this incident the appellant moved his belongings to a room which was in the attic of the house as a precaution. Two weeks later, the PDP party members returned to the house looking for the appellant. They entered the house and went to the appellant's room. Upon seeing he was not there, they left without saying anything to his friend.

[20] In July 2006, the appellant's younger brother also died as a result of what the appellant believed had been a voodoo attack initiated at the behest of his uncle. Concerned about not only attacks from rival PDP party supporters but also from his uncle, the appellant decided that he had no option but to leave Nigeria. He travelled to South Africa on his Nigerian passport shortly afterwards. In May 2007 he saw a man who was one of his uncle's bodyguards in a mall near to where he stayed in South Africa. It was clear that the bodyguard had seen and recognised him as well. Approximately three weeks later he received a letter from his uncle at the place where he was staying inviting him to attend a family reunion scheduled to take place in Z in December 2007.

[21] The appellant was anxious about returning but decided to give his uncle the benefit of the doubt. He decided that he would not go directly to Z but would first travel to Lagos one or two weeks prior to the scheduled family reunion. Shortly before he returned to Nigeria, the appellant discussed his predicament with a friend. He wanted to be sure that he could leave South Africa for a safe western country on an emergency basis should his uncle's intentions be to harm him. He therefore arranged for a false South African passport to be issued to him in a false name.

[22] The appellant had no intention of travelling to the family reunion without first satisfying himself that it was safe to meet his uncle. He went to his friend's home in Lagos. His friend was from Z and knew all about the appellant's problems with his family and the inheritance. The appellant explained the contents of his uncle's letter to his friend and asked him to reconnoitre the family home in Z. If it all looked safe and a genuine event then the appellant decided that he would contact his uncle immediately after the family reunion and take things from there. He told his friend that, if this was a genuine event, there should be a large marquee erected outside the family home in Z and many people in attendance from overseas. When his friend went to Z as planned, he reported back that there was no large marquee. Fearing a trap the appellant did not go to Z nor have any contact with his uncle. Instead he decided that he should leave Nigeria.

[23] The appellant did not have sufficient money to leave immediately and had to wait until his friend could arrange the money for him. Also, his daughter, who was born in January 2007 and who lived in Nigeria with his girlfriend after her birth, was about to turn one and he did not wish to miss her birthday. Therefore, the appellant remained in Lagos for the next few months.

[24] In March 2008, the appellant was approached in a restaurant in Lagos by four men wearing PDP party head scarves. They spoke to him by his Christian name and told him they wished to see him outside. When the appellant refused, one of the four men pulled out a machete and cut him on the arm. The appellant told them that he would accompany them outside but knew that he was being led to his certain death. He therefore resolved that he would try and escape and as they exited the restaurant onto the street he pushed one of his assailants and ran down the street. He was chased for some time during which one of his assailants pulled out a shotgun and fired at him. He was hit about his body with this shot but still managed to escape his assailants.

[25] The appellant immediately contacted his friend who collected him and took him to a private and illegal medical facility in Z where the appellant was treated for a wound in his arm and the gunshot wound. He convalesced there for two weeks, after which time his friend collected him and drove him to Ghana. The appellant worked in Ghana until July 2009, at which time he travelled to China. He then travelled to South Korea and Malaysia before travelling on to New Zealand.

[26] The appellant believes that should he return to Nigeria he will not be safe. His uncle is very powerful and will be able to find him in Nigeria and eliminate him to get his hands on his father's estate. Also, those seeking retribution for his activities for the AD party will be able to find him and harm him.

Documents and submissions

[27] On 16 December 2009 the Authority received a memorandum of counsel dated 15 December 2009. Attached to that memorandum was a medical report dated 11 December 2009 from Dr Wansbrough at the St Patrick's Square Medical Centre regarding scarring to the appellant's body. Also attached to this memorandum were a copy of the appellant's birth certificate and a copy of his Nigerian passport. Mr Mansouri-Rad made opening and closing oral submissions to the Authority which have also been taken into account in reaching this decision.

THE ISSUES

[28] 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."

[29] 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

[30] The Authority has no doubt that the claim by the appellant is not a credible one. His account was replete with inconsistencies, mobility and implausibilities.

Inconsistencies

[31] There were a number of inconsistencies relating to many aspects of the appellant's account. In particular:

- (a) The composition of the appellant's wider family

In his confirmation of claim form, the appellant was asked to set out the names and particulars of his siblings and to include any half brothers and sisters. He only included the person he claims to have been his younger brother by his mother and father. He made no mention of the 11 other half brothers and sisters he now claims to have had. This is surprising as the appellant also claims that six or seven of these 11 other siblings have been killed by other family members in disputes over the father's property. Although Mr Mansouri-Rad, in his closing submissions, characterises this as a peripheral detail, it is, in fact, central to the appellant's claim to be at risk from his uncle for a similar reason.

- (b) His movements and contact with his uncle

The appellant told the Authority that following his mother moving to Lagos in May 2000, he and his brother vacated the family home. He stated he lived with a friend in Z at a house owned by his friend's mother until he fled to South Africa in mid-2006. He had no direct contact with his uncle following a meeting regarding the burial in January 2000 and had no financial support from him. By contrast, in his interview with the RSB, the appellant stated that following his father's death the uncle, who had been living in Lagos, came to visit his mother "at the family home" implying strongly that she remained living at the family home in Z until her death in 2003. Moreover, the appellant told the RSB that, following his mother's death in 2003, he and his brother were visited in Z by the uncle on a number of occasions over the family inheritance. He also told the RSB that he, from time to time, took money from his uncle.

(c) The outcome of the state and local elections

In his RSB interview the appellant stated that he became a youth leader for the AD party in late 2004. He told the Authority that this took place in March 2003. He initially told the RSB that the AD party won the state elections. However, by way of an interview report dated 28 September 2009, the RSB put the appellant on notice that according to available country information, the PDP party had won both the state and local government elections which the appellant had claimed to have been involved with. By way of written reply dated 9 October 2009, the appellant modified his evidence and now stated that the local government election was won by the AD party but that the governor or state elections had indeed been won by the PDP party. Before the Authority, however, the appellant changed his evidence once more to say that the PDP party had won both the local government and state level elections.

[32] The appellant's explanation for this myriad of discrepancies and variations in his evidence was that at the time he filed his claim and was interviewed by the RSB he had been detained in Mt Eden prison. He found this environment particularly stressful. He obtained hardly a full night's sleep and was subjected to harassment and intimidation from other inmates. As a result, he could not remember accurately the details of his claim whereas now, outside of the stressful environment of Mt Eden prison, he could now accurately recall what had

happened and recount this to the Authority. Mr Mansouri-Rad, in his closing submissions, urged that the Authority recognise and give weight to the stressful environment in which the appellant made his earlier oral and written statements

[33] While the Authority has no doubt that being detained in Mt Eden prison would have been a stressful environment to the appellant and that detention in such circumstances may impact on a person's ability to recall events surrounding their claim, the Authority is satisfied that this cannot satisfactorily explain the discrepancies that have emerged in this appeal. There are simply too many of them going to fundamental issues relating not only to the appellant's claim involved with his uncle but also his claim relating to his alleged political activities for this to provide a convincing explanation.

[34] Furthermore, there were vague and implausible aspects of the appellant's evidence before the Authority which are not related to any condition of detention and which, when added to the matters detailed above, leave the Authority in no doubt that this is an untrue claim.

Vagueness

[35] The appellant's evidence was vague on issues where it can reasonably be expected he would have greater knowledge if this were a true claim. Thus the appellant:

- a) could not tell what steps his mother took in relation to bring the suspicious nature of his father's death to the attention of the police. He stated that it "never occurred to me" to ask and he was not in a position to do anything about it.
- b) was vague about what, if anything, he stood to inherit under the terms of his father's will. He claims this was never discussed with him by his mother or his father's lawyer.
- c) could not remember who took ownership of the family home in Z after his mother, he and his brother moved out in January 2000.

The implausibility of his return to Nigeria

[36] The appellant explained to the Authority that he fled to South Africa because he realised that nowhere in Nigeria was safe for him. The PDP party had

located and tried to kill him in Lagos – a large city. Also, his uncle lived in Lagos. The appellant could not plausibly explain why he returned to Lagos if he was generally in fear of his uncle and the PDP party as he claims. Moreover, he could not convincingly explain why he chose to return to Nigeria at all in anticipation of a family reunion called by a man who he believed to have murdered his father (by poisoning), mother and brother (by way of voodoo assault) in an attempt to gain control of the appellant's lawful inheritance. By way of explanation the appellant told the Authority that he had no intention of approaching his uncle until his friend had conducted the reconnaissance of the family home where the reunion was scheduled to take place. If so, he could not plausibly explain why he simply did not choose to wait in South Africa until his friend reported back to him there. He told the Authority that he had his genuine Nigerian passport. It would have therefore been very easy for him to remain in South Africa until his friend reported back that all appeared as it should be if this were a genuine family reunion and then get on the next available flight to Nigeria.

[37] When the Authority put this point to him the appellant's demeanour visibly changed and he could not give any sensible answer whatsoever.

An implausible series of coincidences

[38] The appellant's claim rests in substantial measure on a series of "unlucky coincidences" which, when added together, evidence an underlying untruthfulness. Thus, by sheer coincidence, the appellant happens to see and is recognised by a bodyguard of his uncle whom he had not seen for several years in a shopping mall in a city in South Africa. By coincidence his uncle manages through unknown means to find out the place where he was staying, despite no prior contact with him in South Africa, and send him a letter inviting him to the family reunion. By coincidence he happens to be in a restaurant in Lagos (a megacity with at least several million inhabitants) some three months later when four men manage to track him down and attack him. While on their own, each of these events is not inherently implausible, the appellant could not offer any convincing explanation as to how each of these events could have arisen. Taken together, their combination does not have the ring of truth about it.

Implausible evidence surrounding the South African passport

[39] The appellant told the Authority that the obtaining by him of the South African passport was by way of extra insurance should his uncle's intentions be to

harm him. He wanted to ensure that he could use this passport on an emergency basis. However, he also told the Authority that this family reunion was scheduled in December 2007. He told the Authority he did not use his South African passport to leave Nigeria and in fact did not show any passport leaving the land border from Nigeria but rather paid money to the immigration officials at the border.

[40] However, in the South African passport are a number of entry and exit stamps for Benin, Togo and Côte D'Ivoire showing his entry and exit on particular dates. There are also stamps relating to his entry and exit from South Africa. When asked to explain why he would take possession of a passport to facilitate possible travel in December 2007 with stamps showing travel in 2008, the appellant became visibly flummoxed. He entered into a phase of rambling and incoherent evidence the purpose of which was to claim that each of these stamps had been inserted into the passport in 2008 after he had taken possession of it. While at one level it is plausible that stamps for Benin and Togo would be "backfilled" into a passport to show lawful travel from Nigeria to Ghana by way of land border, the appellant's own evidence was that such travel and stamps were not necessary. It was common for West Africans to travel across land borders without having stamps placed into their passports. Moreover, his explanation for the entry and exit stamps into Côte D'Ivoire were bordering on the fantastic. His claim was that the original stamp placed in the South African passport for exiting South Africa was done so badly that it needed to be scraped off the page and redone. The entry and exit stamps for Côte D'Ivoire were placed on the same page to hide the damage that had been done in this process. This evidence is unrealistic and implausible. It is rejected.

Conclusion on credibility

[41] For these reasons the Authority has no doubt that the claim advanced by the appellant is a false one. The Authority does not accept that the appellant has had the problems with the PDP or that his father, mother, and brother were murdered by his uncle in an attempt by the uncle to inherit the family estate as he has claimed. The Authority does not accept the appellant's claim to be at risk from the PDP or his uncle in Nigeria. The first principal issue is therefore answered in the negative. The need to consider the second principal issue does not, therefore, arise.

CONCLUSION

[42] 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"

B L Burson
Member