

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

**REFUGEE APPEAL NO. 1738/93**

**RE AK**

**AT AUCKLAND**

**Before:** R.P.G. Haines (Chairman)  
M. Weir (Member)

**Counsel for the Appellant:** Mr R.J. McKee

**Appearing for the NZIS:** No appearance

**Date of Hearing:** 6 March 1995

**Date of Decision:** 22 March 1995

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**DECISION**

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This is an appeal against the decision of the Refugee Status Section of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a citizen of Ghana.

**INTRODUCTION**

This appeal was first set down for hearing on Monday, 13 February 1995. Notice of this date was given by the Secretariat in a letter to the appellant's solicitors, McKee & Co dated 7 February 1995. Unfortunately, the ten working days notice required by the Authority's Terms of Reference was not given. By fax dated 12 February 1995, Mr McKee sought an

adjournment as he had had insufficient time to prepare the case. In view of the inadequate notice that had been given, the application was granted.

While preparing for the hearing on 13 February 1995, the Authority's researches uncovered a substantial body of country information relevant to the issues raised by the appellant's case. Following the grant of the adjournment application, the Secretariat wrote to Mr McKee on 14 February 1995 drawing attention to the information which had come into the Authority's possession. The letter was in the following terms:

"The Authority has directed that the appellant be provided with the following country information:

- (a) Department of State Country Reports on Human Rights Practices for 1987: Ghana (February 1987) 123 (the section on Freedom of Religion).
- (b) Department of State Country Reports on Human Rights Practices for 1991: Ghana (February 1992) 153-154 (the section on Freedom of Religion).
- (c) Department of State Country Reports on Human Rights Practices for 1993: Ghana (February 1994) 112-118.
- (d) Walter Suntinger, "Ghana" in Baehr, Hey, Smith & Swinehart (eds), Human Rights in Developing Countries Yearbook 1994 203.

Whereas full copies of (c) and (d) are being provided, items (a) and (b) comprise extracts only. Should the appellant wish to inspect the full DOS reports for 1987 and 1991, this can be done by request to Mr Haines through the Secretariat.

At the hearing of the appeal the appellant should be prepared to address this country information both in his evidence and his submissions."

Before the hearing of the appeal commenced on 6 March 1995, Mr McKee acknowledged that he had received the letter and enclosures and had had an opportunity to discuss the information with the appellant and to obtain instructions.

We should add that at the hearing the Authority also made available to Mr McKee the section on Ghana from the Amnesty International Report 1994.

The appellant elected to give evidence at the appeal hearing without the aid of an interpreter. The Authority was satisfied from his responses throughout the hearing that he clearly understood the questions being put to him and was able to articulate his answers in English with both clarity and precision.

## THE APPELLANT'S CASE

The appellant is presently thirty-one years of age. He was born in Sunyani, the provincial capital of the Ghanaian province of Brong-Ahafo. His parents cultivate a six acre farm. His two brothers are also farmers. His five sisters are married. The appellant completed ten years schooling and thereafter attended a one-year course at the Sunyani Agricultural Institute in 1981. In 1982, he attended a Bible Institute.

Although brought up as a Methodist, the appellant joined the Jehovah Witness movement in 1980. He explains his change of allegiance on the basis that he enjoyed the emphasis on evangelizing.

In March 1983, the appellant married AY in Sunyani and there are two children of that marriage, both sons. The first son was born in 1984, the second in 1989. The appellant's wife is a Pentecostalist and disapproved of his membership of the Jehovah's Witness movement.

Be that as it may, in 1985 the appellant was baptized and became confirmed as a full member of the Jehovah's Witness movement. In the following year, 1986, he was elected youth leader in the church but he suffered no disability as a result of his religious beliefs, unlike the seven teachers who, in September 1987, were dismissed from their jobs following their decision, as Jehovah's Witnesses, to refuse to recite the national pledge of allegiance or sing the national anthem: Department of State Country Reports on Human Rights Practices for 1987: Ghana (February 1987) 123.

In June 1988, the appellant was elected regional youth leader for the Jehovah's Witness church and represented the region at national conventions.

It should be mentioned that following the appellant's completion of his studies at the Bible Institute, he worked with his father on the six acre farm.

In June 1989, the Ghanaian government "froze" the assets of four churches, two indigenous Christian churches plus the Jehovah's Witness and the Church of Jesus Christ of Latter-Day Saints (Mormons), and expelled their foreign personnel: Department of State Country Reports on Human Rights Practices for 1991: Ghana (February 1992) 154:

"The indigenous churches had often been accused of promoting practices offensive to the general community; the Jehovah's Witness community was accused of not showing proper respect for the symbols of Ghana's government, and the Mormons were accused of practising racism."

At the same time, PNDC Law 221 of June 1989 required all religious organizations to register with the religious affairs committee of the National Commission on Culture. The Commission was granted authority to deny registration and the right to worship publicly to any religious group whose actions, in its opinion, would lead to social disruption or offend the morals of the people. The government received some 11,000 applications from various churches wishing to register. However, the Roman Catholic church and the fourteen mainline protestant churches which belonged to the Christian Council refused to register on the grounds that the law infringed freedom of religion. The government made no effort to enforce the law and those religious bodies that refused to register continued to worship freely. In 1991, the PNDC suspended this religious registration law while it conducted discussions with the Catholic Secretariat and the Protestant Christian Council: Department of State Country Reports on Human Rights Practices for 1991: Ghana (February 1992) 154.

Notwithstanding the freezing of the assets of the Jehovah's Witness community, the appellant personally suffered no immediate consequences for continuing to practise his faith.

However, on 30 March 1991, while the appellant was holding a prayer meeting at his home, he and the nine other Jehovah's Witnesses were arrested by armed militia and taken to army headquarters at Sunyani. The appellant was detained for approximately one month. He does not know whether the nine other men were detained for the same length of time.

At the time of the appellant's arrest his home was searched. The militia found a number of

Jehovah's Witness publications such as *Awake* and *Watchtower*. In addition they located a letter from the appellant's uncle [name deleted] who had been the Minister of Finance in the Second Republic. After losing office, the appellant's uncle went into exile in London where he started a human rights organization known as the Ghana Democratic Movement, the aim of which was to overthrow or obtain the resignation of the PNDC government. The letter located by the militia had been received by the appellant approximately two months prior to his arrest. In this document the appellant's uncle suggested that the appellant organize demonstrations against the clampdown on the Jehovah's Witness community. The appellant was also asked to send to his uncle information concerning conditions in the Sunyani area.

The appellant says that each day during his captivity he was beaten while being interrogated about his activities in the Jehovah's Witness community and in particular, his role in arranging prayer meetings. His captors were also interested in the uncle's letter and wanted to know what information the appellant had provided. These beatings would last approximately an hour. The appellant was kicked, beaten with fists and struck with a cane.

The appellant came to learn from the guards that he and the other nine Jehovah's Witnesses were to be charged with "subversion" and would appear in the People Democratic Court. The appellant understood that the charge related to the meetings he had held and to the letter found in his house.

With the assistance of a sympathetic guard, the appellant was able to escape from custody by pretending to be sick. The guard rushed the appellant to hospital, or at least pretended to. Instead, he and the appellant drove to the border with Togo, arriving there on 30 April 1991. From there, by a circuitous route, the appellant eventually arrived in New Zealand on 19 September 1991. The appellant's application for refugee status was received on 3 October 1991.

Unbeknown to the appellant, in July 1991, the Ghanaian government met with the Jehovah's Witnesses and in November 1991, a decision was made to "unfreeze" the church's assets and Jehovah's Witnesses were allowed to resume public worship:

Department of State Country Reports on Human Rights Practices for 1991: Ghana (February 1992) 154.

Following these developments, the Department of State Country Reports on Human Rights Practices for 1993: Ghana (February 1994) now contains the following commentary on freedom of religion in Ghana:

"There is no state-favored religion and no apparent advantages or disadvantages attached to membership in any particular sect or religion. Just before the inauguration of Rawlings as president, the PNDC repealed the law requiring religious organizations to register with the Government. The law had been opposed by the Christian Council and the Catholic Secretariat, the two largest religious organizations in Ghana, and had been suspended for over a year pending review.

Foreign missionary groups have generally operated throughout the country with a minimum of formal restrictions, although some churches continue to have difficulty obtaining visas and residence permits for some of their expatriate missionaries."

A very similar assessment of the freedom of religion is made by Walter Suntinger, "Ghana" in Baehr, Hey, Smith & Swinehart (eds), Human Rights in Developing Countries Yearbook 1994 203, 225:

"There is no state religion in Ghana, with several religious communities existing. In addition to Moslems and members of indigenous religions, different Christian churches constitute the biggest group. Under the military regime, members of the Christian churches were critical of the Government's policies and its human rights record which provoke repressive reactions by the PNDC, including the confiscation of newspapers and the harassment of journalists. The most serious attack on the freedom of religion under the PNDC regime was the Religious Bodies Registration Law 1989 (PNDCL 221) which required religious bodies in Ghana to be registered, otherwise they were forbidden to operate. Officially PNDCL 221 was enacted to "protect Ghanaians from the exploitative tendencies of some churches", but it was an obvious attempt to control the churches. In a pastoral letter the Christian Council of Ghana and the Ghana Catholic Bishops' Conference qualified the law as "an infringement of the fundamental right of worship" and refused to register, as did the Anglican, Methodist and Presbyterian churches. Four churches were subsequently banned: the Latterday Saints (Mormons), the Jehovah's Witnesses, and two local sects, the Jesus Christ of Dwozulu and Nyame Sompaa. In 1990, the UN Special Rapporteur on Religious Intolerance sent a communication to the government of Ghana concerning the fact "that the Government has imposed a freeze on any activity of the Jehovah's Witnesses", and that an American missionary had been expelled. After sending a reminder in 1991, the Ghanaian government responded that these measures had to be taken "for moral as well as security reasons", but denied any "persecution or harassment whatsoever against the members of the sect". In November 1991, the government unfroze the assets of the Jehovah's Witnesses and allowed it to resume public worship. PNDCL 221 was suspended in 1991, and finally repealed by the PNDC shortly before the inauguration of the Fourth Republic. The 1992 Constitution protects the right to "freedom of thought, conscience and belief, which shall include academic freedom" and to the "freedom to practise any religion and to manifest such practice". No information on any interference with these rights is available."

In a letter dated 3 July 1992, the appellant's wife reported that although there had been a lifting of bans on political parties and the granting of an amnesty for Ghanaians in exile to enable them to return home, her enquiries with the Sunyani authorities produced the reply that no decision on the appellant could be made unless he first returned to Ghana. Her letter also refers to the fact that from time to time she is interrogated by the authorities as to the appellant's whereabouts. To avoid harassment she had gone to stay with an uncle.

The appellant's attempts to persuade the immigration authorities to allow the entry of his wife and children into New Zealand prior to a determination of his refugee status were unsuccessful. Subsequently, his wife decided that in view of the harassment she was suffering and the indeterminate time it would take for the appellant to resolve his status in New Zealand, she wished to divorce the appellant. Accordingly, on 15 January 1993, the appellant's marriage was customarily dissolved by the families of both spouses and with the mutual consent of the couple. Evidence of the divorce is to be found in a declaration by the appellant's father dated 15 July 1993 at p 133 of the Immigration Service file.

The Refugee Status Section interview took place on 9 February 1993. Subsequently, by letter dated 2 July 1993, the Refugee Status Section declined the appellant's application, citing information received from the Jehovah's Witnesses headquarters in Brooklyn to the effect that since 1990 they had received no reports of personal abuse or violence against Jehovah's Witnesses in Ghana. Reference is also made to the fact that in November 1991, the Brooklyn headquarters advised that there were no people charged or detained under PNDC Law 221 and that to the best of their knowledge the one prosecution which had been brought had been dismissed on the grounds of lack of evidence. Since the lifting of the ban, Jehovah's Witnesses had practised their religion freely. It was the decision of the Refugee Status Section that the appellant's fear of persecution was not well-founded.

The appellant's appeal was presented on the basis that he has a well-founded fear of persecution for two Convention reasons. First, his religious beliefs. Second, his actual or imputed political opinion. This second limb of the case was founded on the uncle's letter discovered at the time of the appellant's arrest and his subsequent interrogation about the

document. The appellant relies also on the fact that as a result of his escape from captivity, the authorities have a particular interest in arresting him and upon that event occurring he will be punished not just for escaping from custody but also for his religious beliefs and perceived political opinion.

The Refugee Status Section decision dealt only with the first limb of his case based on his religious beliefs.

On 17 April 1994, the appellant married a New Zealand citizen. There are no children of the union although the appellant's wife has three children from a previous relationship. The appellant's second wife disapproves of the Jehovah's Witnesses and since the couple met, the appellant has discontinued his hitherto weekly attendances at his local Jehovah's Witness church. He believes, however, that upon return to Ghana he would resume his activities in the church because most of his friends are Jehovah's Witnesses.

### **THE ISSUES**

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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 is unable or, owing to such fear, is unwilling to return to it."

In the context of this case the four principal issues are:

1. Is the appellant genuinely in fear?
2. Is it a fear of persecution?



3. Is that fear well-founded?
4. Is the persecution he fears persecution for a Convention reason?

In this regard we refer to our decision in Refugee Appeal No. 1/91 Re TLY and Refugee Appeal No. 2/91 Re LAB (11 July 1991).

In the same decision this Authority held that in relation to issue (3) the proper test is whether there is a real chance of persecution.

### **ASSESSMENT OF THE APPELLANT'S CASE**

We find that the appellant is a credible witness and his account is accepted.

The appellant's application for refugee status founders, however, for two reasons:

1. His fear of persecution on the grounds of his religious belief and political opinion (actual or imputed) is not well-founded.
2. His fear of arrest and punishment for having escaped from custody is a fear of prosecution for breach of the criminal law, not persecution for a Refugee Convention reason.

Addressing first the appellant's religion, every source consulted confirms that since November 1991, Jehovah Witnesses have been able to practise their faith without restriction or penalty. The appellant holds a contrary belief, but fairly conceded that he has no evidence to contradict the material already cited emanating from the Jehovah Witnesses headquarters, the Department of State and the assessment by Walter Suntinger in the Human Rights in Developing Countries Yearbook 1994.

As to the political element of the appellant's case, Mr McKee sought to draw comfort from

the observation made in the Department of State Country Reports on Human Rights Practices for 1993: Ghana (February 1994) 112 that it was "too early to judge whether the rule of law and democracy would flourish in Ghana after eleven years of authoritarian rule". He readily conceded, however, that the same report emphasizes that the human rights situation in Ghana improved in 1993 and offers the assessment that there were no known political detainees or prisoners being held by the authorities at the end of 1993. The assessment made by Walter Suntinger in "Ghana" in Baehr, Hey, Smith & Swinehart (eds), Human Rights in Developing Countries Yearbook 1994 203 is couched in even stronger terms, namely that:

"After one year of constitutional rule it seems that, despite initial problems and fears, the Ghanaian constitutional democracy is a stable one. A strong independent press functions as watchdog and the Supreme Court has taken several important decisions following suits by the NPP and contrary to the government's position. The government has criticized the judgments but abided by them.

The situation with regard to civil rights has improved considerably in the last years."

Mr McKee also sought to draw comfort from the fact that refugee status has been granted to at least two other Ghanaians and he drew the Authority's attention to Refugee Appeal No. 474/92 Re KA (12 May 1994) and Refugee Appeal No. 1981/93 Re BD (9 August 1994). However, it is trite law that every refugee application is unique and turns on its own particular facts. The facts of the appellant's case are very different to those in the two decisions cited. In particular, the political element of the appellant's case is peripheral, to say the least, and we see nothing in the two earlier decisions of the Authority that will assist the appellant. Importantly, although communication between New Zealand and London is easily possible, the appellant has had no contact with his uncle since he left Ghana. He has adduced no evidence to show that supporters of his uncle's movement face punishment or penalty in Ghana, nor has the appellant been able to adduce any evidence to show that persons similarly situated to him encounter difficulties in present-day Ghana. Our reading of the very detailed article by Walter Suntinger as well as the Country Reports on Human Rights Practices for 1993: Ghana (February 1994) and the Amnesty International Report 1994 is that for persons on the very periphery of Ghanaian politics, such as the appellant, there is nothing but a remote or speculative possibility of detention and punishment. This falls well short of the "real chance" standard adopted by the Authority in Refugee Appeal

No. 1/91 Re TLY and Refugee Appeal No. 2/91 Re LAB (11 July 1991).

We turn now to the final element of the appellant's case, namely the fact that in 1991 he escaped from custody. It must be acknowledged that every state has an interest in maintaining law and order and punishing its citizens for breaches of its criminal law. It would be unusual, to say the least, for a state not to investigate and punish the act of escaping from custody. On the facts as presented to us, there is no evidence on which we could find that the appellant's arrest and punishment for his escape would be motivated by, or aggravated by, considerations pertaining to his religious beliefs or political opinions. In short, any punishment he may face for his escape will not be related to any of the five Convention grounds. It would be a case of prosecution for a breach of the criminal law, not persecution for a Convention reason. See further Refugee Appeal No. 29/91 Re SK (17 February 1992) 8. Nor is there reason to believe that the appellant will receive anything other than a fair trial. Both the article by Walter Suntinger and the Department of State Country Reports on Human Rights Practices for 1993: Ghana (February 1994) 113 remark upon the fact that under the Fourth Republic, the judiciary has exhibited the independence provided for in the Constitution. Furthermore, defendants are presumed innocent, trials are public and defendants have a right to be present, to be represented by an attorney, to present evidence and to cross-examine witnesses. The Constitution also provides for a Commission for Human Rights and Administrative Justice to investigate alleged violations of human rights and to take action to remedy proven violations. The appellant will have, therefore, the opportunity of a fair trial and we rather suspect that as the incident arose out of a temporary banning of the Jehovah Witnesses church and that as there has been a substantial improvement in the human rights situation in Ghana in the interim, the appellant's offence will not be seen in a serious light. Our overall conclusion is that the appellant will face prosecution, not persecution.

In the result, this application for refugee status must fail for the two reasons already stated, namely:

1. The appellant's fear of persecution on the grounds of his religious beliefs or political opinion (actual or imputed) is not well-founded.

2. The punishment feared by the appellant for his act of escaping from custody is a fear of punishment for a breach of the criminal law, not for his religious beliefs or political opinion.

For these reasons the application for refugee status must fail.

On 20 September 1994 the appellant lodged an application for residence based on his marriage to a New Zealand citizen. That application has not yet been considered by the New Zealand Immigration Service. Nothing that we have said in this decision will affect the application as this Authority is empowered by its Terms of Reference to consider only the issue of refugee status. We have no jurisdiction to consider immigration issues.

### **CONCLUSION**

We find that 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.

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(Chairman)