

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

**REFUGEE APPEAL NO 76207**

**AT AUCKLAND**

<b><u>Before:</u></b>	J Baddeley (Member)
<b><u>Counsel for the Appellant:</u></b>	C Curtis
<b><u>Appearing for Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	2, 3, 11, 15, 18 July 2008
<b><u>Date of Decision:</u></b>	1 October 2008

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**DECISION**

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[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.

**INTRODUCTION**

[2] The appellant is a 42 year old married man, a national of the Democratic Republic of Congo (DRC). He arrived in New Zealand on 11 October 2007 and lodged a claim to refugee status the following day. He was interviewed by the RSB on 10 December 2007, 3 January 2008 and 4 January 2008. The decision declining his claim to refugee status was published on 31 March 2008. It is against that decision that he now appeals to this Authority. The principal issue in this case is whether his account is credible.

**THE APPELLANT'S CASE**

[3] The evidence the appellant gave at the hearing is summarised below. It is assessed later.

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[4] The appellant's father was a [...] minister with a parish in Kinshasa. The appellant attended boarding school and thereafter graduated from Kisangani University [...] in 1992. The same year, his first child was born to [...] his *de facto* spouse. The appellant was a chorister in his father's church. In 1992, [...], Pastor Kutino, established his own church in [...] Kinshasa. The appellant joined Pastor Kutino's church [...]. There were already about 500 members of Pastor Kutino's church which was named *L'Eglise Armee de Victoire* ("the AV church"). This church had its own radio station and television channel. [...].

[5] In 1993, the appellant began work as a social worker for [...]. His job was to establish a plan for promoting the health of the local community. He returned once every month to Kinshasa to be with his family who could not join him [...] because he worked in a war zone. On his return he attended the AV church in Kinshasa.

[6] He married [...] in 1994. He continued his *de facto* relationship and had two more children with his girlfriend. In 1996 he and his wife had a daughter. War broke out between President Mobutu and Laurent Kabila. This forced the appellant to return to Kinshasa where he remained until 1998.

[7] His father died in 1998 and the appellant adopted his youngest sister MM and undertook to care for her. In the same year he obtained work with [an NGO] which involved the supervision of unaccompanied children from Burundi, Rwanda, Uganda and the DRC. He continued [to return] once a month to Kinshasa and attend the AV church there.

[8] In January 2003, the appellant began working for [an international agency], based in X. He collected data from refugee camps and was principally concerned with reuniting unaccompanied children with their parents. He submitted information he had gathered to the Red Cross which worked [...] to reunite children with their families.

[9] In 2002 or 2003, Pastor Kutino established an organisation *Sauvons Le Congo* (SLC), a Christian movement seeking to remove Joseph Kabila and replace him with Congolese politicians. The SLC was also opposed to forced conscription of child soldiers. In 2005, the appellant joined SLC, principally because of its interest in preventing the recruitment of child soldiers.

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[10] In 2004, the appellant joined the *Mouvement de Liberation de Congo* (MLC), an opposition party headed by Bemba, a close friend of the appellant's brother, BB, [...].

[11] Although the appellant had continued to attend the AV church, Pastor Kutino had been forced to leave the DRC in 2003 because of his criticism of the Kabila government. He went into exile in Europe.

[12] In November 2005, the appellant was asked by Pastor Kutino to [take on an official position in the] SLC. The appellant agreed. The invitation came at an AV church service in Kinshasa. The pastor had come back from Europe to the DRC for a few days in order to allay his followers' concerns about his safety. The appellant and other members of the congregation were surprised at the pastor's sudden and unannounced appearance in their midst during the church service. [...]. [The appellant] performed these voluntary duties [for the SLC] along with his paid employment [...].

[13] In May 2006, Pastor Kutino returned to the DRC prior to the elections. He preached a sermon at the AV church advising people not to vote for Nyamulengue (a term used for those who are not Congolese) particularly Kabila and his supporters. The appellant was present [...]. The proceedings were interrupted by officers of the Government Intelligence Service (ANR) who arrested the pastor, some elders of the church, the pastor's driver, an interpreter named ZZ and the appellant.

[14] The appellant was detained at *Kin Masiere* prison and questioned by a military Tribunal about the presence of guns in the church. He and ZZ were released after two weeks without being formally charged. Others were convicted and imprisoned. Pastor Kutino and the Deputy Pastor Bompère were both convicted and sentenced to lengthy terms of imprisonment.

[15] The appellant was demoted from being an advisor to a social worker for [an international agency] as a result of his arrest. He continued working in Bukavu as before.

[16] In February 2007, CC, who was leading the AV church in the absence of Pastor Kutino, asked the appellant to help him organise a march on 17 March 2007 protesting the imprisonment of Pastor Kutino. [...] the appellant organised

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the distribution of leaflets publicising the march on 13 March 2007. On 14 March 2007, he received news that soldiers had killed CC at his home. He went to CC's home and spoke to his wife. They tried to get CC's body taken to the hospital for an autopsy showing the cause of death. The soldiers refused to allow this and CC was buried the following day. The appellant attended his funeral.

[17] In March 2007, the results of the 2006 elections were announced. This provoked clashes between government forces and militia fighting for the opposition led by Bemba. The appellant's brother BB was killed by government soldiers in the fighting. He had gone to the MLC offices to fetch money for the purchase of more ammunition. He was seen by government soldiers who shot him and took the money.

[18] The protest march was held as arranged on 17 March 2007. When the marchers reached the city council offices, the appellant and other organisers were arrested and taken to a military detention centre. The appellant was accused of insulting the President. He was interrogated and mistreated. He was beaten and kicked on his body and legs on many occasions, electric shocks were applied to his genitals and his nose was badly injured resulting in frequent nose bleeds. After nearly three months of detention, he was taken by guards to the University of Kinshasa hospital to be treated for his severe nose bleeds which exacerbated his existing asthma and caused severe breathing difficulties. The soldiers took him in a jeep, handcuffed and in leg irons. They took these off in the jeep before they entered the hospital. There he saw a doctor and was treated with a cortisone spray and given a prescription. The appellant and his guards went to the pharmacy to obtain the prescribed medication. As they left the pharmacy the appellant saw a group of university students from the faculty of medicine outside the building. He shouted out to them "Help" and started to run away from his guard. The students came over, surrounded the soldiers and prevented them pursuing the appellant. In the ensuing melee one of the soldiers was killed.

[19] The appellant ran off. Eventually he found himself at WW Convent. The appellant decided to seek refuge in the Convent. The Sister Superior recognised him [...] and gave him accommodation but forbade him to reveal his whereabouts lest they get into trouble for harbouring a fugitive.

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[20] The appellant persuaded the Sister Superior to go to his home in order to find out what had happened to his family since his arrest. She was told by the appellant's neighbours that his wife and adopted daughter MM had been taken by soldiers and his children were gone. The house had been ransacked. The appellant gave the Sister Superior his uncle's address and she visited his uncle and discovered his children were staying there.

[21] The uncle told her that the appellant's wife and MM were in hospital. His wife had miscarried because of the mistreatment she had suffered while in detention after her arrest. The Sister Superior visited both women in hospital on several occasions. MM had been raped by soldiers. The sister paid the women's medical expenses but would not allow them to come to the Convent. They disappeared after their discharge from hospital. The Sister Superior did not make any further enquiries at the hospital as to their whereabouts because she feared that this might attract suspicion. The appellant was prevented from sending a letter to his uncle to obtain any news of his wife and children because the sisters thought that even this might attract untoward attention. The appellant had no further news as to the whereabouts of his wife or MM until an email received on 8 August 2008 (subsequent to the appeal hearing) advising that his wife had died in a medical centre in Kinshasa. She had been living in Beni as a refugee and had not received adequate medical care.

[22] In August 2007, the sisters at the Convent organised a false passport for the appellant to enable him to leave the country. He travelled at night in a fishing boat across the river from the DRC to Brazzaville. There he was met by nuns from another Convent and sheltered by them for three days. On 29 August 2007, he flew from Brazzaville airport on a false Comoros passport to Johannesburg.

[23] In Johannesburg he stayed with his friend a former fellow university student, FF. It was while in Johannesburg that he learned from FF of his brother's death in March in Kinshasa during the fighting.

[24] He also contacted his uncle who had had no more news of his wife and sister. A colleague KK [...] sent the appellant an email advising that the military authorities had been looking for the appellant at his place of employment in Bukavu. KK asked the appellant not to contact him again because he feared repercussions from the authorities.

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[25] The appellant attended church in Johannesburg with FF and during the service he was spotted by some DRC government agents. Several days later FF's home was visited by the South African police and an official from the DRC Embassy. They asked FF to go to the DRC Embassy the following day because the Ambassador wished to see him. Neither the appellant nor FF were concerned about this.

[26] At the Embassy, FF was told that he was suspected of harbouring the appellant, an escaped fugitive from the DRC. He was asked to sign a paper authorising the police to search his house. When he returned home FF told the appellant what had transpired and that he should leave immediately and arranged alternative accommodation for him at a friend's house. The appellant left FF's home before the authorities arrived to search for him the following day.

[27] FF arranged for an agent, RR, to provide the appellant with a false passport. He was told that this would enable him to travel to New Zealand but that he should destroy it after accessing the border. He arrived in New Zealand on 11 October 2007. The appellant followed the agent's instructions and destroyed the passport. He also ripped off the baggage tags which showed the flight on which he had travelled.

[28] In the course of his employment with [...], the appellant had learnt about refugee status. The day after arriving in New Zealand he went to the Immigration New Zealand offices to get help and was referred to the Refugee Council. The appellant applied for refugee status on 23 October 2007.

[29] Since arriving in New Zealand the appellant has had contact with some friends in the DRC, his uncle and FF in South Africa.

[30] The Authority received and has taken into account in its decision the following documents from the appellant:

- (a) Memoranda of counsel dated 26 June 2008 and 6 August 2008 with attached country information.
- (b) Emails from: KK dated 12 June 2008, HH dated 16 June 2008, FF dated 13 June 2008, 6 August 2008 and 8 August 2008.

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- (c) Letter from Pastor Kutino to the First President of the military court at Kinshasa dated September 2007.
- (d) Medical reports dated 20 November 2007 and 8 July 2008.
- (e) Video images concerning Pastor Kutino's arrest provided to the Authority on 3 July 2008.
- (f) Letter from Pastor PP dated 8 July 2008.

[31] The Authority received a letter from counsel dated 1 August 2008 asking for an extension of time to provide further submissions. This request was granted. On 11 August 2008 counsel advised the Authority that the appellant had received emails concerning the appellant's wife's recent death and requested to provide these with translations and further submissions. The emails were provided to the Authority which granted the appellant leave until 29 August 2008 to file any further submissions. On 29 August 2008, counsel advised the Authority that all outstanding issues had been addressed and no further submissions would be filed.

### **THE ISSUES**

[32] 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."

[33] 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?

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

[34] Before determining the abovementioned issues an assessment must be made of the appellant's credibility. The Authority accepts that the appellant is a national of the DRC. It also accepts, and extends to him the benefit of the doubt in this regard, that he was a member of the AV church. Beyond this the Authority rejects the appellant's account of his departure from the DRC and the reasons for it. The reasons for the Authority's findings follow.

### **The appellant's election [in November 2005]**

[35] The appellant stated that he was appointed [to an official position] in the SLC in November 2005. He was asked to take on this role by Pastor Kutino in person after a service at the AV church in Kinshasa in November 2005. The appellant was questioned in detail about this event because all available country information indicated that, after going into exile in 2003, Pastor Kutino did not return to the DRC until June 2006. When this country information was put to him by the RSB the appellant replied that the pastor had returned to the DRC for a few days in November 2005. His counsel submitted that his return may well not have been reported. The Authority asked him why Pastor Kutino had done this, given that he had gone into exile to save his life and further why the return of such a well known figure had not been reported.

[36] The appellant replied that Pastor Kutino had returned in response to his congregation's concern about his welfare and whereabouts. Church members had been "putting pressure" on the government to give them proof that he was safe and well. They had not seen him or heard any news about him either on television, radio, the Internet or in any other written material since 2003. The appellant stated that it would have been too dangerous for Pastor Kutino to give an interview or in any way disclose where he was hiding.

[37] The appellant conceded that Pastor Kutino's close family, friends and senior church officials may well have known his circumstances but not the rest of the congregation. When asked why the church officials had not at least reassured the congregation that he was safe and well, the appellant replied that they had merely stated in a circumspect way: "He is fine. God is protecting him" which did not reassure his followers.

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[38] The Authority asked the appellant how Pastor Kutino had managed to legally enter the DRC and remain there for several days and leave unmolested by the authorities. The appellant replied that this was possible because the government's ban on him had been lifted shortly before his arrival in November 2005. Again no country information could be located which showed that a ban had in fact been imposed or that it had been lifted. The appellant's explanation for this was that the ban was a shameful thing for the government and that it was not generally known that Pastor Kutino had gone into exile. The appellant claimed that although he and other church members knew Pastor Kutino had gone into exile they did not know that it was for political reasons. When it was suggested to him that the political reasons behind the exile must have been obvious given that Pastor Kutino had been accused of inciting rebellion against the government, the appellant avoided the issue by stating that the government would not allow anyone to criticise it. He was then asked why, if "the ban" was a shameful matter for the government, the church, given its clear opposition to the government, had not publicised the fact that the ban had been imposed and then lifted. He replied that the church merely continued doing whatever it had to.

[39] It was apparent that the appellant was giving evasive and fabricated answers about the claimed imposition and lifting of the ban. This conclusion was reinforced when the appellant described the circumstances of Pastor Kutino's return; no announcement of his return was made to the congregation prior to the church service at which he appeared. During the course of the church service the congregation became aware that he was sitting undisguised in their midst. Everybody was surprised, screaming and shouting when they saw him. The appellant then went on to state (in apparent contradiction) that Pastor Kutino had kept a low profile while he was in the DRC in November 2005 because it was "too dangerous for him" and he stayed only three or four days.

[40] The Authority does not accept that on the one hand Pastor Kutino revealed himself to his congregation at a large public church service where they loudly acclaimed his arrival and on the other hand that he was keeping a low profile because it was too dangerous for him.

[41] Further doubt is cast on the appellant's evidence about the return of Pastor Kutino. He claims that the reason for his brief return (which he claimed was dangerous and required him to keep a low profile) was to show himself and

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reassure his congregation who had been without any news of him from radio, television or any other means since 2003. The Authority put to the appellant a record of an interview with Pastor Kutino made by Congo Vision on 30 June 2005 and posted on the Internet on 8 August 2005. (Refer <http://www.congovision.com/interviews/kutino2.html>).

[42] The appellant was asked why among the thousands in the congregation of the AV church no one had any knowledge of that interview which clearly demonstrated that he was alive and well at that time. The appellant surmised that no one had known about this interview because it was on the Internet and very few people in the DRC had Internet access. People walked miles to use the Internet and then used it only sparingly. They would not have searched the Internet to find any news of Pastor Kutino. However, the appellant had earlier given evidence that he had Internet access at his place of employment and that people in Kinshasa used Internet cafes. The Authority does not accept that among the large congregation of the AV church no one would have known about that interview. The church's headquarters are in Kinshasa, the congregation is not confined to remote areas where no Internet service was available.

[43] If the congregation was so anxious about him that he had to put himself in danger by returning to DRC, their fears could easily have been allayed by the few officials of the church or his family who knew his whereabouts or by himself sending a communication to the church to reassure them. The Authority does not accept the appellant's claim that he would be reluctant to do so because this would result in revealing his whereabouts as the appellant contests. Not only would it have been possible for him to send messages to his congregation without disclosing where he was, but the notion that he would be concerned to reveal his location in a safe country of exile, yet be willing to travel back into the DRC, simply to reassure his congregation of his safety, is not sensible.

[44] The Authority concludes that the appellant's explanation for Pastor Kutino's return to reassure his congregation despite the risks to himself is implausible. It does not accept that Pastor Kutino kept himself entirely incommunicado from 2003 to November 2005 other than to some close relatives and high-ranking church officials. Furthermore, it does not accept that church officials would have failed to allay the congregation's fears for Pastor Kutino (had they existed). Neither does the Authority accept that the visit of someone of such high profile and concern to

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his several thousand strong congregation would have passed unnoticed and unreported in any media.

### **Pastor Kutino's arrest**

[45] The appellant's description of Pastor Kutino's arrest in May 2006 changed during the course of the appeal hearing. To the RSB he had described the entire event as taking place in the church in Kinshasa. To the Authority on the first day of hearing he repeated this description. He also described a stadium (not part of the church's headquarters) on the other side of the road from the church where services were sometimes held. He stated that he saw Pastor Kutino being arrested five to ten metres away from him in the church. He drew a diagram of the church showing the layout and the positions of the choir, the interpreters and the pastor at the time of his arrest. He said that the service and all the proceedings had taken place in the church headquarters.

[46] At the beginning of the third day of hearing the appellant's counsel advised the Authority that the appellant wished to change his evidence about that event because he now recalled that the service had moved across the road to the stadium where the pastor preached the sermon and then had returned to the church where he was arrested. This description accorded with descriptions of the event in available country information. When asked what caused him to change his evidence he replied that it was "his conscience".

[47] The arrest of Pastor Kutino is central to the appellant's narrative. The Authority is concerned that having closely questioned him as to the location of all the events which took place surrounding the pastor's arrest, including the service, he changed his story about a significant matter namely, where the service had been held immediately prior to the pastor's arrest.

### **The appellant's brother's death**

[48] The appellant gave the following account of his brother's death to the RSB: His brother had been killed in Kinshasa during the fighting between the government forces and those loyal to Bemba [...]. At the time of his brother's death the appellant was in Bukavu and received the news of his brother's death in a telephone call from his wife. He described his family's distress and outrage

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because they were not given his brother's body to mourn. The soldiers who had shot him took his brother's body and did not allow the family to approach closer than five metres to the body. The refugee status officer then asked him to explain how he had been in Bukavu when his brother was killed in the fighting which according to country information took place on 22 and 23 March at which time the appellant had previously stated that he was in custody having been arrested on 17 March and imprisoned for two months. His explanation was that he was stressed and confused. He conceded the fighting in which his brother had been killed had taken place on 22 and 23 March and that in fact he did not attend his brother's funeral because he was in prison at the time. He had confused his brother's death with that of CC because they were both killed in similar circumstances and their bodies were not released to their families.

[49] To the Authority the appellant's account was significantly different. His evidence was that he had not heard of his brother's death from his wife but first knew about it when he was in South Africa where his friend FF gave him the news. He explained the inconsistency as to when he heard the news of his brother's death by again saying that he was confusing his brother's death with that of CC because they were both killed in similar circumstances.

[50] To the RSB he also stated that his brother's death was known about by everybody in the DRC and reported in the media in an interview in Portugal by Bemba on an international television station. When asked by the Authority if his brother's death had been reported in the media, he stated that it had not been reported in the media in the DRC because the media was owned by the government, furthermore he did not know whether it had been reported outside the DRC. When later questioned about this inconsistency the appellant replied that the television interview had occurred in Portugal but that in telling the Authority that there had been no media reporting he was referring only to the DRC (despite the fact that he had been clearly asked whether there were any reports overseas).

[51] The Authority rejects the appellant's evidence concerning his brother's death for the following reasons:

- (a) It does not accept that he would confuse his brother's death with that of CC. They were not killed, as he claims, in similar circumstances. CC was assassinated at his home prior to the protest march. His

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brother was killed in the course of several days fighting. It is implausible that he would mix up his brother's death (whose funeral and burial he did not attend) with CC (whose funeral and burial he did attend). Neither would he describe his own family's distress at being unable to approach his brother's body and mourn him appropriately (an event he had not witnessed), when in fact this was what had taken place after CC's death (an event he had witnessed).

- (b) It does not accept the attempt to explain the conflicting accounts about whether or not his brother's death was reported in the media.

[52] This causes the Authority to conclude that the appellant has not given a truthful account of his brother's death.

### **The appellant's escape**

[53] The RSB asked the appellant at interview whether he was handcuffed. He replied that when in the jeep on the way to the hospital he had chains on his legs but no handcuffs. When asked by the Authority whether he had any restraints on him while being transported in the jeep he replied that he had handcuffs on him. Asked to explain this contradictory evidence, the appellant replied that he had been restrained with both handcuffs and chains on his legs; he had not been given time by the refugee status officer to explain this because the officer would only allow the appellant to give "yes" or "no" answers. This explanation is not accepted. In the record of the interview his reply to the refugee status officer's question "Were you handcuffed?" is thus: "I had chains on my legs but I had no handcuffs and when we got in front of the hospital they took the chain off because ...". This description gives a degree of detail far exceeding a yes/no answer.

[54] The appellant's explanation to the Authority is nothing more than an attempt to explain away clearly contradictory evidence.

### **Refuge at the convent**

[55] The appellant described the sympathy and crucial assistance which was given to him by the sisters at the WW Convent. The Sister Superior not only gave him refuge for three months but visited his uncle and children and also made hospital visits to his wife and sister and paid their medical fees. However, when

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his wife and sister left the hospital, the Sister Superior refused to make any enquiries of the hospital as to their whereabouts. The appellant stated that she told him it was too risky to do so because his wife and sister had been brought to the hospital by soldiers and that she and the convent would be in danger from the authorities if she made such enquiries. The Authority finds it implausible that, having openly helped the women at the hospital by visiting them and paying their medical expenses, she would be fearful of attracting official attention by enquiries of the same hospital about their whereabouts after they had left. The Authority concludes that this explanation is one of several convenient excuses offered by the appellant as to his failure to make any enquiries of the whereabouts of his wife and sister.

### **The Comoros passport**

[56] The appellant described to the RSB how he had obtained the Comoros passport which he had used to travel to South Africa. He was given it by the sisters at the WW Convent who had taken his photograph which was inserted into the passport. He had received the passport two days before he left the convent for Brazzaville. In his written statement dated 28 November 2007 he similarly had stated that the WW Sisters “helped me find a false passport. They got a passport from the Comoros Islands so I could enter Brazzaville and South Africa without a visa”. He also explained at his RSB interview how he had crossed the Congo river at night dressed as a fisherman so he would not be noticed.

[57] To the Authority, his evidence was that the sisters at the WW Convent had taken his photograph and had told him that the nuns in Brazzaville would give him a passport. After arriving in Brazzaville he was given the passport by the nuns there.

[58] When this inconsistency was put to him he gave the following explanation: The nuns at WW Convent had given him a pass in order to get into Brazzaville (even though he was disguised as a fisherman he needed this document). The nuns in Brazzaville then gave him the Comoros passport. The description in his written statement may have been due to confusion, he conjectured.

[59] The Authority does not accept this explanation for the clearly contradictory evidence.

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[60] The refugee status officer had not been able to verify the existence or location of the WW Convent despite research. The appellant was asked whether he could contact the convent to obtain some verification of his account of his stay there. He replied that he had no contact details. When it was suggested that he could ask a member of his family or a friend to make contact with the convent he replied that the sisters had told him that it would be dangerous to do so because his family were under surveillance and this would throw suspicion on the convent.

[61] When questioned by the Authority, the appellant stated that the sisters had told him they had helped him and wanted nothing more to do with him. It was then suggested to him that if he was so concerned about any danger to the Sisters, he could make the initial contact through the Catholic Church in New Zealand. This suggestion was met with the response that the Sisters were very strict and had told him not to make any further contact.

[62] In similar vein it had been suggested by the refugee status officer that it was important for the appellant to verify his identity and that he could do so by contacting [an international agency] via the UNHCR in Canberra to obtain verification that he had been employed by them. He declined to do so, saying that all the [international agencies] work with the DRC government and that his whereabouts would be disclosed to the authorities. Once this was known, government agents would pursue him to New Zealand, as they had to South Africa.

[63] To the Authority he repeated the same excuse also saying that his work colleague in Bukavu had told him not to write to him again because it would get him into trouble. As to the whereabouts of his wife and sister, the appellant suggested that the Red Cross might be able to make enquiries. However, he himself had never approached the Red Cross either while in the DRC or since, despite the fact that he had worked in conjunction with them when reuniting children with their families in the DRC. He gave the same excuse for not approaching the Red Cross as he had in respect of the [international agency]; he was not secure here in New Zealand and did not want to disclose his whereabouts.

[64] The appellant has received emails from his colleague KK with whom he worked at [an international agency] in Bukavu. An email dated 12 June 2008,

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advises that the appellant's family, friends and colleagues have been harassed by the ANR agents, one colleague had lost his job and the appellant's uncle was interrogated and imprisoned on occasion for a few days.

[65] He also provided an email dated 16 June 2008 from his friend HH stating that HH had known the appellant at university and also his wife. He had believed the appellant was still working in Bukavu for [an international agency] and then went on to ask after the appellant's wife and his family who HH evidently thought were in New Zealand with the appellant.

[66] The appellant provided to the Authority a letter dated 13 June 2008 from FF in which he describes problems with government agents in the DRC which required the intervention of the South African ambassador (FF himself has South African citizenship). His problems were caused by the help he had given the appellant. This had also caused problems for his family and he refers to these problems as "ruining his life". He told the appellant to stop any further contact with him. However, the Authority also notes that an email dated 12 June 2008 from FF to the appellant contained country information concerning the arrest and imprisonment of Pastor Kutino. Apparently FF was still prepared to help the appellant on 12 June 2008 but not by 13 June 2008.

[67] The appellant produced a letter from [an official] of the *Eglise du Christe au Congo*. It has no sender's address and is dated 18 July 2008. The letter confirms that the appellant was a member of the AV church from 1992, a chorister, [and the holder of other positions]. [The official] expresses the view that the appellant was a victim of "manipulation" and regrets that Pastor Kutino transformed their religious movement into a political one. He thanks God that the appellant has escaped the country and has found shelter. No reference is made to the circumstances and reasons for the appellant's leaving the DRC.

[68] There are also two witness statements on the Immigration New Zealand file which attest to the fact that the appellant is the son of a [minister] [...] and had attended the church in Kisangani and worked for [an international agency] in a position unknown to the witnesses. None of this evidence confirms from any official source that the appellant worked as he claims with the [international agency] or that he was given refuge by the Catholic Church. The appellant has not made any effort to verify these aspects of his claim by confirmation from official

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sources. The Authority does not accept his reasons for failing to take any steps to verify these matters with either [international agencies] or the Catholic Church.

### **The passport**

[69] The appellant presented himself at the offices of Immigration New Zealand without any documentation to verify his identity or the account of his travel to New Zealand. He had been told by his agent, he said, to destroy his passport which he did at Auckland airport. He also ripped off the luggage tags and destroyed the air ticket. In his written statement supplied to the refugee status officer the appellant stated that the false passport he travelled on was a Belgian one. He later changed his evidence and claimed that the passport was Canadian.

[70] To the Authority, he stated that FF had told him to say that the passport was Belgian (no reason was given for this). He claimed that he did not himself look at the passport to ascertain the nationality until he was airborne after he had left South Africa. He then saw it was Canadian. It was put to him that this was a very important document and that he would have been expected to examine it before beginning his journey. He said that he was too stressed to do so.

[71] The appellant stated to the refugee status officer that he did not know the full name or date of birth noted in the passport (despite having filled in an arrival card at Auckland airport containing these details). He knew only that the year of birth was 1965 and the first name was "X" and the third and last name began with the letter "Z". To the Authority however he stated that the middle name in the passport was "ZZ", the same as his own. FF had told him this would be a helpful way for him to remember the name in the passport. When asked why this name "ZZ" was not mentioned anywhere in the refugee status officer's interview report or in the appellant's written replies to that report where the issue of identity details in the passport was directly addressed, he answered that the refugee status officer had told him he was interested only in the first and last names; the name "ZZ" was "already there". It was put to him that when efforts were being made to establish the identity of someone arriving undocumented it would be extraordinary for the refugee status officer not to record all of the names given by the undocumented arrival. The appellant reiterated his reply; the refugee status officer wanted all the names except "ZZ".

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[72] The appellant stated to both the refugee status officer and the Authority that he was completely unaware of the airline on which he travelled (despite the long flying time and the airline's name and logo being prominently displayed in the plane and its name announced at departure). He stated that he did not recall this; it was his first time travelling like that (although he had flown from the DRC to Johannesburg), FF had filled out all the documentation for him and he had heard only the departure gate number announced, not the name of the airline.

[73] The appellant attempted to account for the omissions (as to his identity) from his written replies to the interview report by saying that he had not received it immediately but that it had gone missing with other mail. The Authority was provided with a letter from the executive officer of the Refugee Council showing that mail had gone missing from the address where the appellant was living during March and April 2008. The report was sent in February 2008. The Authority accepts that this may have been the case. However, this issue was also not addressed in counsel's subsequent submissions prior to the appeal hearing. The first mention of the name "ZZ" in the passport was at the appeal hearing. The appellant also maintained that there was nothing in the questions posed in the interview report that specifically queried the identity details in the passport. He was then referred to the Immigration New Zealand file (page 163) where the refugee status officer had stated that it could appear that his inability to recall details of his travel was an attempt to be deliberately misleading. When shown this he stated that this must have escaped him.

[74] The Authority does not accept that the appellant would have remained unaware of the nationality of the passport on which he would have checked-in and landed or the name of the airline on which he had flown. Nor does it accept that the refugee status officer would have failed to record or failed to verify with the appellant the name "ZZ" as one of the names in the passport. The Authority concludes that the appellant is deliberately trying to conceal the identity he used and the manner of his travel to New Zealand.

### **Conclusions as to credibility**

[75] The Authority finds that the appellant is not a credible witness. In particular it rejects his accounts as to the following:

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- (a) His description of his appointment [to an official position] by Pastor Kutino in November 2005.
- (b) His arrests and detention for reason of his participation in the AV church and escape from the DRC authorities.
- (c) His account of the circumstances of his brother's death.
- (d) His account of the way in which he obtained the Comoros passport.
- (e) His ignorance of significant aspects of his travel to New Zealand such as the name on the passport and the airline in which he had travelled.

[76] The Authority also rejects the appellant's contention that the refugee status officer refused to record the name "ZZ". It finds that this name was not recorded because the appellant did not supply it to the refugee status officer. The Authority finds that the appellant has made no attempt to verify his claimed sojourn with the WW Convent or his claimed employment with [an international agency]. No credible reason has been provided for his failure to do so and this casts further doubt on his credibility.

### **Medical evidence**

[77] The Authority was provided with a medical report from Dr [...] who examined him on 20 November 2007. The report describes the following injuries:

"A laceration scar beneath his right eye, various abrasion scars on his shins and a laceration scar on his right groin."

[78] The appellant claims that these are the results of the beatings he received while imprisoned in 2007. The doctor states that these injuries are consistent with his account. A further report from Dr [...] dated 8 July 2008 describes the appellant as suffering from recurrent nose bleeds and also lacking a sense of smell and having an impaired sense of taste indicative of disruption of the olfactory cranial nerve which is frequently caused by head injury to the base of the skull. The appellant claims that these injuries were also caused by the mistreatment he received while incarcerated by the DRC authorities.

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[79] The Authority notes that the doctor can go no further than to state these injuries are consistent with his account but not probative of it. The doctor has not had the advantage (as the Authority has) of hearing the appellant's evidence in its entirety. While accepting that the appellant has sustained these injuries, the Authority does not accept that they were inflicted in the circumstances he describes because it rejects entirely his account of his arrest, detention and escape and the reasons for it.

[80] The Authority accordingly concludes that there is no basis for the appellant's claim to have a well-founded fear of being persecuted on return. The first issue as framed having been answered in the negative the second issue does not, therefore, arise.

### **CONCLUSION**

[81] 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.

"J Baddeley"

J Baddeley  
Member