

**REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND**

REFUGEE APPEAL NO. 75585

REFUGEE APPEAL NO. 75586

AT AUCKLAND

Before:	EM Aitken (Chairperson) RPG Haines QC (Member) BA Dingle (Member)
Representing the Appellant:	C Curtis
Date of Hearing:	27, 28, 29 & 30 June 2005; 12, 13 & 14 July 2005 2005; 12 & 13 October 2005
Date of Further Principal Submissions:	14 October 2005; 25 October 2005; 23 January 2006; 15 February 2006; 28 March 2006; 27 April 2006; 9 May 2006; 12 June 2006; 12 March March

2007; 18 June 2007; 27 August 2007

Date of Decision:

13 September 2007

QC **DECISION OF THE AUTHORITY DELIVERED BY RPG HAINES**

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INTRODUCTION

[1] This is a conjoined appeal against decisions of the Refugee Status Branch (RSB) of the Department of Labour given on 28 June 2004 declining the grant of refugee status to the appellants who claim to be citizens of Nigeria.

[2] The appellants are husband and wife. For the purposes of this decision, the female appellant will be referred to as “the wife” and the male appellant will be referred as “the husband”. The husband and wife will be referred to jointly as “the appellants”.

[3] By consent the appeals were heard together, the evidence of each appellant being treated as evidence in the appeal of the other.

[4] Generally summarised, the appellants claim to be Christians at risk of being persecuted in Nigeria for reason of their religious beliefs. They also claim to have been targeted for serious harm by Muslims in Kano because of the husband’s status as a Christian pastor who in that city converted a Muslim woman to Christianity. Furthermore, they claim they cannot relocate within Nigeria because the husband’s activities as a Christian healer and preacher will cause him to be the target for serious harm from Muslims wherever he settles in Nigeria. The wife also claims that she will be refused access to medical services because of her religious beliefs.

Procedural background

[5] The Authority acknowledges that there has been delay in the determination of this conjoined appeal. That delay must be seen against the procedural background of the appeal and the serious ill-health of the wife.

[6] As noted above, the RSB delivered the decline decisions on 28 June 2004 after rejecting, on credibility grounds, significant aspects of the refugee claim. The appellants appealed to this Authority. On 21 December 2004 a differently constituted panel of the Authority dismissed the appeal on the grounds that while the claims were credible, there existed in Nigeria an internal protection alternative with the result that New Zealand's obligations under the Refugee Convention were not engaged.

[7] On 19 January 2005 the appellants filed proceedings in the High Court at Auckland seeking judicial review of that decision. The primary challenge was in relation to the finding that the appellants had an internal protection alternative in Nigeria. After argument an interim order under s 8 of the Judicature Amendment Act 1972 was made by Heath J on 11 February 2005 along with certain timetable orders. As the Authority wished to have opportunity to consider matters raised for the first time during the interim order hearing, it subsequently consented to the decision of 21 December 2004 being set aside. On 12 April 2005 Venning J made a consent order which quashed the first decision of the Authority and remitted the matter to the Authority for a rehearing de novo. Expressed in these terms, the order left all findings of fact and of credibility for determination at the rehearing.

[8] The conjoined appeals were subsequently set down for rehearing on 27, 28, 29 and 30 June 2005. By letter dated 7 June 2005 the lawyer for the appellants, Ms Curtis, advised that she was withdrawing because no decision had then been made by the Legal Services Agency as to whether there would be a grant of legal aid. However, by letter dated 16 June 2005 Ms Curtis advised that she would continue to act.

[9] The hearing duly commenced on 27 June 2005 and continued on 28 and 29 June 2005. The husband was the first witness and his evidence occupied all of these first three days. His re-examination was scheduled to begin on the morning of 30 June 2005 with the wife's evidence following immediately thereafter. The Authority was

told on the morning of 29 June 2005 that the wife was having trouble with headaches as she had been unable to obtain funding for the prescription glasses she required.

[10] Prior to the hearing resuming on 30 June 2005 the Authority received a fax from Ms Curtis advising that when she and her clients had left the hearing on the 29th, the wife had told Ms Curtis that she (the wife) was “very unwell” and feeling nauseous. Late that night the wife had collapsed at the hostel where she and her husband were staying and had been taken by ambulance to Waitakere Hospital. Although discharged within a few hours she had been given instructions that to avoid the risk of severe migraines she should rest. Ms Curtis reported that the husband was also showing stress symptoms. An adjournment application was presaged. When the Authority convened at 10am on 30 June 2005 Ms Curtis formally sought an adjournment. Neither of the appellants was present. The application was granted subject to the production of medical certificates. Such certificates were received later in the afternoon.

[11] The hearing resumed on 12 July 2005 with the re-examination of the husband. As mentioned, up to this point only he had given evidence. On the afternoon of 12 July 2005 the wife commenced her evidence. When the hearing resumed on 13 July 2005 Ms Curtis advised that the wife was not feeling well and while there was no objection to the hearing continuing, the Authority was asked to adjourn in good time to allow the appellants to catch an early train to the hostel in Takanini where they were staying. Towards the end of the afternoon the wife declared that she was unable to continue as she had a headache. The hearing was accordingly adjourned.

[12] On the morning of 14 July 2005 both appellants attended the hearing but the Authority received a fax advising that Ms Curtis had a severe migraine and would not be able to attend the hearing. Told of this development the appellants elected not to proceed in the absence of Ms Curtis and the hearing was adjourned.

[13] The Authority subsequently gave notice that the appeal would resume on 12, 13 and 14 October 2005.

[14] By letter dated 3 October 2005 Ms Curtis advised that the wife was in the early stages of pregnancy and had been unwell. She (the wife) was experiencing deep depression which had stopped her sleeping. In addition she had become emotional and frightened of losing the baby, having previously experienced a miscarriage in Nigeria. The Authority was advised that it would not be known until closer to the hearing whether the wife would be fit to give evidence.

[15] By letter dated 6 October 2005 Ms Curtis advised that the wife had been given an urgent referral to the Maternal Mental Health Services and had been asked (by Ms Curtis) to discuss with the hospital whether she would be fit enough to attend the resumed hearing. It was said that a further application for adjournment might be made.

[16] On 10 October 2005 the Authority was asked to delay the hearing almost indefinitely on the grounds that to proceed would create an increased risk of miscarriage. The Authority was provided with a brief letter dated 10 October 2005 from the Manurewa Trust Health Care. It relevantly stated:

She presents with significant distress and anxiety related to her pregnancy. You will know that her medical history includes a miscarriage caused by assault when she was four months pregnant. That assault forms part of the reason for this family seeking refuge in New Zealand. She attends today with her husband requesting this letter in support of her request for the hearing to be delayed until such time as the "baby is strong".

They are a genuine couple with realistic concerns about the pregnancy. [The wife] has been seen in this clinic on 4 occasions essentially with anxiety about her pregnancy and risk of miscarriage. I am happy to support their request for a delayed hearing on that basis (heightened anxiety state, increased risk of miscarriage).

[17] Couched in these terms the request was for an indefinite postponement of the hearing. The Authority, not being satisfied that the medical certificate met the minimum requirements stipulated by *Practice Note 1/04* (23 February 2004) at para [25.1], directed both appellants to attend the resumed hearing on 12 October 2005.

[18] On the morning of 12 October 2005 the appellants and Ms Curtis appeared. Ms Curtis pressed the adjournment application. It was declined on the grounds that the medical evidence was insufficient to establish that resuming the hearing would be prejudicial to the health of the wife or otherwise unfair. The Authority stressed, however, that in assessing the wife's evidence the Authority would necessarily take into account her medical condition. It also ruled that the wife could take such breaks during her evidence as were necessary. In the event, the wife was able to continue her evidence on 12 October 2005 without further incident and completed her evidence the following day (13 October 2005) just before midday. Her husband was then recalled by Ms Curtis to give supplementary evidence. That evidence concluded just at lunchtime. Closing submissions followed. At the close of those submissions Ms Curtis sought and obtained leave to file further evidence and submissions.

[19] As indicated in the intituling to this decision a substantial body of further evidence and submissions have since been received. It is not intended to detail each item of correspondence. They include letters from Ms Curtis dated 14 October 2005; 25 October 2005; 23 January 2006 and 15 February 2006. By letter dated 24 February 2006 the Authority drew the attention of Ms Curtis to the decision in *Januzi v Secretary of State for the Home Department* [2006] UKHL 5 (15 February 2006); [2006] 2 AC 426 relating to the issue of the internal protection alternative.

[20] By fax dated 1 March 2006 the Authority was advised that the wife had lost her baby and was critically ill at Middlemore Hospital where she had been for the past four days. She was described as "currently on life support and ... extremely unwell".

By letter dated 2 March 2006 the Authority was advised by Ms Curtis that the wife was in an induced coma and that it was “not known whether she will survive or not”. By letter dated 28 March 2006 Ms Curtis advised the Authority that the wife had been released from hospital the preceding week after two weeks in Intensive Care and that her health situation required ongoing monitoring. The letter concluded with a statement that Ms Curtis was awaiting further information concerning the wife’s health and a precise diagnosis of what had happened to her and of her ongoing medical care needs. Under cover of the same letter Ms Curtis filed submissions on *Januzi* and the internal protection alternative.

[21] By letter dated 18 April 2006 Ms Curtis advised that the wife’s health during her pregnancy was relevant to her refugee claim. It was said that the Authority would be provided with further information on this issue after the wife had attended clinic on 4 May 2006. On 27 April 2006 further country information was filed and by letter dated 9 May 2006 the Authority was provided with a report by Dr Keith Allenby, Clinical Director, Women’s Health, Middlemore Hospital dated 8 May 2006 in which he confirmed that when admitted to hospital, the wife was “at grave risk of death due to the severity of her condition”. It was said that the death of her baby and her own collapse was due to preeclampsia, a condition which apparently particularly affects African women. Based on this report the submission made was that when pregnant, the wife would require regular medical care and possibly hospitalisation throughout the later stages of her pregnancy. In New Zealand, a highly developed country, her child had died and she herself had been at risk of dying despite sophisticated medical support. It was claimed that she would not be able to receive the medical care she needed in Nigeria. The Authority was advised that Ms Curtis was still waiting for a full report and it was said that the Authority would be advised as soon as possible when it was received.

[22] After further correspondence, Ms Curtis by letter dated 12 June 2006 explained that there had been difficulty in obtaining the full report referred to in her letter dated 9

May 2006. She also tendered further country information. A brief medical report dated 30 October 2006 was subsequently received advising (inter alia) that the wife was attending the high risk antenatal unit at Counties Manukau. By letter dated 25 January 2007 Ms Curtis advised the Authority that the wife had been advised by the Centre that she and her husband could now consider trying to conceive another child. By letter dated 7 March 2007 the Authority invited the appellants to file all further evidence and submissions they wished the Authority to take into account. Those final submissions were submitted by Ms Curtis under cover of a letter dated 12 March 2007. Since then there has been further correspondence from Ms Curtis. That correspondence is addressed later in this section of the decision.

[23] Because health issues were raised by the wife prior to and during her evidence and because the subsequent medical evidence established that by early March 2006 she was at grave risk of death, the Authority decided to postpone determination of the appeal until such time as the wife had recovered full health. That point appeared to have been reached in early 2007. It might help were we to expand on this decision. We were particularly mindful of the fact that the credibility of the wife and of her husband are central to the determination of this case and that the wife's medical condition would be relevant to that assessment. Members of the panel had, at the conclusion of the last hearing date (13 October 2005) convened to review the evidence and independently and unanimously expressed serious concerns in respect of the credibility of both appellants, those concerns having been made clear to the appellants over the course of the hearing. Consideration was postponed, however, pending receipt of the further evidence and submissions which had been promised by Ms Curtis. That material was submitted by letters dated 14 October 2005 and 25 October 2005. In March 2006, on hearing of the deterioration in the wife's health, the Authority took the view that fairness required its credibility concerns to be reassessed when the Authority was in possession of further submissions and more detailed medical evidence and after it had been confirmed that the wife had recovered her

health. The delays which have occurred in this case need to be seen against that background.

[24] The members of the Authority have since independently reviewed the totality of the evidence, submissions, medical evidence and supplementary material provided by counsel. The findings of credibility and of fact which follow later in this decision are the product of that process. For such delays as the Authority is responsible, an apology is offered. However, it determined that the interests of fairness overrode the imperative to deliver an expeditious decision.

[25] Returning to the correspondence from Ms Curtis, there is a letter dated 18 June 2007 requesting “a third Refugee hearing” on the grounds that as one of the panel members (Ms Aitken) had been appointed a District Court Judge in March 2007, prior to publication of the Authority’s decision Ms Aitken “was not now available to be able to have any input in the making of the final decision”. By letter dated 6 July 2007 the Authority drew attention to the fact that Schedule 3C, para 1(3) of the Immigration Act 1987 provides that notwithstanding that the term of office of a member of the Authority has expired or that a member of the Authority has resigned, the member is deemed to continue as a member of the Authority for the purpose of deciding any matter that was wholly heard before the expiry of the term of office or before the resignation took effect. It was pointed out that Ms Aitken (as she then was) had been fully involved in all deliberations of the panel and would continue to be so involved until the decision of the Authority was published.

[26] Subsequently, by letter dated 27 August 2007 it was submitted that there had been a change of circumstances in Nigeria of concern to the appellants. It was said that those changes included the fact that the new President of Nigeria is a Muslim and it was understood that his Cabinet was made up of primarily Muslim cabinet members. The fear expressed by the appellants was that it would be only a matter of time before

the new President started to implement Sharia law in the South of Nigeria. The Authority's attention was drawn to new country material, including information from Amnesty International relating to prison conditions in Nigeria and to the rape of women by the security forces. The submission was as follows:

Our clients fear that the husband will draw unwanted attention to them because of his proselytising and that the wife will be unable to keep herself safe from the police and security forces.

[27] This new submission is separately addressed later in this decision.

[28] It is now intended to briefly outline the case presented by the appellants. An assessment of the credibility of that evidence follows later in this decision.

THE CASE PRESENTED BY THE APPELLANTS

[29] On their arrival in New Zealand at Auckland International Airport on 27 April 2004 the appellants claimed refugee status on the basis that they were citizens of Uganda and that the husband had been a member of the Lords Resistance Army (the "LRA") since 1998. Explaining his role in the LRA he said that in the hierarchy of the "army" there were eight assistants to the leader of the LRA and below those eight he was one of the sole commanders with power to order his soldiers to fight. He had in fact never ordered his soldiers to fight and had eventually fled Uganda with his wife to escape the LRA. The appellants had taken a truck from Uganda to Nairobi, secured false South African passports and then travelled to Auckland after transiting through Jakarta, Brunei and Australia. The South African passports had been destroyed on the aircraft prior to arrival in Auckland but after the transit through Australia.

[30] However, prior to the first instance interview by the refugee status officer both appellants radically changed their accounts. They now claimed to be citizens of

Nigeria who were in fear of being persecuted for reason of their Christian beliefs. It is this latter claim which was pressed at first instance and at both hearings before the Authority.

[31] As to this amended claim it is not practicable to repeat or summarise at length the evidence received by the Authority, comprising as it does the evidence given at first instance to the refugee status officer, the evidence given to the first panel of the Authority on 30 August 2004 and 1 September 2004 and the evidence given before us over a substantial number of days. Only the main features follow in abbreviated form. As mentioned, an assessment of the credibility of the claims made by the appellants follows in a later part of this decision.

The husband's background

[32] The husband is one of nine children born to Christian parents who lived in a small village near Benin City in southern Nigeria. Both parents are now deceased. Since his arrival in New Zealand he has been informed that one of his sisters was killed in unknown circumstances. He does not now know the whereabouts of any of his other siblings, believing that they may have been displaced by what he described as ongoing violence in Nigeria since his departure from that country in 2004.

[33] After completing his schooling in 1986 the husband completed a six year apprenticeship as a motor mechanic.

[34] Throughout his childhood and apprenticeship years he regularly attended church and related activities. When approximately ten years of age he had had a dream in which God revealed to him that he (the husband) had gifts which he was to share with others. In his evidence he identified five gifts. The gift of revelation; the gift of healing; the gift of guidance - he can look into the future; the gift of singing and the

gift of wisdom. His parents encouraged him to serve God and to use his gifts for the good of others.

[35] In early 1993, a few months after completing his apprenticeship, the husband moved north to Kano City (“Kano”) as he had heard that he could earn substantially more money there as a mechanic and he had the intention of starting his own vehicle repair shop in that city.

[36] For the first few months after his arrival he found casual work through other mechanics. Around the end of 1993 he established his own workshop which he financed with his savings together with money lent to him by both colleagues and clients. To this end he rented a house in a relatively undeveloped fringe of Sabon Gari, a suburb of Kano. The workshop was attached to the house. Within a year or two his business was flourishing and he employed two Christian men as apprentices.

[37] Also in 1993 the husband resumed his church activities and began attending the AB Church (“ABC”) in Kano. He had been given the name of the church by his Pastor in Benin City. He began using his gifts for healing and preaching at the ABC and was appointed Assistant Pastor in 1994.

[38] Although there were intermittent outbreaks of violence between Muslims and Christians in Kano during the 1990s, the husband did not take any interest in them because they did not affect him directly.

The wife's background

[39] The wife was born in Benin City although her parents have always lived in Kano. She is the eldest of seven children. She spent some of her childhood living with a relative in Benin City but subsequently returned to live with her family in Kano before starting secondary school. The wife's family are practising Christians and have attended the ABC in Kano for as long as she can remember. She attended the ABC with them from the time she returned to live in Kano.

[40] The wife's early life was largely unremarkable. She does recall some episodes of violence during the 1980s and 1990s, although she is unable to remember the cause of many of the events. On one occasion, in approximately 1988, windows in the family home were broken during a riot. On another occasion, in approximately 1989 or 1990, she and her school friends witnessed a gang fight on the street which resulted in one man being killed. There were other outbreaks of violence between Muslims and Christians and between different tribal groups during the 1980s and 1990s but none of them affected the wife or her family directly.

Life together

[41] The husband and wife met through the ABC in Kano in 2000 and after a short courtship were married. The wife moved into the husband's house where he continued to run his workshop and she took work as a seamstress.

Inter-religious violence - March 2001

[42] In March 2001 they were directly affected by inter-religious violence in Kano for the first time. Fighting broke out between Christians and Muslims in nearby Kaduna State and the unrest spread to Kano. During the violence their church was surrounded

by Muslim people. In another incident, three members of the church were killed in street violence in the Sabon Gari area. The husband also recalled that three Christian churches and one missionary school in the Sabon Gari area were burned down during this period. He estimates that more than two hundred civilians died during the fighting.

[43] In response to the violence the appellants fled their home and travelled with other Christians to a bush-covered area of farmland approximately thirty minutes drive from Sabon Gari where they took shelter, living in a farm building. They only returned home after being told that the riots in Kano were over. Even after their return home, they were unable to attend their church because of blockades and protests by Muslims on the road leading to the church. None of the appellants' property was damaged during the violence.

[44] Approximately one month after returning to Kano, the appellants resumed their church attendance and related activities.

Conversion of the Muslim woman in September 2002

[45] In September 2002 the ABC held its annual week-long deliverance programme attended by approximately five hundred people. A central feature of the programme was the healing of the sick by the husband. A Muslim woman who attended the service had her illness "flushed out" by the husband. The woman and her family were so inspired by the experience that they converted to Christianity and began attending the ABC church. When news of the conversion spread, the ABC was attacked by Muslims and religion-based violence occurred once more. The appellants took refuge in their house for a week and were not aware of the precise extent or nature of the violence. After the violence receded, neither the husband nor the ABC took any

particular measures to increase church security or to attempt any sort of reconciliation or engagement with the Muslim group responsible for the violence.

[46] The husband believed that, as a result of the conversion, he now had a high profile as a Christian pastor in the city and had become well-known as someone who had converted a Muslim to Christianity. He could not recall any other instances of conversion in his church between 1994 and 2003. He believed that he was now at risk of being harmed by Muslims seeking revenge.

[47] The husband and wife resumed their normal life and church activities approximately one month later and had no further difficulties until June 2003.

Disruption of prayer meeting - June 2003

[48] In June 2003 the ABC held a week-long prayer and fasting programme at which the husband was to heal people. The programme was held in a field adjacent to the church and between five hundred and one thousand people attended. On the second night of the programme the service was disrupted by a group of Muslim men who attacked the congregation by throwing stones and waving burning sticks. This attack was a response to the conversion of the Muslim woman in September 2002.

[49] The crowd dispersed abruptly and the appellants fled to their house where they remained in hiding for three days. This fighting again triggered a wider conflict between Christians and Muslims in Kano although the ABC church building itself did not suffer any damage. Some of the musical instruments which were outside in the field may, however, have been damaged.

Attack on the appellants' land - October 2003

[50] In May 2003 the husband purchased a plot of land in a new development on the outskirts of Kano some thirty minutes drive from their existing home. The intention was to build their own home. In October 2003 they hired Christian labourers to begin preparing the site. Later in the morning the appellants left the site in a taxi to collect lunch. On returning to the area some thirty minutes later they learnt that fighting had erupted between their workers and a group of Muslims. They were warned that it would be dangerous for them to get any closer. Notwithstanding this warning they continued on their way to their land but once they saw that fighting was in progress they immediately returned home in the taxi. Again, the fighting which had begun on their land spread into Kano and resulted in violence which lasted some days.

[51] The appellants believe that they were being specifically targeted at their land because of the husband's profile as a Christian preacher and because he had converted a Muslim woman to Christianity. The husband believes that the Muslim group in question had since September 2002 been tracing him with the intention of killing him.

Forced to flee - 17 October 2003

[52] Approximately a week after the incident at the plot of land the appellants were woken early one morning by a fellow Christian and informed that a group of Muslims were plotting to attack and kill them later that day. Their informant had overheard the plan when he entered a bar to get change for his taxi. The appellants packed a few necessities and fled to Seriki, a nearby village familiar to the husband as he had visited the village on previous occasions with friends.

Seriki Village - in hiding

[53] The appellants were "in hiding" at Seriki Village for five to six months. On their first arrival they met a Christian man who, on hearing of their difficulties, offered them

a room in his house. There they lived for the duration of their stay in Seriki Village and were dependent on the goodwill of their host who provided free accommodation and food.

[54] As the appellants were in hiding they did not attend church, work or contact anyone they knew in Kano or elsewhere in Nigeria.

[55] In November 2003 the wife was severely beaten by a group of Muslim men as she walked home from the local market. She believes she was targeted because she is a Christian and also believes that they intended to kill her. She regained consciousness after her attackers left and managed to walk to Seriki Village. As a consequence of the attack she suffered a miscarriage and became very ill. She could not access any medical help because, she claims, hospitals in Kano will not treat a Christian woman. Nor were they able to engage the services of a doctor because they were in hiding and feared being identified by anyone. This left the wife to be treated with herbal medicine, prayer and bed rest. After two months she had recovered sufficiently to consider leaving the village.

[56] In approximately February 2004 a friend of the husbands, realising that the appellants were no longer at their home, went looking for them at Seriki Village, knowing the village was familiar to the husband. On locating the appellants the friend informed them that their workshop and house in Kano had been destroyed and advised them to leave Nigeria. He offered to assist and requested US\$200 to procure false South African passports and airline tickets for the appellants.

[57] Approximately two weeks after their first meeting the false passports and tickets to New Zealand were delivered by the friend and the appellants prepared to leave the village.

Departure from Nigeria

[58] In mid April 2004 the appellants travelled from Kano to Lagos by public bus. Using their false South African passports they left Nigeria for New Zealand. They did not contact any members of their respective families or other friends before departure.

[59] It was while waiting for their departure from Lagos Airport that the appellants overheard a conversation about the Lords Resistance Army in Uganda and the fact that it was involved in a rebellion against the Ugandan Government. They decided to use this information for their refugee claim when they arrived in New Zealand.

[60] As mentioned, the appellants claimed refugee status on arrival at Auckland International Airport on 27 April 2004, advancing the claim that they were Ugandan nationals and that the husband had been a commander in the LRA. They were interviewed by an immigration officer and detained under s 128(5) of the Immigration Act 1987.

[61] Subsequently, on 25 May 2004 the appellants submitted amended confirmation of claim forms in which they advanced their present claim to refugee status based on their status as Christians in Nigeria. The first claims based on the LRA were abandoned.

[62] It is now possible to turn to the assessment of the claims to refugee status.

THE ISSUES

[63] 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.”

[64] In terms of *Refugee Appeal No. 70074/96 Re ELLM* (17 September 1996) the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is Yes, is there a Convention reason for that risk of being persecuted?

ASSESSMENT OF THE CLAIMS TO REFUGEE STATUS

[65] Before the identified issues can be addressed an assessment must be made of the appellants' credibility, the Authority's credibility concerns having been clearly articulated during the hearing. In this regard we have taken into account all the evidence and submissions received both during the hearing and subsequently.

The husband's language limitations and detention in custody

[66] The husband speaks English with a heavy accent and he is at times difficult to understand. He gave his evidence to the Authority partly in English and partly through an interpreter. These factors present special challenges. Special caution must be exercised when assessing the credibility of such a witness, particularly where contradictions in his evidence emerge. The affidavits sworn by Shenaaz Munif (a solicitor employed by Ms Curtis) on 12 July 2005 and 25 October 2005 underline the difficulties she faced when first obtaining instructions from the husband, difficulties

exacerbated by the fact that during his period in detention the stress he was under made it really difficult for a clear and coherent statement to be obtained from him.

[67] These points were amplified and stressed by Ms Curtis at different points during the hearing and in her submissions. We have accordingly exercised extreme caution in making our credibility determination in relation to the husband.

The wife's medical condition and demeanour at the hearing

[68] Although the wife's command of English is far better than her husband's and although the wife was not detained in custody for the same length of time as her husband, we note Ms Munif's evidence that the wife was both distressed and anxious during the period of her husband's detention and this led to difficulty in obtaining her statement.

[69] There are, however, additional factors special to the wife which need to be taken into account in assessing her credibility and demeanour at the hearing. These factors relate to her medical condition. As the procedural background narrated earlier makes clear, the wife was at times feeling unwell during the hearings, partly due to the fact that by at least October 2005 she was in the early stages of pregnancy. An application was advanced on 10 October 2005 that the hearing be adjourned virtually indefinitely on the grounds that to proceed would create an increased risk of miscarriage. This application was declined and it proved possible to complete the hearing on 13 October 2005 without incident. It was some time after that that the wife was admitted to hospital on 1 March 2006 for an emergency caesarian section. The letter from Dr Keith Allenby dated 8 May 2006 confirms that at the time of her admission, the wife was at grave risk of death. This, coupled with the loss of her child led the Authority to postpone the determination of the appeal until such time as the wife had recovered full health. As mentioned earlier, that point appeared to have been reached in early 2007.

[70] Against this background it is clear that in the wife's case also extreme caution must be exercised when assessing her demeanour as a witness at a time when she was unwell and under substantial stress because of her ill-health and because she had previously suffered a miscarriage prior to her arrival in New Zealand. In addition, there was the inevitable stress of the hearing itself. As previously indicated, while members of the panel had, at the conclusion of the last hearing date convened to

review the evidence and while each member of the panel had independently and unanimously expressed serious concerns in respect of the credibility of both appellants, on hearing of the deterioration in the wife's health the Authority took the view that fairness required its concerns to be revisited when the Authority was in possession of more detailed medical evidence and after it had been confirmed that the wife had recovered her health. That would allow members of the panel an opportunity to reflect whether over time and with more information about the wife's medical condition, their credibility concerns could be allayed or at least be categorised as concerns in relation to which the wife should receive the benefit of the doubt. The members have accordingly independently reassessed the totality of the evidence, submissions, medical evidence and supplementary material provided by counsel. The findings of credibility and of fact which follow are the product of that process. Particular account has been taken of counsel's submissions on credibility and the point that while credibility concerns had plainly emerged during the hearing, those concerns should be resolved in the wife's favour because of the stress she was under and because of her state of mind.

General conclusion on credibility of appellants

[71] The Authority has concluded that neither the husband nor the wife has given truthful evidence on any material aspect of their claim and no aspect of their evidence is accepted. Our principal reasons for so concluding are now summarised. Central to the appellants' case is the claim that the husband, as a Christian pastor in Kano, converted a Muslim woman to Christianity in September 2002. A year later this caused the appellants to flee for their lives after the Muslim community discovered where they lived and were about to arrive with the intention of killing them both. We do not accept that the alleged conversion ever took place nor do we accept that the appellants were forced to flee Kano to escape vengeful Muslims. We do not even accept that the couple lived in Kano. Indeed, no part of their evidence is believed. For

convenience, the headings which follow largely correspond with those used when outlining the appellants' case.

ABSENCE OF KNOWLEDGE OF KANO AND OF SABON GARI

[72] Although the wife claimed to have lived in Kano for most of her life and at least from the time she attended secondary school (1986) and although the husband claimed to have lived in Kano in the period 1993 to 2004, they displayed an astonishing lack of knowledge about Kano generally and Sabon Gari in particular. This has led the Authority to conclude that neither had lived in Kano prior to their claimed escape from Nigeria in 2004. To contextualise this part of the decision we set out below the brief description of Kano given in *Lonely Planet, West Africa* (1995), being Exhibit A:

Dating back more than 1,000 years, Kano is the oldest city in West Africa, and for centuries was one of the most active commercial centres in the region. Today, it is Nigeria's third-largest city and number one on most travellers' list of places to see in Nigeria.

Kano's main attraction is the old city which has a huge wonderful market, an important mosque, an interesting museum, the Emir's palace and some centuries-old dye pits. The new section is also interesting, particularly just north of Sabon Gari market.

The centre of Kano is Sabon Gari market. Just to the north is Sabon Gari itself, where most of the city's cheap hotels and restaurants are. The city's modern commercial centre is south of the market, and major roads include E Bello Rd (not to be confused with Ahmadu Bello Way 2 km to the east) and Murtala Mohammed Way, which runs east-west along the southern side of the market.

The old city is about 1 km to the south-west of the market, the boundary being the old city wall, now largely destroyed. Some of the gates in the wall, however, are still intact; the main one is Kofar Mata Gate on Kofar Mata Rd which leads to the mosque and Emir's palace. At the heart of the old city is Kurmi market, the city's major "must see".

[73] A further description of Kano and of the Kano Wall is to be found in a travel advisory dated 15 December 2004 from *TripAdvisor* put in evidence by the appellants. It is entitled *Kano, My Favorite Place in Nigeria, Really!* While the source may appear to be a somewhat informal one it is evidence produced by the appellants and usefully condenses information scattered across more "authentic" sources received in

evidence. It is also reasonably contemporaneous with the latter part of the appellants' claimed residence in Kano.

Kano is the business and culture center of Northern Nigeria. I spent two months in Kano during my nearly three years in Nigeria; I left in September 2004, so most of this information is up-to-date.

The town itself is broken into the Old City, where the Hausa Muslims live; Sabon Gari (New City) where a mainly Christian population lives and works. Many southerners work in Kano, and the Sabon Gari was established during colonial times to house Christian clerks and administrators (Nigerians). The G.R.A. was there when the British lived during colonial times. Now, Kano's G.R.A. is not so much dominated by rich Nigerians or powerful government officials like in other Nigerian cities, but the G.R.A. is a nicer section of town where many Lebanese and wealthier Nigerians live. All around Kano there are diverse neighborhoods, Kano does a booming business in religion and there are many Koranic schools with young students from Chad, Niger and Nigeria. You'll see them, they beg most of the day for their meals. I could not help but notice the upsurge in radical imams, so be aware of the important place Islam plays in Kano.

...

What to see: I've spent nearly six years in West Africa, and found Kano a manageable and extremely interesting place. If a tourist, give yourself 2 to 3 days, if studying Hausa or the culture, this is a good to campout and enjoy. The towns and villages around Kano are very welcoming to foreigners. There is a nice dam outside Kano for recreation, and the small villages are easy to manage.

--Start at the Gidan Makam Museum in front of the Emir's place. Great guides and extremely interesting. Another interesting place is the Gidan Dan Hausa, Kano State-run place. First British school in Kano in a old Sudanese building. Interesting, but often closed. See the guardian to see the curator Mallam Bature.

--Emir's Palace and Main Mosque: Try to find someone who can get you access. You can see the Emir come out for court in the morning. If you get a connected person, you can visit the Emir's receiving room; see all the presidents and queens' signatures in the guestbook. Queen Elizabeth's signature in the late 50s is interesting, plus Mugabe's, Rawling's and Sec. State Albright's signature. You can visit other parts within the palace, but you need access and some cash. The Main Mosque is unremarkable.

--Kurmi Market: Absolutely a treat, amazing and tiring. One of the oldest markets in West Africa. Words cannot explain this place. Give yourself at least two visits. It is tiring, and it is hard to stay for more than two hours at a time. Get a guide in the market, they will find you otherwise. Too many stalls and too confusing otherwise.

--Other markets: Near Kofar Mata there is a large fruit and vegetable market. In town, near Sabon Gari is the textile market. Interesting and inexpensive. There is a nice fruit and vegetable market on the Hadeja road on the G.R.A.

--Dye Pits: World famous, buy your indigo fabric and Fulani blankets here. Guides at gate. Will take you to shops behind the pits. Interesting to see the whole process.

--Craft Market in Front of Central Hotel: This is a good place with cheap prices. Bargain hard, they have a lot of items from Niger, Burkina Faso and Central Nigeria.

--City Walls: German money is rebuilding part of the walls. You can see them all through the old city. Recommend buying books at Kurmi museum explaining British conquest of Kano in 1901, or other books explaining the history of Kano.

--Old town: Just get lost in the old town. You will meet people all day and learn a lot. Kano is great to wander around.

--Bayero Kano University: There are two campuses. It is interesting to go out to the main campus, not much to see, but they have a guesthouse, if you are visiting the university. Nigerian universities, once the best in West Africa, are now on the decline. See for yourself. During the last riots, people even attacked students and teachers at the university, a first.

--Outside town about 3 hours to the East is the Hadeja wetlands and bird sanctuary. Amazing, go during bird migration season. The area is hard to get to and no housing, if you can manage, you can stay in villages.

....

[74] As to the Kano Wall, the following description was produced by Ms Curtis. It is by Yusuf Adamu, Geography Department, Bayero University, Kano, "Kano Wall: Case for restoration II" (www.kanoonline.com/publications) who quotes from the statement made by Lord Lugard, the Governor-General of Nigeria in a report of 1903 about the Kano Wall:

... The force reached Kano, where the extent and formidable nature of fortifications surpassed the best-informed anticipation of our officers. Needless to say, I have never seen, or imagined, anything like this in Africa. The wall was 11 miles in perimeter, with 13 gates all newly built. Subsequent measurement at several points by the Public Works Department proved the walls to be from 30 to 50 ft high and about 40 ft thick at the base, with a double ditch in front.

While as noted by the *Lonely Planet* commentary there has been disintegration of the city walls, part have been rebuilt and they are visible throughout the Old City. See the TripAdvisor commentary.

[75] During the hearing several maps of Kano were produced and discussed. Ms Curtis points out that there are differences between the maps. For the purposes of determining these appeals the Authority has not found the differences to be material.

The husband's evidence

[76] For his part, the husband was unable to provide the Authority with any meaningful detail about the features of Kano or of the Sabon Gari area, despite claiming to have lived and operated his own business there for approximately ten years in the period 1993 to 2004.

[77] When asked by the Authority to give a general description of Kano, the husband did not provide one, stating that he was not interested in anything except his business, his church and the gospel. He also stated that Kano was not a place where one could just walk about and start asking people questions. When asked again for a description of the Sabon Gari area, he stated that it existed but that he had not memorised it and did not want to talk about things he did not know about. When pressed on the point, he responded in the most general of terms to the effect that the area contained hospitals, schools, markets and transport stations but that he could no longer recall their names. Neither could he recall any specific features or locations which indicated that he had a genuine knowledge of the area.

[78] Likewise, when asked to recall street names in the Sabon Gari area, he was at a loss to provide any information. He stated that the road on which he lived was called "Area 15, number 20" because "that is the way [they] name streets in that area". He said that most road names were not written on signs and those that were, were in Arabic. When asked by the Authority to explain why he could not recall even the general layout of the roads in his neighbourhood, he suggested that only a "transporter" (ie a passenger vehicle driver) would be able to describe the road layout. He accepted that in the course of his business of repairing motor vehicles he would take vehicles for a test drive but said he would do so only by driving the vehicles to the end of his road and then back to his business premises. He himself did not own a

vehicle and got around by taxi or would be given a lift by a friend, as when he needed to go out to purchase spare parts and other items for his business.

[79] It is to be noted that the husband also claimed that as one of his pastoral activities he would visit members of the congregation in hospital but he could not remember which hospital he went to. He did not know how many hospitals there were in Kano but did know that there was only one hospital that members of his congregation used. He could give no information about that hospital. When he was shown the *Lonely Planet* map of Kano he claimed not to be able to read a map and volunteered that maps were not used in Nigeria.

[80] In relation to his claim that his address was Area 15, number 20 the Authority drew attention to the fact that in his second Confirmation of Claim to Refugee Status in New Zealand he had supplied the following address in answer to Question A7 (address in your home country):

[*deleted*]
Kano, Kano State
Nigeria

[81] Not only was this address different to “Area 15, number 20” it showed his knowledge of a specific street name. To this he claimed that it was a postal address where letters addressed to him could be delivered. No postal deliveries took place in his area and he therefore provided the address of a friend. When the friend received a letter addressed to the husband, the friend would bring it to the husband, a journey which took almost two hours by car. The husband had chosen this friend’s address because the friend was a “very close associate”. It was pointed out to the husband that his mother and father-in-law lived only thirty minutes away by vehicle and that their address would have been a more convenient one. To this he replied that he had chosen his friend’s address and the inference was that there was nothing further to be said.

[82] Considered in the context of the husband's claimed business and church activities in Kano, the Authority finds his inability to convey any authentic detail about Kano or Sabon Gari to be significant. He had claimed to have travelled from home to church at least three times a week for approximately ten years. He had also travelled with his wife to the market on a weekly basis and regularly visited a hospital, prisons and schools. Furthermore, he claims to have gone out preaching on the streets and to have made regular trips to his wife's parents' home and, after May 2003, to his plot of land. In these circumstances his inability to give any meaningful detail of Kano and of Sabon Gari has led the Authority to conclude that the husband has not lived in Kano or Sabon Gari. While on the second day of the hearing he was able to recall some road names in the area (most likely learned after overnight research or study), he could not provide detail about features of these roads or to give a sensible reason why he was now able to recall these particular names. When asked how he was now able to recall one particular road, he stated that it was because on one occasion "somebody took me in his vehicle along that road". The Authority has no doubt that the husband has learned a story and finds difficulty answering questions outside the parameters of that learned account. His facile responses as to how on the second day of his evidence he could remember detail and his equally facile claim that maps were not used in Nigeria simply underline the false nature of his evidence.

The wife's evidence

[83] The wife's evidence about Kano was similarly vague, delivered without conviction and improvised as the hearing progressed. Asked at the hearing on 13 July 2005 whether she had heard of the old city wall she responded that it was an historic place, like a museum. She went there once with her father when she was small. There he had shown her places where wars had been fought. She had seen pictures of earlier rulers of Kano, their history and the machetes they had used to fight a war. She had also seen some very old vehicles, one of which was called a Black Maria. Another

vehicle she saw there had an engine and four wheels. Asked if she had seen anything else, she said that she had seen a mud wall, parts of which were broken. Later that day she was shown a map on which the old city wall had been marked and was asked whether this was where her father had taken her. To this she answered “I can’t remember”.

[84] During re-examination on 13 October 2005 counsel asked the wife to comment on a *Mobil* map of Kano and asked whether she knew the city walls. Without hesitation the wife replied in the affirmative, adding that it was a very big wall, that houses had been built up against the wall and where this had not happened, the wall had collapsed. She mentioned that not much of the wall was left but there were still gates in the wall through which one passed into the old city. In parts, the wall continued on “as a high wall”.

[85] In the Authority’s view this fluent and confident answer was given in re-examination after the wife, knowing that the credibility of her claim to have lived in Kano was in issue, had had an opportunity to reflect on her earlier evidence and to improve on it with the assistance of information gleaned from the documentation on which the Authority was drawing for the purpose of its questions.

[86] Much the same was seen when the wife was asked to describe the Sabon Gari area. Initially she stated that there were markets but was unable to give any further detail. She then stated that Sabon Gari was not in the main city but was a community on its own, the implied assertion being that she could not be expected to know about Kano itself and that there was little of note in the Sabon Gari area. When pressed for detail about Sabon Gari, she could only mention an unnamed area where people traded. Although she went to shop there weekly, she was unable to give any further detail about it. It was only after the Authority had asked the wife to give a description of Kano and Sabon Gari from her life experience (having allegedly lived there) that the

Authority then produced to her maps of the area in order to test her knowledge further. The Authority noted that once the wife understood the progression of the questions and once she had the maps in front of her more “evidence” was given, albeit with little spontaneity. The Authority has considered whether this was due to a genuine witness having real difficulty in remembering the features of the city in which she lived for most of her life and whether (as submitted by counsel) the wife had difficulty reading a map or whether it was an opportunistic witness who was able to “feed” off the information in front of her and off the progressive questions being asked by the Authority. That is, a witness who could invent a story around the documentation to which she was being introduced. We have concluded that the wife falls into the category of the opportunistic witness. We did not detect any difficulty on her part reading the maps she was asked to comment on. She admitted to having been taught geography at school and recalled her teacher decrying the fact that it was not possible to obtain a map of Kano and they had been shown only a map of Nigeria. Far from being unsophisticated (counsel’s submission), the Authority is of the view that the wife is an intelligent, quick-witted individual who was able to incorporate into her false testimony information she was able to extract from the maps and other documents to which her attention was drawn.

[87] She also repeated her husband’s evidence that their house address was “Area 15, number 20” and asserted that street names in Kano are in the Arabic and Hausa languages, thereby implying that she was unable to read them. She also stated that there were no street signs or street names in Sabon Gari, although she could give no explanation why there were street signs in other parts of the city but not in Sabon Gari.

[88] Later in her evidence, after being presented with maps of the Sabon Gari district showing that roads were named, she resiled from both aspects of this evidence. She conceded that Sabon Gari did have street signs and that when the signs were “just names” she was able to read them notwithstanding their linguistic origin. When asked

to explain why she had been previously unable to name any of the streets, she initially stated that it was because she had not lived in Sabon Gari for very long. When the Authority pointed out that she had lived there for three years, she responded that she did not “go about Sabon Gari looking for names”. She asserted that she had not taken any notice of the street names.

[89] Tellingly, after being asked about specific roads shown on the maps, the wife confirmed that she now remembered them. She was also now able to give limited information about distances between particular places marked. She asserted that her earlier inability to provide names was because the Authority had asked questions about “streets” rather than “roads” (being the term used in the *Lonely Planet* map). There was an air of unreality to the distinctions she then drew when explaining the difference between roads, streets, avenues and ways. The Authority finds her evidence about the geography and layout of Kano and Sabon Gari to be untruthful in every respect. While counsel has pointed to differences between the *Lonely Planet* and *Mobil* maps, the differences do not address the primary point, namely that the wife knows little, if anything about a city in which she claims to have lived for most of her life and even less about the district in which her matrimonial home was situated. It is not as if she is unfamiliar with understanding cities. In giving her evidence she used Papatoetoe as a reference point as well as the Britomart. Counsel asked the Authority to consider whether the wife’s inexperience with maps and her claimed general naivety explained the lack of detail she was able to give about Kano and Sabon Gari. The Authority does not accept the premise. Whether or not the wife had ever seen a map of Kano or Sabon Gari previously, she displayed a confident ability to read the ones she was shown and to follow the questions asked. The only difficulty she had was to align the information in the map with the evidence she had previously given. The Authority is in no doubt that the credibility concerns that arise in this respect are related to the lack of truth in the wife’s account, not to her claimed naivety or to any other reason.

[90] While probably unnecessary to do so, we mention that her evidence as to the location of the ABC was also unbelievable. First she said that the church was in AA Way in the Sabon Gari area. Later in the hearing she changed her evidence and asserted that the ABC was in Area 15, the same area as their home. When her previous inconsistent statement was put to her, she reasserted the claim that the church was in AA Way but added that this was an “area” close to Area 15 and not a street or road. When asked to clarify her evidence, she became vague and suggested that the church was between two areas. Pressed further, she said that the church could be accessed through Area 13, Area 14 or Area 15 but she did not know the exact area of the church. She could offer no credible explanation for these constant changes or her inability to recall the location of the church she had allegedly attended more than once a week for approximately twelve years.

KNOWLEDGE OF EVENTS AFFECTING CHRISTIANS IN KANO

[91] Equally remarkable was the appellants’ almost complete lack of knowledge of significant reported events affecting Christians in Kano which, as individuals allegedly immersed in Christian life in Kano, they could reasonably be expected to have some knowledge of.

The wife’s evidence

[92] The wife could not recall significant conflicts between Muslims and Christians which had occurred in Kano in 2001. The following events were put to her:

- (a) In June 2001, seventeen churches were destroyed by Muslims. See for example Freedom House, *The Talibanization of Nigeria: Radical Islam, Extremist Sharia Law and Religious Freedom* (27 May 2002).

- (b) In September 2001, six further churches were burnt down and a number of others forced to close. See for example Freedom House, *The Talibanization of Nigeria: Radical Islam, Extremist Sharia Law and Religious Freedom* (27 May 2002).
- (c) In October 2001, violence again erupted between Christians and Muslims. Approximately two hundred people were killed and seventeen thousand people had to flee their homes, thousands taking shelter in army barracks. The President of Nigeria visited in an effort to quell the violence. See IRIN News, *Nigeria: Police Arrest 286, Charge 150 for Riots* (17 October 2001).

[93] When asked why she was unable to recall these events in any genuine detail, the wife gave a range of responses. She said that she had been ill during one so could not recall it. When asked to clarify when she had been ill, she could only say that it was when the fight was on. With regard to the others, she gave vague explanations about not recalling events which did not involve her and about her not being able to remember the timing of specific events. None of these explanations alleviated the concern of the Authority that she could reasonably be expected to recall in at least some detail events which in 2001 would have sent shock-waves through the minority Christian population of Kano. Her inability to do so indicates that she was not a practising Christian living in Kano at the time.

The husband's evidence

[94] While the husband claimed to have lived in Kano from 1993 he was unable to recall significant events in that city without being prompted by country information and questions by the Authority. When he did then “recall” events, he was unable to give any detail which indicated a genuine memory of those events.

[95] For example, he had no memory at all of an event in May 1995 in Sabon Gari when the market was burnt down and scores killed. Neither did he have any recollection of the earlier beheading of a Christian pastor (Gedeon Akaluka) in Sabon Gari in December 1994, an event which could be expected to have considerable resonance with the husband. See IRB, *Nigeria: Information on any religion's riots or protests in Kano City on 21 May 1995; On the Christian Association of Nigeria in Kano and on the death of Brother Gedeon Akaluka in December 1994* (NGA24526.E, 1 July 1996). His explanation was that as the incident did not happen to him, he was not interested in it. It was the one that had happened to him that caused him to run away. His ignorance of these events and his seeming casual indifference to the suffering of others indicates that the husband did not live in Kano as claimed and is not the Christian pastor he claims to be.

[96] Notably, until prompted by questions from the Authority, the husband did not recall that the State government in 1999 designated some one hundred and fifty churches in Kano for demolition. See Human Rights Without Frontiers, *Churches Threatened with Demolition* (20 August 1999). Having asserted that he did now remember the matter and that the ABC had received a letter to the effect that it too had been marked for demolition, the husband was unable to give any other details. Further undermining his evidence, he asserted that his wife was praying and fasting during the relevant period. But as to this, in 1999 he had yet to meet her for the first time. When the Authority pointed this out, he stated that he knew that she had prayed at the time because she had later told him so. When questioned further, he retracted the evidence about his wife and suggested that he was mistaken because they often prayed together. The superficiality of his attempt to assert knowledge of the event strengthens the Authority's view that he has no genuine memory of it. Overall, the evidence led the Authority to the view that the husband did not live in Kano in the period asserted by him.

INTER-RELIGIOUS VIOLENCE - MARCH 2001

[97] The appellants claim to have been personally affected by inter-religious violence in Kano in March 2001. Their account of the alleged events has, however, been an evolving one. To this Authority, both appellants repeatedly identified the March 2001 religious riots as the first incident of religious conflict in which they had been personally involved. They claimed to have been so fearful of the violence that they had fled from their home to seek shelter on a farm situated in the bush on the outskirts of Kano. There they had remained for some two weeks.

[98] Surprisingly, this significant aspect of their claim was not articulated by either appellant until the first appeal hearing on 30 August 2004 and 1 September 2004. Prior to that, on withdrawing their original claim based on the husband's membership of the Lords Resistance Army, each appellant had completed a second confirmation of claim form and made a written statement dated 14 June 2004 (the husband) and 16 June 2004 (the wife) respectively. The statements are very similar. There is no mention of the March 2001 violence in either. By way of illustration we intend referring to the wife's statement in which she identified the following specific incidents:

- (a) Her being beaten and suffering a miscarriage as a result;
- (b) Both she and her husband being stopped on many occasions by an Islamic group who tried to obstruct church services;
- (c) Being confronted by police and being questioned about their activities;
- (d) Muslims visiting the husband at his workplace and causing difficulties; and

(e) The workshop being burnt down by extremists and the appellants almost being killed.

[99] As mentioned, the husband's second confirmation of claim form and his statement dated 14 June 2004 detail almost identical incidents and similarly fail to mention the March 2001 events.

[100] When both appellants were interviewed by a refugee status officer at first instance they again made no mention of the March 2001 events. When sent the officer's written interview report for comment and correction, neither said anything about the March 2001 events even though they identified other specific incidents in which they had claimed to have suffered as a result of being Christians living in Kano. Indeed, the husband told the refugee status officer that his personal difficulties with Muslims first began in August 2003 when he was assaulted by Muslims while preaching on the street. The March 2001 events did not emerge until the first appeal hearing in August 2004. When asked by the present panel of the Authority to explain why he had not mentioned the March 2001 incident prior to the first appeal hearing, the husband said that he had previously referred to religious crises in Kano even if he had not detailed the time and the year. He said that being then in custody and separated from his wife he felt under pressure at the RSB interview. In this respect the Authority has taken into account the difficulties encountered by the appellants' first lawyer, Ms Shenaaz Munif in extracting full statements from both the husband and the wife. As against this the decline decision of the refugee status officer at p 197 of the file contains the following observations about the husband's evidence:

At interview [the husband] was very selective in what details and how much detail he gave out. He readily gave specific details about his attendance and activities at the three churches he has been associated with in Nigeria. He described his pastoral duties enthusiastically. However, when he talked about his problems with Muslims, he was very reluctant to be specific and he spoke constantly in generalities.

[101] This Authority, on a de novo appeal, is not bound by the decision reached by a refugee status officer or by that officer's assessment of a witness. Indeed, the Authority takes neither the assessment nor the decision into account when reaching its own independent decision. But it is relevant, in this context, to record that the evidence of Ms Munif must be seen in context. The difficulties she faced, real though they were, must be balanced against the refugee status officer's observation. We do not accept that the failure by the appellants to mention an important event in which they fled for their lives was attributable to the fact that the husband was in custody, that the couple were thereby physically separated and that they were under substantial pressure to prepare for the RSB interview. That both appellants would simultaneously fail to provide evidence of the March 2001 events in their second confirmation of claim forms, in their written statements of 14 and 16 June 2004, at their RSB interviews, in their responses to the interview report but then for both to recall the incident at the first appeal hearing cannot be reasonably explained by coincidence or a belatedly recalled memory. If the appellants had, in fact, fled their home and hidden in the bush for two weeks to escape inter-religious violence in 2001, it is difficult to accept that they would have failed to have mentioned such dramatic and important evidence in their statements, at the first instance interview and in their responses to the interview report on which they were invited to comment before the first instance decision was taken.

[102] The Authority has other concerns in relation to the appellants' account of the March 2001 events. They include:

- (a) Inconsistent evidence was given by the husband and wife about their activities when they returned home after their two week absence. The husband said that they did not attend the church for one month after their return home. Three Christians had been killed in Sabon Gari and Muslims continued to operate roadblocks in the area. In contrast, the wife recalled returning to the church the

first Sunday after their return from the bush and confirmed that she and her husband had resumed all their church activities from that time. When the husband's inconsistent evidence was put to her for comment she changed her evidence, saying that on the Sunday they had returned to church not many people had been in attendance and this remained the position for one month. Asked whether she was saying that other people did not attend the church for a month or whether she was saying that neither she nor her husband attended for a month, she answered that it was both. After the first service there had been no others for one month. She added that because the other parishioners were frightened, they decided not to attend church. When presented with the husband's evidence that the reason for being unable to attend was that Muslims had erected barricades to prevent people going to church, she said that she agreed with his evidence. Asked why she had not mentioned the barricades until the Authority put her husband's evidence to her, she replied to the effect that she "had meant to say". In the context in which this evidence was given, the Authority is of the view that it is an example of how the wife will adapt her evidence as the convenience of the occasion requires.

- (b) A notable feature of the evidence of both the husband and the wife was their almost complete lack of concern as to the fate of others during the violence. Apart from mentioning that three Christians had been killed, neither appellant was able to give any evidence as to what impact the riot had had on the two workshop employees (also Christians), the wife's family, other parishioners and other pastors. Their explanation, in short, was that they had not made enquiry. The Authority finds this evidence by two allegedly committed Christians to be implausible in the claimed circumstances and strengthens the Authority's view that their claim to be committed Christians from Kano who have been victims of religious violence has no foundation in truth.

[103] For the reasons given, the Authority concludes that the appellants' account of the March 2001 events is not a truthful account. Whether or not an incident of some kind occurred in Kano in March 2001, the appellants were neither involved in those events nor affected by them. Nothing in their account is accepted.

CONVERSION OF THE MUSLIM WOMAN IN SEPTEMBER 2002

[104] The central and indeed critical event to the refugee claim advanced by the appellants is the assertion that the husband is at risk of being killed by Muslims seeking revenge for his conversion of a Muslim woman (“the conversion”) in September 2002. Every significant aspect of their narrative hinges on this core claim. We here refer to the disruption of the prayer meeting in June 2003, the attack on the Christian labourers working on the appellants’ land in October 2003, and the appellants own flight from their home a week later to the safety of Seriki Village. Indeed, their refuge in that village notwithstanding the claimed serious ill-health of the wife had one purpose only, namely to escape from vengeful Muslims. As the husband explained, from the time he healed the Muslim woman he knew that other Muslims were trying to trace him with a view to killing him. In short, the conversion in 2002 was the critical event which focussed Muslim attention on the appellants and caused them to flee Nigeria and to seek refugee status in New Zealand.

[105] Astonishingly, the conversion of the Muslim woman in 2002 was not mentioned in either of the second confirmation of claim forms submitted by the appellants. Nor was it mentioned in their statements of 14 and 16 June 2004. Nor was it mentioned at their respective interviews with the refugee status officer or in their responses to the interview reports. The conversion incident was not mentioned until the first appeal hearing on 30 August 2004 and 1 September 2004.

[106] When asked to explain this omission the husband repeated the explanation he had given for not disclosing the March 2001 incident at an earlier stage. That is, he referred to the pressure he was under at the RSB interview. For the reasons given earlier, the Authority does not accept his explanation. The wife’s explanation for not mentioning the conversion prior to the appeal hearing was that at the time of the RSB interview she was distracted and it was her habit to forget the most important things.

In the context in which this evidence was delivered, the Authority found the reply disingenuous and the Authority does not accept the explanation. Given the significance of the conversion to the refugee claim, it is inherently unlikely that it would have been consistently omitted in error, particularly when, as it is now alleged, it was the flashpoint for the subsequent events, particularly the incident on the land in October 2003 and the narrow escape to Seriki Village. Both of these events were traversed by the appellants in some detail at the RSB interview. It is hard to believe that they overlooked making mention of the alleged cause of these incidents, namely the conversion of the Muslim woman.

[107] The Authority finds that the assertion that the husband converted a Muslim woman to Christianity in September 2002 is yet another untruth. The delayed assertion of the conversion was no more than an attempt by the appellants to bolster their refugee claim.

ATTACK ON THE APPELLANTS' LAND - OCTOBER 2003

[108] Notwithstanding that he knew from the time of the alleged conversion in September 2002 that Muslims wished to kill him, the husband did not take any obvious measures to reduce that risk by, for example, changing his residential address and reducing his visibility as a Christian pastor in the community. Instead, his life continued on exactly as it had before. He continued to attend the same church on an average of two or three times a week to perform his duties as assistant pastor. He also continued his other pastoral duties such as visiting hospitals and preaching in public. At the same time he ran a busy business (his workshop) and continued to live in the house adjoining the workshop, a house in which he had then lived for approximately eight years. In these circumstances it is inherently implausible that almost a year went by without a physical attack on the husband who was living and working in plain sight of his enemies. It is implausible that they were unable to find him earlier. Even when

an attack was mounted, it was mounted against his Christian labourers, not against him as he had fortuitously left the scene a short time earlier to get lunch for the labourers and on his return was able to escape with his wife. The scenario is fanciful.

FORCED TO FLEE - 17 OCTOBER 2003

[109] It is to be recalled that approximately a week after the incident at the plot of land the appellants were woken early one morning by a fellow Christian and informed that a group of Muslims were plotting to kill them later that day. The appellants had immediately left their home (never to return) for Seriki Village.

[110] There are inherently improbable aspects to this claim. First, that a Christian acquaintance of the appellants was, by coincidence, in a bar and just happened to overhear a group of Muslim men discussing their intention to attack and kill the husband that very morning. Second, that the assassination plot was planned in a bar. While it is certainly the case that being Muslim does not necessarily mean abstinence from alcohol, the combined circumstances are cumulatively improbable.

[111] The Authority's assessment is supported by other aspects of the appellants' narrative. When first asked by the Authority to explain how the Christian man came to overhear the plot, the husband stated that the man "went somewhere to purchase something" [where] the [Muslim men] were drinking. In re-examination he amended this evidence to an assertion that the man was a transporter who was driving around the city and had gone into the bar to get change.

[112] As to the timing of the warning, the appellants gave inconsistent evidence at the RSB interview. The husband told the refugee status officer that the Christian man had arrived at their home at approximately 5am on the morning of the planned attack whereas the wife told the interviewing officer that the person had arrived the previous

afternoon towards evening. They had remained at home that night before leaving early the following morning, an account she adhered to in her response to the interview report. The inconsistency is, in our view, another manifestation of the invented nature of the claims advanced by the appellants.

SERIKI VILLAGE - IN HIDING

[113] The appellants' account of their five to six months residence in Seriki Village is characterised by central aspects which are simply implausible. They include:

- (a) Their good fortune that immediately on arrival in the village they chanced upon a Christian man who offered them food and shelter in his house and permitted them to stay for five to six months without payment of any kind;
- (b) That the husband happened, fortuitously, to have a kind friend who owed him either money or favours and who just happened to arrive in Seriki one day, anticipating that the appellants might be hiding there. He accepted US\$200 to make all arrangements for their flight, including the false passports and travel tickets to New Zealand;
- (c) The further good fortune that the husband had chanced to bring with him from home passport-sized photographs of both himself and of his wife;
- (d) The wife's inability to recall the name of either the man or his wife in whose house she had lived for some five months, or the names of the other people staying in the house who, it is claimed, helped nurse her for two months after she was beaten and suffered a miscarriage;

- (e) Even though the wife had made weekly trips to the local market the appellants were so in fear of being identified and found by their Muslim assailants that they would not seek medical help even when the wife was seriously ill after the beating and miscarriage;
- (f) It was claimed that in any event hospitals in Kano would not treat Christians, particularly Christian women. As against this it is odd that the husband claimed to have visited members of his congregation in hospital. But above all, in her handwritten statement exhibited to the affidavit sworn by Ms Munif on 25 October 2005 the wife gives a very different reason for not having gone to hospital after her miscarriage:

Our house, my husband's workshop, including other people's cars he was repairing we burnt down. We almost got killed, I was beaten up so much that I had miscarriage because I was pregnant at that time and I lost so much blood, **I couldn't go to the hospital because the hospital that was close to where we stayed was destroyed** and people were killed. About more than two hundred lives were killed in the religious crises. [Emphasis added].

[114] These features of the evidence underline the fabricated nature of the refugee claim. The Authority rejects all the evidence about the period in Seriki Village. It follows that the Authority does not accept the wife's evidence that she was beaten and suffered a miscarriage as a result. She may well have suffered a miscarriage in the past, but not for the reason and in the circumstances asserted in her refugee claim.

Contact with friends and family while in Seriki

[115] There were a number of compelling reasons for the appellants to establish contact with the wife's family (who live in Kano) during their (the appellants') claimed stay in Seriki. The wife was allegedly seriously ill and in need of medical and emotional support. In addition her family would have been deeply concerned about her whereabouts and well-being. The appellants needed money and food to survive

their time in hiding. It is also to be remembered that the wife's father was a bus driver who operated a service from Kano City to Lagos and could have assisted their flight from harm. Any one of these reasons would have justified the appellants making contact with the wife's family, either directly or indirectly.

[116] However, both appellants claim to have had no contact with family members from the time of their flight from their home in October 2003 until May 2004 which was some time after their arrival in New Zealand. Apart from the friend who arrived serendipitously in Seriki Village, the appellants avoided contact with friends, associates and fellow parishioners.

[117] Asked to explain their reluctance to contact the wife's family, the appellants gave responses which were at once contradictory and far fetched. The husband initially suggested that they could not contact the wife's parents because they (the parents) would have run away in response to the violence. When asked why the parents would have run away, the husband asserted that whenever there was fighting "everyone will run for dear life". Not only is this assertion conjecture, it is plainly untrue in light of the appellants' own evidence that on three occasions when violence erupted (September 2002, June 2003 and for the week following the October 2003 land incident) the appellants had simply gone home to "sit it out".

[118] As to whether the husband's friend could have made enquiries on the appellants' behalf, the husband suggested that to do so would have exposed him (the husband) in some way. When pressed further, he suggested that his father-in-law's vehicle might be traced by the Muslims to their (the appellants') refuge in Seriki Village. In answer to further questions he asserted that he did not want anyone to know of his whereabouts and that there was no possible way of contacting the wife's parents by telephone. All these responses are far too convenient. They leave the appellants isolated from their entire world even though they are living in a village only a matter

of minutes from Kano. Except of course for the acquaintance who just happens to find them there and who is able to make all the travel arrangements.

[119] The wife's explanation for the lack of contact was slightly different but no more compelling. Initially she said that she did not contact her parents because she was ill and in hiding. As to why she did not contact them when she recovered, she said that she did not want to cause problems for her parents. Asked to clarify, she suggested that if the neighbours of her parents saw that the parents were happy (having heard that the appellants were alive), they (the neighbours) would know that the appellants were alive somewhere and Muslims would come looking for them again. These fanciful assertions strengthen the Authority's overall impression that the wife invented evidence whenever she thought it would bolster the claim to refugee status.

OTHER CREDIBILITY CONCERNS

Committed Christians?

[120] Both appellants made numerous assertions to the Authority that they were deeply committed Christians who seek to live and serve the word of God. But their account demonstrated a conspicuous absence of Christianity, particularly compassion for others. This is not a moral judgment by the Authority. Rather it is a question of credibility. If their admitted actions are not those of committed Christians, a credibility concern is legitimately raised.

[121] For example, the appellants failed to make any enquiries about the seven Christian labourers they abandoned at the time they fled the attack at their land in October 2003. Asked about the fate of these labourers the husband admitted doing nothing to enquire about them. This is not the action of a genuine pastor of a Christian church in a city where over ninety percent of the population are Muslim and where violent religious clashes are common. Significantly, while being pressed as to why he

made no enquiry about the labourers the husband, entirely out of context and without being asked, simply began talking about the arrival at his home at 5am one morning of the messenger who announced that the house was about to be attacked and burnt by Muslims seeking revenge for the conversion of the Muslim woman. This diversion was patently obvious to the Authority and served only to undermine the husband's credibility.

[122] Similar indifference was exhibited by the appellants in relation to other incidents. For example, when the appellants fled the March 2001 violence, they did not invite their two Christian employees to escape with them. Instead, according to the wife, the employees were left to close up the workshop before themselves fleeing. Moreover, on their return neither of the appellants made enquiry of the employees to ascertain how the violence had affected them.

[123] The appellants also claimed to have been intimately involved with the church congregation over many years, the husband engaging in extensive praying, healing and other pastoral duties while the wife was actively involved with the choir, Sunday school and acting as the "praise and worship team leader" (statement dated 16 June 2004). However, when asked about the three members of their church who were killed in 2001, both appellants displayed a disengagement from what was (if true) both a memorable and tragic event. It is also notable that during the RSB interview the husband did not recall anyone from the church being killed despite being questioned about it specifically. The wife's evidence to the Authority was similarly vague and disinterested. Initially she was unable to recall the death of any church members. After further questioning she did recall that members had been killed but was unable to remember any other details. The Authority finds it unlikely that the death of three church members would be such an insignificant matter for the appellants and that they would struggle to recall it but a few years later.

[124] The Authority was also asked to draw the inference that because the appellants are committed Christians that their evidence has been truthful. Indeed, in her handwritten statement dated 16 June 2004 the wife describes the heavy burden which the lies about the Lords Resistance Army had been to her and her husband. As to this, having interviewed the appellants at length the Authority is more than satisfied that Christianity has been used as a camouflage or facade for an entirely false set of refugee claims.

The false claim advanced on arrival in New Zealand

[125] It is to be recalled that on arrival at Auckland International Airport on 27 April 2004 the appellants claimed refugee status on the basis that they were citizens of Uganda and that the husband had been a member of the Lords Resistance Army since 1998. As noted earlier, this claim was subsequently withdrawn and substituted with the refugee claim presently under determination.

[126] When asked by the Authority why he had advanced the false LRA claim, the husband stated that he did not want to be returned to Nigeria. He could not explain why, as a man of God, he claimed to have been a commander in a group renowned for gross human rights abuses in Uganda instead of presenting himself for what he claims to be, namely a Christian pastor from northern Nigeria who is at risk of being killed by Muslims. The claim that he got the information from an overhead conversation at Lagos Airport is so inherently implausible that it is a fiction.

Access to medical services

[127] The wife said that after her miscarriage in Seriki she was seriously ill. Asked whether she had consulted a doctor she said that she had learnt from the other women in the house in which she was staying that no doctor in Kano would treat a Christian

woman. This was the first time she had been acquainted with this fact. Questioned by the Authority as to whether her mother or her two sisters had ever mentioned to her that Christian women in Kano would not be treated by a doctor, she replied that her mother had never seen a doctor. In effect, her claim was that she had lived in Kano for some twenty years without ever learning that as a Christian woman she would not be treated by a medical doctor. The wife was reminded that her husband claimed to have regularly visited members of the congregation in hospital. She was asked whether he had ever mentioned to her that he had not seen any Christian women in these hospitals. The wife replied that she had never been told this by him. She claimed that he had told her that when he arrived at hospital he did not go to the room where the patients were. Rather he had gone to a separate room. She also claimed that she had not known anyone who had been admitted to hospital in Kano. In their totality, the Authority finds these assertions extraordinary and does not believe them. In making this finding we have taken into account that in her handwritten statement exhibited to the affidavit of Ms Munif sworn on 25 October 2005 the wife gives a very different reason for not having gone to hospital after her miscarriage, namely that the hospital close to where they were staying had been destroyed.

[128] For his part the husband said that he knew from at least 2001 that he could not take his wife to hospital because the hospitals in Kano did not treat Christian women. Asked why, in these circumstances, he had decided to live in Kano permanently and purchase a plot of land in May 2003 on which to build a house knowing that his wife could never receive medical treatment at a Kano hospital, he asserted that his wife never got sick. As in the case of the wife, the Authority found his evidence difficult to believe.

CREDIBILITY AND Demeanour

[129] The Authority's assessment of the husband is that he learnt the basic details of his second claim to refugee status (the one based on his being a pastor in Kano) but that he was unable to remember it consistently. As a witness he was evasive, unable to improvise when questioned about aspects of the claim he had not thought out or which he could not remember. As previously mentioned, on one occasion, on being questioned why he had abandoned the seven Christian labourers, he simply switched to the next point of the narrative, being the arrival of the messenger at 5am in the morning. The Authority detected no element of sincerity in his evidence. In making our credibility assessment we have made every allowance for differences in culture and the fact that his evidence was given through an interpreter.

[130] As to the wife, we have, for the reasons mentioned, given long and anxious consideration to her case. When she gave evidence on 12 and 13 October 2005 she was pregnant and understandably anxious at the possibility of a miscarriage. On the other hand, the Authority had an opportunity to assess her credibility prior to the pregnancy, her evidence having commenced on the afternoon of 12 July 2005 and having continued all day on 13 July 2005.

[131] The evidence of the wife was characterised by long pauses between the question and answer. Our assessment of her as a witness follows:

- (a) The pauses were not due to language difficulties. She had the assistance, when required, of an interpreter but seldom called on his services. When she did, she spoke to him in the same English she had used when addressing the Authority and her exchanges with the interpreter were accordingly clearly understood by the panel.
- (b) The pauses were not introspection of the kind sometimes seen in honest, cautious witnesses. Nor were the pauses due to cultural or personal

characteristics. The Authority is aware that some witnesses, due to anxiety, nervousness or cultural or personal characteristics will sometimes hesitate between question and answer to ensure that the response is both true and accurate. However, in the case of the wife, having closely questioned her for a period of days, the Authority is of the clear view that the pauses were, in her case, due to her effort to recollect a learned account or, when the questions from the panel were outside the parameters of her learned account, to allow her to reflect on how best to ensure that her answer would not contradict either the learned account or the other evidence she had given or both. There was no spontaneity in the evidence given. Information relating to matters outside the learned account were given slowly, reluctantly and with a great degree of deliberation.

- (c) There was a conspicuous lack of sincerity in the giving of her evidence. As with her husband, she did not present as someone who has experienced serious harm in the past and who genuinely anticipates further harm in the future should she return to Nigeria. Rather, her demeanour was that of a person who was treating the whole enquiry as a game or contest of wits with members of the panel as to whether her falsehoods would be uncovered or remain hidden. There was no sense or impression of a person who was recounting something which had genuinely happened to her or which had been experienced by her.
- (d) There was also a clear contrast between the fluency of her evidence and the details she was willing to provide in relation to those parts of her case which had been learned and remembered. As soon as the panel asked questions outside the parameters of that account, there was pronounced hesitation, a reluctance to address the question, a failure to provide requested detail and a “stop/start” approach.

- (e) The wife is a quick-witted and resourceful individual. She was well aware that the Authority was testing what she knew about Kano. Her first tactic was to give no meaningful detail. Having repeatedly told the Authority that there were no street names in Sabon Gari she was then shown a street map of Kano and in particular the Sabon Gari area as published by *Lonely Planet*. Asked why street names proliferate on the map, she said that the map referred only to roads whereas the Authority had been asking her about streets. This was a particularly glib and facile response. She had been well aware from the context of the questions that “street” and “road” had been used by the panel as general descriptors and were in that context interchangeable. She even volunteered that “avenue” and “way” were interchangeable. That being the case, it is the more difficult to accept that in her mind she had a clear distinction between “street” and “road”. Furthermore, it being patently obvious that the Authority was testing what she knew of the thoroughfares and travel routes in Kano, it is surprising that she did not draw attention to the fact that while she did not know the names of streets, she did know the names of roads. In any event, the street/road dichotomy is somewhat unreal given her earlier repeated assertion that street names were either in Arabic or in Hausa and for that reason she could not be expected to know the English names.
- (f) Probing questions often required repeating. Evasion characterised her evidence. When inconsistencies in her evidence were drawn to her attention, she would reply to the effect that she did not understand the inconsistency or claim that the inconsistency arose through misunderstanding on her part. In the context in which these responses were given, the panel concluded that her responses were disingenuous. She is clearly an intelligent woman, not the unsophisticated and traditional woman she sought to portray.

(g) At almost all the hearings the wife either directly or through counsel impressed on the Authority the fact that she was in ill-health either because of migraines or because of her pregnancy. When her evidence resumed on 12 October 2005 she presented herself as a tragic figure, wrapped in several layers of clothing, looking sad and speaking in a very soft voice. However, the projection of this image did not last long and the panel noticed that her demeanour soon changed once she engaged with the questions. The strongest impression was that of a calculating, manipulative and dishonest witness.

CONCLUSION ON CREDIBILITY

[132] For the reasons given the Authority has concluded that the narrative advanced by the appellants in support of their claim to refugee status is not truthful in any material respect. The Authority rejects all of their evidence.

[133] It follows that the Authority attaches no weight at all to the letters of support which have been produced from the Life Centre Trust and from the United Maori Mission. The Authority has had opportunity to examine in close detail the credibility of the appellants, an opportunity which the authors of the letters have not had. Similarly the email correspondence produced in evidence which purports to confirm that the husband is a pastor from Kano is not evidence we are prepared to give weight to. The authors of the documents have not been made available for questioning by the Authority and the contents of the correspondence are at best vague and insubstantial.

[134] As the Authority does not accept any part of the appellants' claims, it does not accept that the husband is a Christian preacher and healer who, on return to Nigeria would preach and heal, causing the couple to come to the attention of Muslim communities in whichever part of Nigeria they may find themselves. Because it is so clearly of the view that no reliance can be placed on anything said by the appellants

the Authority is not even prepared to find that the appellants are citizens of Nigeria. As mentioned, no part of their evidence is accepted.

[135] Even if they are to be treated as citizens of Nigeria, the findings of the Authority mean that neither of them face any risk of harm should they be returned to that country. It follows that the internal protection alternative, on which the decision of the first panel of this Authority turned, does not arise on the facts.

**FIRST NEW GROUND FOR REFUGEE CLAIM:
THE WIFE'S MEDICAL NEEDS**

[136] The next point to be addressed is the contention that the wife's health during pregnancy is relevant to her refugee claim. It is said that she would be unable to obtain specialist care in Nigeria and without such care she would be at risk of serious ill-health. The point made by counsel in her letter dated 9 May 2006 is in the following terms:

Neither have available family support in the South [of Nigeria]. They are without employment and cannot afford the health care that [the wife] needs during pregnancy. When pregnant, [she] must have regular medical care and possibly hospitalisation throughout the later stages of her pregnancy. In New Zealand, a highly developed country, her baby died and she herself was at risk of dying - despite sophisticated medical support.

[137] This new ground for the refugee claim was further articulated in the submissions dated 12 March 2007.

[138] In support the Authority is referred to the letter dated 8 May 2006 from Dr Keith Allenby of Middlemore Hospital. His opinion is that the wife's risk of preeclampsia in the next pregnancy is in excess of 10% and that with regard to future pregnancies the wife will require extremely close supervision. If she were to develop the same degree of disease where the health services are less advanced she and her baby would undoubtedly be at risk of demise although Dr Allenby "would not be able to specifically quantify that risk and put a figure to it".

[139] The Authority is also referred to an article by BB Osinaike & SD Amanor-Boadu & AA Sanusi, "Obstetric Intensive Care: A Developing Country Experience" *The Internet Journal of Anesthesiology* 2006, Volume 10, number 2 accessed at http://www.ispub.com/ostia/index.php?xmlFilepath=journals/ija/vol_10n2/ostetric.xml. The authors state:

There is agreement in the developed world on the need for Intensive care facilities for the obstetric patient. This level of care may not be attainable for the pregnant in the developing world as lack of access to basic health facilities is one of the major factors responsible for high maternal mortality rates in the region. The Intensive care beds in Nigeria with a population of over 120 million, are less than 100 and limited to the teaching hospitals situated in the urban centres and are grossly oversubscribed.

[140] The jurisdiction of the Authority is a limited one and is confined to determining only whether the appellants are refugees within the meaning of Article 1 of the Refugee Convention. The Authority is statutorily forbidden by s 129W(e) of the Immigration Act 1987 from determining any issue of a humanitarian nature that arises outside the context of a decision relating to the recognition of refugee status in New Zealand.

[141] Viewed through the prism of the refugee definition the new ground for the refugee claim is problematical. First, whether the wife will become pregnant again in the future is entirely speculative. Second, the evidence she relies on establishes that her inability to access appropriate medical care would be for reason of the general absence of medical care facilities of this kind in Nigeria, not because of her race or religion or other Convention ground. While she claims that as a Christian woman she will be denied health care, there is no evidence to support the claim and indeed the Authority has rejected this claim on credibility grounds. The credibility finding is such that the Authority will not accept any assertion made by the wife or by the husband without clear and unequivocal supporting evidence drawn from an independent and verifiable source. We find no such evidence to support the new refugee claim based on medical grounds. The statistic of one hundred intensive care beds for a population of over 120 million would in any event substantially undermine the discrimination claim. In the result, the “Convention ground” element of the refugee definition cannot be established. That being so, the new refugee claim must fail. The wife’s desire to remain living in New Zealand for the purpose of accessing

healthcare facilities superior to those in Nigeria falls completely outside the Refugee Convention and completely outside the jurisdiction of the Authority.

SECOND NEW GROUND FOR REFUGEE CLAIM: THE INSTALLATION OF A MUSLIM-DOMINATED GOVERNMENT

[142] The second new ground for the refugee claim is advanced in the letter from Ms Curtis dated 27 August 2007. It is in the following terms:

We refer to our previous correspondence. There has been a change of circumstances in Nigeria which worries our clients.

The new president Umaru Mussa Yar'Adua is a Muslim and our clients are very fearful that it will be only a matter of time before he starts to implement sharia law in the South of Nigeria also. It is early days but we understand that his cabinet is made up of primarily Muslim cabinet members.

We enclose an article from the internet from a Christian publication just before the elections when this candidate was elected President.

We also enclose information from Amnesty International concerning the prison conditions in Nigeria and also the rape of women by the security forces.

Our clients fear that the husband will draw unwanted attention to them because of his proselytising and that the wife will be unable to keep herself safe from the police and security forces.

Please advise if any further information is required.

[143] For reasons detailed earlier, the Authority does not accept any part of the appellants' claims. In particular it does not accept that the husband is a Christian preacher and healer who, if returned to Nigeria would preach, heal and proselytise thereby causing the couple to come to the attention of Muslim communities in whichever part of Nigeria they may find themselves. It follows that it does not accept the premise on which the second new ground for the refugee claim rests.

[144] Even if (contrary to the Authority's findings) the appellants are to be treated as citizens of Nigeria, our decision that no part of their evidence is believed means that there is no basis for a finding that the recent change in government puts one or other of the appellants at risk of being persecuted for a Convention ground. Similarly, there is no basis for finding that the wife is at risk of being raped by the security forces or for

the appellants to be subjected to the prison conditions described in the report from Amnesty International. Section 129P(1) of the Immigration Act 1987 stipulates that it is the responsibility of the appellants to establish the claim to refugee status. On this second new ground for their refugee claim they have failed by a significant margin to establish any case at all, let alone one which satisfies the refugee definition.

CONCLUSION

[145] Neither of the appellants have established a well-founded fear of being persecuted for a Convention reason should they return to Nigeria. It follows that they are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

“Rodger Haines”

[Rodger Haines QC]

Member