

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 74669

AT WELLINGTON

<u>Before:</u>	M Hodgen (Member)
<u>Counsel for Appellant:</u>	J S Petris
<u>Appearing for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	13 August 2003
<u>Date of Decision:</u>	10 February 2004

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of Sierra Leone.

INTRODUCTION

[2] The appellant is a 22 year old, unmarried man, who arrived in New Zealand in September 2002. On 4 November 2002 the appellant submitted a claim for refugee status. On 8 January 2003 the appellant was interviewed by a refugee status officer. On 21 May 2003 the refugee status officer issued a decision declining refugee status. The appellant appeals against that decision.

[3] The appellant's claim for refugee status was submitted by Mr Phillip Meyer of Ryken & Associates. Mr Meyer also appeared for the appellant at the refugee status interview before the refugee status officer. However the appellant's current legal representative is Mr J S Petris (counsel).

THE APPELLANT'S CASE

[4] This is a summary of the appellant's case as presented to the Authority. Consideration of the appellant's credibility and the claim is dealt with later in this decision.

[5] In January 1982 the appellant was born in X town in Sierra Leone. He is a Muslim and a Hausa. His father was a Hausa, who had a business and was an imam at the local mosque. His mother was a Fulani. He had one sister. X town has people of various ethnicities, including Hausa.

[6] The appellant attended an Islamic school in X from about 1991. The emphasis of the school was Islamic. Even geography and history lessons were directed at Arab countries and did not touch on any aspects relating to Sierra Leone. The appellant learned Arabic and some English at school. He also had a private English tutor.

[7] In about October 1998 the appellant's mother was caught up in violence in the market place of X and was shot and died in that violence.

[8] The appellant was injured during a fight in the market in approximately March 2000. Someone had shot a firearm in the market and people were running. During this event someone stabbed the appellant in the arm and he was taken to hospital and had to be treated for the injury.

[9] Apart from being injured at the market, the appellant had no real problems as a schoolboy, other than occasionally having people insult him by asking him why his father had been chosen to be the imam of the mosque. People would sometimes say this to him when he was going to the market. The mosque where his father was imam was a small mosque with not more than 200 people who attended it.

[10] The appellant's sister died of natural causes in 2000.

[11] When the appellant finished school in 2000, he could speak Hausa, Arabic, some English and also a small amount of Fulani. The languages used in the mosque were both Arabic and English.

[12] After finishing school the appellant started helping his father in his father's diamond trading business. His father taught him various aspects of the business in respect of diamonds. The business involved buying and selling both rough and cut diamonds.

[13] The appellant began travelling with his father by bus to a town in Guinea to sell diamonds to a man called L. The appellant travelled with his father, as his father wanted him to learn the trade. He and his father went many times to visit L and sometimes L came to visit them in Sierra Leone. They could make the trip to L and back in one day. The appellant is not sure of the name of the town where L lived and he is not sure of the name of the border crossing point. The border crossing was just a building with a boom over the road.

[14] The appellant's father initially had a shop, but sold it in about 2002, and thereafter traded from their home.

[15] On a Monday in February 2002, between 4am and 5am, the appellant heard people in the family home and was aware of a torch being shone on him. He was taken by these people and saw his father lying on the floor with blood on him. His father was dead. The people (whom he later identified as rebels) asked him for money and diamonds. They were pushing him around and telling him what to do. These men were armed and numbered about seven. He showed them where the diamonds and money were, where his father had locked them up. The men broke open the place where the diamonds and money were kept and took the diamonds and money. They forced him out and into their vehicle, which he described as a Jeep. They forced him onto the floor of the jeep and they then drove from his home.

[16] The men, having forced the appellant into their jeep, drove for approximately 3 hours with the appellant, stopping only twice to refuel and ultimately arrived at their camp in the bush or forest. The men had carried their own petrol to refuel the vehicle. The appellant had not been injured during his capture, but his hands had been tied up and that was the only act that the men did to him.

[17] As the appellant had been made to lie on the floor of the jeep he had not been able to see the route the men took to their camp in the forest.

[18] At the camp the appellant and other captives that were at the camp were told by the rebels that if any of them tried to escape they would be captured, and if captured they would be killed. They were also warned that the rebels would seek them all over Sierra Leone and the neighbouring countries if they escaped. The rebels told all the captives this. There were approximately 6 to 7 women captives and 7 men captives.

[19] The other captives were (ethnic) Mandingo, "Krako" (Kuranko?), Susu, and Yoruba. The captives were made to do chores at the camp. The appellant was required to collect firewood and carry items around the camp. The women were required to cook and clean. The appellant had not known the other captives before he was captured. The number of rebels at the camp fluctuated between 7 and 12 and he saw that they only had one vehicle. The rebels spoke English with him, but they also talked in another language, which he could not understand.

[20] The appellant was detained for approximately 2 months at the camp.

[21] Although the appellant had some opportunities to talk to the other captives, he did not find out where they were captured or where they came from, however some of them asked where he had come from. The appellant also did not find out the name of the rebel group in the time that he was detained. He only knows that they were rebels. They did not have any particular names or acronyms on any of their items that indicated the name of their rebel group. During his time as a captive he noticed no local inhabitants in the area, just that it was forest and bush.

[22] After about 2 months as a captive, the appellant was out gathering wood for the rebels. He was being guarded by 2 guards, who were drunk and were talking to each other. The intoxicated rebels were not keeping a proper watch on him and it was beginning to get dark. The appellant took advantage of the opportunity and ran away. He ran for what he estimates to be 4 or 5 hours and ultimately arrived at a village, which he found to be near the Guinea border. He does not know the name of the village. The villagers gave him a place to sleep and gave him a small amount of Sierra Leone currency to take with him to Guinea. The villagers directed him as to how to get to Guinea.

[23] At the border he paid persons to guide him across the border and changed into clothes he had been given in the village.

[24] Once in Guinea the appellant travelled immediately to L, where he had been previously with his father. When the appellant reached L, he told L that he had come to collect the US \$5,000 that L owed his father. L however told him he could only give the appellant approximately half of that amount at that time, and would only be able to give him the rest later. The appellant took the money and went to a border town, near to the Guinea/Sierra Leone border, where he stayed.

[25] At the border town, the name of which the appellant cannot remember, he sold African tourist items to tourists. The tourist goods included statues, bangles, necklaces out of wood and the like. The appellant moved from place to place selling these items, in the general area of that border town. There were tourists in the area where he was operating on the border. These tourists included overseas tourists and people from Africa.

[26] After some months the appellant was able to obtain the remaining money from L. He then proceeded to Conakry, the capital of Guinea.

[27] In Conakry the appellant met two men whom he told of his problem with the rebels and that he was afraid of them. The men offered to help him to escape to France. He gave them money for a false birth certificate and further money for a false passport. The passport and birth certificate were to indicate that he was a Guinean national. The appellant also paid the men for a visa to enter France. The total amount paid to the two men was US \$600, for the birth certificate, passport and French visa. The appellant then went and bought a ticket to France. The appellant had at that stage been in Guinea for approximately two months.

[28] Although the appellant said that he did not feel safe in Guinea, he experienced no trouble while in Guinea.

[29] The appellant flew to France two months after being in Guinea (ie approximately July 2002).

[30] The appellant stayed in Paris and while in France he met two other Africans who told him France was not a good place to stay. They said New Zealand takes better care of refugees, so it would be better to go there.

[31] The appellant met a man in Paris who told him that he could help him get to New Zealand and told him that he could obtain a false French passport for the purpose, for the payment of US\$900. He said that if the appellant had a French passport he could go to New Zealand without a visa. The appellant paid the money and received a false French passport with the name of another person in that passport.

[32] In late September 2002 the appellant left France using his false French passport and travelled by air to New Zealand. He left his false Guinean passport behind in France.

[33] The appellant had no difficulties while he was in France and had no difficulties travelling from France to New Zealand with his false French passport.

[34] The appellant arrived in Auckland after travelling for approximately 2 days, including two stopovers. On arrival in Auckland, after passing through Immigration controls using his false French passport, he then threw away the passport outside the airport.

[35] Once in New Zealand the appellant took a taxi into Auckland city and found out where the nearest mosque was. He stayed at the mosque for some weeks and also used the assistance of people at the mosque to direct him to a lawyer. The appellant went to a lawyer at the firm of Ryken and Associates.

[36] When he was settled in New Zealand, the appellant made contact with a friend N in X in Sierra Leone. While the appellant initially said he wrote to N, he later corrected himself (when asked for N's address) and said he had telephoned N with a view to obtaining his birth certificate from X in Sierra Leone. The appellant had N's telephone number written on a piece of paper and he managed to get in contact with N by telephone. He asked N to send his birth certificate and also to send a letter to tell him what was going on in X and Sierra Leone. This one call was the only contact he had with Sierra Leone.

[37] The appellant explained that he had obtained his friend N's telephone number from people who were travelling from Sierra Leone to Guinea, while the appellant was in Guinea after fleeing the rebels. The appellant has had no other contact with anyone else in Sierra Leone. N is just a friend (and not a relative); he

knows N from praying with him in the mosque and he played soccer with N. He has tried to contact N again, but the persons at the telephone number said N no longer lived in the town. The appellant then threw away the paper with N's telephone number, so was not able to provide the Authority with the number or the piece of paper.

[38] The appellant does not know anyone else's telephone number in Sierra Leone and has not been able to contact anyone else. He has not thought of writing to anybody in X. He also would not write, as he does not have anybody's address that he can write to in Sierra Leone. He explained that in Africa there is usually no proper address to which one can write. N was the only friend he had who had a telephone and who he could contact.

[39] The appellant was asked what information he had about the situation in Sierra Leone since he left. His response was that he has not gained any further information since he left Sierra Leone, as N did not write to him when he sent the appellant's birth certificate. He however said he did once phone N from Guinea. The appellant had not told the refugee status officer about phoning his friend N from Guinea, but he explained that he did not give this evidence since nobody asked him about it. He also had not mentioned it to the Authority earlier, since the situation did not arise when he felt it was being asked. He said that when he called from Guinea, N had told him that he did not know if it was safe in Sierra Leone at that time. N also told him that his father had been buried. The appellant said that he had made this call to N from Conakry in Guinea.

[40] Other than what was said during the call to N from Guinea, the appellant has no other information on the general situation in Sierra Leone. He did not make such enquiries when in France. On the occasion he phoned X town from New Zealand seeking N and was told that N was no longer there, he did not ask the woman he spoke to about the general situation in X town at that time.

[41] It was N that the appellant contacted in X town in Sierra Leone to obtain his birth certificate and not the relative mentioned in the refugee status officer's decision. The appellant could not explain why N had not been mentioned to the refugee status officer. The appellant only had one other living relative that had lived in X town at a time. The relative was D. However the relative had left X

town, and he and his father then lost contact with D. The appellant does not know where D is living. He does not know of any other living relatives elsewhere.

[42] Prior to his father's death and his own abduction, the appellant had no real problems living in X.

[43] The appellant does not want to return to Sierra Leone, as he fears the group that captured him. The appellant did not mention any other group that he feared, other than the rebels who captured him.

[44] Counsel made submissions to the Authority both before and at the end of the hearing. Counsel's initial submissions were that the appellant, being a Hausa, was not necessarily an indication that his evidence that he lived in Sierra Leone is false. The counsel noted that while Hausa are a Nigerian tribe, there are a number of Hausa-speakers, and they are spread over a wide area from northern Nigeria to the Niger Republic and contiguous area and are prominent in West Africa. Counsel argued that the Hausa language is a lingua franca in Muslim West Africa and most large cities have Hausa communities. At the end of the hearing Counsel also argued that the vagueness of parts of the appellant's evidence should not be held against him; some of the matters were peripheral and lack of knowledge of geography and political matters relevant to Sierra Leone and its environs is not necessarily an indication that the appellant is giving false evidence.

[45] The counsel noted the appellant's youthful age and that he may not have been interested in wider events. In the respect of assessing the appellant's credibility, counsel asked the Authority to take into account the decision *Kathiresan v Minister for Immigration and Multicultural Affairs* [1998] 159 FCA (4 March 1998).

[46] Counsel further argued that some weight should be given to the fact that the appellant has produced what appears to be the certificate of his birth in X, and that should not be rejected without further ado. In addition there was insufficient evidence for a finding that the appellant was not from X and Sierra Leone. After the hearing, on 9 December 2003, counsel submitted a copy of a page from a passport issued by Sierra Leone to the appellant on 10 July 2002, indicating he is a national of Sierra Leone.

[47] Counsel was referred to the extracts of country information and reports that had been put to the appellant in the course of the appeal hearing and to the current situation in Sierra Leone according to the country information and reports. Counsel had no further submissions in respect of the country information and reports. The country information and reports included Refugee International *Sierra Leone* (May 2003, internet printout dated 1 August 2003); Amnesty International Report *Sierra Leone* (2003); Human Rights Watch *the Regional Crisis and Human Rights Abuses in West Africa: A Briefing paper to the U.N. Security Council* (20 June 2003), the section of the report headed *Sierra Leone* (at pp 5 & 6); IRINNEWS.ORG (UN Office for Coordination of Humanitarian Affairs) *SIERRA LEONE: special Court indicts two former militia leaders* (31 July 2003); Christian Science Monitor *Sierra Leone's troubling stones* (22 May 2002), an internet printout; and the United Kingdom Home Office *Sierra Leone Assessment* (April 2003).

THE ISSUES

[48] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

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

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[50] The first issue for the Authority, before addressing the principle issues, is to assess the appellant's credibility.

[51] The appellant's evidence to the Authority of contact with Sierra Leone after leaving it contradicted his evidence to the RSB, both as to the person he had contact with and the details thereof. In brief, the appellant told the RSB that he had only had contact with his relative (on his father's side), the contact was by post, and he obtained his birth certificate from the relative; while he told the Authority he only had contact with his friend N (who is not his relative), but having retracted his evidence that this contact had been made by post, said he had only made contact with N by phone. As a result of his telephone call, N posted him his birth certificate. He only had contact with N and nobody else, and his relative, who formerly lived in X, is D, whose whereabouts are unknown. He gave no satisfactory explanation for the differences between this RSB evidence and what he told the Authority. However although one version must be false, his contradictory evidence on this aspect of the case is not critical to the basis of his case and is not held against him in respect of the Authority's decision.

[52] The appellant's lack of knowledge of the names of the towns in Guinea relevant to his case, namely the one he visited many times (where L did business), or the one he stayed at or near after fleeing, is surprising and casts some doubt on his evidence of visiting L and taking refuge in Guinea. The appellant also showed a surprising lack of knowledge of events, which happened around him; for example he did not know the name of the rebels in Sierra Leone, and he did not know that the leader of the Revolutionary United Front (RUF) was Foday Sankoh, who led the RUF until August 2000. This is despite the country information showing the RUF rebels began incursions into eastern Sierra Leone from Liberia in 1991, and that it operated in large areas of the country, including the X town area. He also had very little idea of the actions of the UN and others to end the conflict in Sierra Leone (including in X and the Eastern province, in which X is situated), while he was still in X. The Authority is however prepared to give the appellant the benefit

of the doubt on these aspects, given his youth, lack of interest in events in Sierra Leone, and limited world view, at the time.

[53] While the appellant's time-frames for his abduction and detention are later than the country information and reports would indicate was likely (see hereunder), the Authority draws no adverse inference from this and takes into account, in the appellant's favour, that the Eastern province was one of the last areas to settle down and the persons who abducted and detained the appellant may have been affected by the peace process later than others, because they were in an isolated bush location, away from human habitation.

[54] The Authority therefore accepts the appellant's evidence as credible in respect of the material facts.

Is There a Real Chance of Persecution if the Appellant Returns to Sierra Leone?

[55] The question is whether there is a real chance of persecution if the appellant returns to Sierra Leone now.

[56] The situation and developments in Sierra Leone were canvassed with the appellant and counsel in some detail. It is therefore appropriate to set out extracts from the country information and reports, which reflect the situation and developments, which were canvassed.

[57] Refugees International in its internet report *Sierra Leone* (May 2003) provides a useful starting point, with its succinct report, sections of which are quoted hereunder:

Political and Economic Environment

From 1991 to 2002 Sierra Leone was ravaged by a civil war between the government and the Revolutionary United Front (RUF). The RUF was known for amputating civilians, raping women and girls, and forcing children to fight. Although the rebels did not have popular support, they were able to sustain a decade-long fight because they controlled the diamond-mining areas of the country. The international community intervened with the largest UN peacekeeping mission in the world: 17,500 troops. The UN peacekeeping force officially completed the disarmament of approximately 45,000 soldiers, and the Government of Sierra Leone is expanding its authority throughout the country. The state of emergency was lifted in January 2002, and the country held peaceful democratic elections last May.

Humanitarian Situation

Sierra Leone is now at peace after a decade of brutal civil war. During the war, more than 500,000 refugees fled to surrounding countries and a similar number were displaced within the country. Although many thousands of refugees remain in Liberia and Guinea, the majority of refugees and internally displaced people have now returned home and are rebuilding what was destroyed during the war.

[58] Amnesty International in its report *Sierra Leone* (2003) states, inter alia:

Background

The internal armed conflict which began in 1991 was officially declared over in January 2002 with completed demobilization and disarmament of more than 55,000 combatants, including almost 7,000 children, from the armed opposition—the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC) and renegade soldiers of the Sierra Leone Army—and the government-allied Civil Defence Forces. Inadequate funds, however, hampered their reintegration into society. The national army and police—restructured, trained and equipped by the international community—gradually resumed responsibility for security and law enforcement in areas previously affected by conflict. Support from the UN Mission in Sierra Leone (UNAMSIL), however, remained necessary, in particular in border areas. Security also remained a concern in diamond-producing areas.

Impunity

There was progress in addressing impunity for gross human rights abuses committed during the conflict, notably in the establishment of the Special Court for Sierra Leone, which the UN Security Council decided in 2000 to set up to try those most responsible for crimes against humanity, war crimes and other serious violations of international humanitarian law, and the Truth and Reconciliation Commission (TRC), which was provided for by the 1999 Lomé peace agreement. The Special Court will, however, only look at crimes committed after 30 November 1996.

UN Mission in Sierra Leone (UNAMSIL)

The human rights component of the UNAMSIL human rights section continued to monitor the human rights situation and provide technical cooperation. It provided support to the Special Court and TRC and human rights training for UNAMSIL personnel, including peace-keeping troops, as well as Sierra Leonean police and army personnel. Two regional offices were opened early in the year, in Port Loko and Koidu, adding to those in Kenema and Makeni, thereby increasing capacity to monitor the human rights situation throughout the country.

[59] Human Rights Watch in *The Regional Crisis and Human Rights Abuses in West Africa: A Briefing Paper to the U.N. Security Council* (20 June 2003) indicated in the section on Sierra Leone as follows:

Sierra Leone

Sierra Leone has made significant progress over the past year. The decade-long civil war ended, and the state of emergency has been lifted. Last May, President Kabbah and his Sierra Leone People's Party were re-elected in elections that were largely peaceful, though there were a few reports of violence and intimidation. The seventeen thousand-strong peacekeeping force of the United Nations Mission in Sierra Leone (UNAMSIL) completed disarmament of over forty-seven thousand combatants, contributing, with British-led efforts to significant improvement in prospects for peace and security. More than 220,000 Sierra Leonean refugees from Guinea, Liberia, and the broader sub-region have returned home. Two important transitional justice mechanisms aimed at ensuring accountability for the

horrific abuses that characterized the war—the Special Court for Sierra Leone and the Truth and Reconciliation Commission—have begun operations.

[60] In IRINNEWS.ORG, the UN Office for the Coordination of Humanitarian Affairs, in its internet report *SIERRA LEONE: Special Court indicts two former militia leaders* (31 July 2003), it is noted as follows in respect of the Special Court:

The court has so far indicted a total of 12 people for war crimes. Most are former leaders of the Revolutionary United Front (RUF) rebel movement, which became notorious for killing civilians and hacking off the arms and legs of thousands of others.

However, the court has also brought charges against Johnny Paul Koroma, who led the Armed Forces Revolutionary Council (AFRC), a military junta which deposed Kabbah's first government in 1997 and sought a rapprochement with the RUF, and one of his lieutenants, Brima "Bazzy" Kamara. It has also indicted Liberian President Charles Taylor, who is accused of arming and supporting the RUF in exchange for contraband diamonds.

[61] In Reliefweb (the UN Office for the Coordination of Humanitarian Affairs internet site) in a report *Sierra Leone: Sankoh dies before facing trial for war crimes* (30 July 2003), it was reported that Sankoh, former head of the RUF, died while in custody but before his trial. Sankoh was 66 years old at the time and had been seriously ill after suffering a stroke the previous year. It may be mentioned, for background, that the report further confirms that the RUF, which Sankoh founded, were originally launched from Liberia, with the aid and support of Charles Taylor (the former president of Liberia).

[62] In the Christian Science Monitor report *Sierra Leone's troubling stones* (22 May 2002), the diamond producing area in the east of Sierra Leone was canvassed and the report, *inter alia*, indicates that:

Today, only licensed prospectors are allowed to mine in Kono. The teams are kept 200 meters away from bridges, to protect their foundations. They work in clearly defined plots. Police patrol the muddy pits to make sure that all finds are registered in government books and later taxed at the requisite rate of 3 percent.

Meanwhile the RUF offices in Koidu are boarded up. A half-dozen aid organizations offer rehabilitation programs for ex-combatants. A new food market has opened in "New Lebanon," a slum named for the diamond dealers who once lived there.

"We are reasserting our authority. We have control. There is law and order," insists Amadu Mamsaray, assistant secretary at the Ministry of Mineral Resources. But he later acknowledges that not all is so rosy. The 23 supervisors and 27 policemen sent to Koidu—paid \$50 to \$75 a month—are not given housing, and are not happy.

"The supervisors are corruptible," allows Mr. Mamsaray. "They aid and abet because they have no incentive not to," he sighs.

[63] The UK Home Office *Sierra Leone Assessment* (April 2003), *inter alia*, indicated that the RUF, now reconstituted as the RUF Party (RUF Party), which took part in the elections in May 2002, only received approximately 1% of the vote and gained no seats. The Authority notes that while the appellant did not name the group or rebels he spoke of, the country information generally (and above) would point to it being the RUF rebels who operated in the Eastern province.

[64] The country information and reports indicate that civil government and peace have returned to Sierra Leone, that the rebels and other armed groups and militia have been pacified and disarmed, and that the RUF is regarded as a spent force.

[65] The appellant said he has no real knowledge of the events as indicated by the country information and reports, because of his lack of contact with Sierra Leone, and therefore still subjectively fears persecution by the group which captured him, if he returns. However the country information and reports show that objectively there is no real chance of persecution of the appellant by the group which captured him, if he returns to Sierra Leone. In addition state authority (and protection) has been re-established over the country.

[66] While not necessary for this decision, the Authority would add that the appellant is from the Eastern province of Sierra Leone, which, due to the diamond mining in the area, has a history of diamond smuggling and some associated lawlessness. Although there is now no real chance of persecution of the appellant by the group that detained him in that area, if the appellant does not wish to return to X and the Eastern Province, he could return to other parts of Sierra Leone, such as the capital Freetown (where Muslims make up part of the population).

[67] Turning to the principle issues raised by the Refugee Convention, the first is answered in the negative and the second therefore falls away.

CONCLUSION

[68] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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M Hodgen
Member