

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76334

AT WELLINGTON

<u>Before:</u>	M A Roche (Member)
<u>Counsel for the Appellant:</u>	R Woods and A Castaneda Flores
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	10 & 11 June 2009
<u>Date of Decision:</u>	19 June 2009

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Angola.

INTRODUCTION

[2] The appellant arrived in New Zealand on a visitor's permit on 2 April 2008. When his visitor's permit expired, he made an unsuccessful application for a work permit. His appeal against the requirement to leave New Zealand was declined by the Removal Review Authority on 20 October 2008. On 3 December 2008, he applied for refugee status. He was interviewed by a refugee status officer on 29 January 2009. A decision declining his application was issued on 20 March 2009, leading to this appeal.

[3] The appellant claims that his family is being targeted by a corrupt politician in Angola who wants revenge against his father for the loss of a large diamond.

He claims that two of his brothers have been murdered by the politician's agents and that if he returns to Angola, he is at risk of the same fate. The primary issue in this appeal is whether the appellant's claims are credible.

THE APPELLANT'S CASE

[4] What follows is a summary of the evidence given by the appellant at the hearing. An assessment of this evidence follows later in this decision.

[5] The appellant is from Luanda, the capital of Angola. He was one of six children. His father was a successful businessman and the family had a good lifestyle compared to other Angolans. The appellant is well-educated and in 2005, he was employed as a teaching assistant at an international school in Luanda.

[6] Both the appellant's parents were members of the MPLA (the Popular Movement for the Liberation of Angola) which is the ruling political party in Angola. In 2006, the appellant's father ran for selection as the MPLA's candidate in administration (local council) elections. He was unsuccessful and was not selected as the MPLA candidate.

[7] Later in 2006, the appellant's father became involved in a business deal with a prominent politician, AA, and another man named BB. The three of them purchased two large diamonds and were intending to sell them on the black market for a profit. The diamonds were approximately the size of golf balls. Around mid-2006, BB left Angola with one of the diamonds. AA blamed the appellant's father for the loss of the diamond and accused him of being in a conspiracy with BB to steal it. He was determined to take revenge against the appellant's father and, from this time on, an escalating campaign of harassment and retribution against the appellant's family began.

[8] The family received threatening calls. They were followed when they moved around Luanda. His parents were attacked and beaten on many occasions. Once his father was hospitalised for two weeks after one of these attacks. His mother was badly injured in two attacks. On one occasion, she was hospitalised for a month. On another, she was hospitalised for three months. His brother, CC, was shot at, although received only superficial wounds. He was also attacked with a broken bottle and hospitalised. The appellant and another brother were shot at when out together in Luanda. The worst incidents which occurred

were the murder of his brother, DD, in February 2007 and the murder of his youngest brother, EE.

[9] DD had been living in Austria for many years and was in Angola for a visit. While out in Luanda, he was attacked, beaten, strangled and electrocuted by agents of AA. EE was shot.

[10] The family attempted to avoid their attackers. They moved many times around Luanda but their attempts to get away from their persecutors failed. The appellant's father usually disguised himself when he was out in the street. He would wear a hat and dark glasses to avoid recognition. The appellant decided to leave Angola for his safety. In April 2007, he applied for a visitor's visa to New Zealand. His application was sponsored by FF, a New Zealand citizen who taught with him at the international school. His visa was finally granted on 10 March 2008, shortly before EE's death. He left Angola on 18 March 2008 and travelled to New Zealand.

[11] Some time after he arrived in New Zealand, he contacted FF and explained that he had come to New Zealand because of the vendetta against his family by AA. She was annoyed with him for travelling to New Zealand without her and contacted Immigration New Zealand to withdraw her sponsorship of him.

[12] The appellant maintained contact with his father after arriving in New Zealand and spoke to him on his cellphone approximately once a month. However, in July 2008, he lost contact with him. He contacted a close friend in Angola, GG. GG went to the house where his family had been staying. He found that it had been bombed out and was deserted. GG was unable to locate the appellant's family or find out what had happened to them. The appellant stopped contacting GG in September 2008. However, some months before this hearing, he resumed contact with him and arranged for GG to send him documents in support of his appeal.

[13] In July 2008, the appellant lodged an appeal against removal with the Removal Review Authority. He filed two letters in support of this appeal. These letters stated that his father had been under a lot of pressure in Angola because he was expected to provide for many members of their extended family. Because the appellant had a good education and a well-paid job, he was also subjected to this pressure. Shortly after arriving in New Zealand, the appellant learned that two of his paternal uncles had been killed when the Angolan police station collapsed.

This would have greatly increased the financial pressure on his father (and himself) to provide for the extended family.

[14] The appellant also stated in his letters that his eldest brother, DD, and his half-brother, EE, had been murdered. DD was tortured and killed when out for a walk and there was no investigation to find out who had done it. Luanda was not safe as shootings and stabbings are common and after the incidents concerning his brothers, he feared living there. He wished to remain in New Zealand where he is not under constant pressure and depressed and worried.

[15] The appellant did not disclose the vendetta against his family by AA to the Removal Review Authority and did not inform that Authority that his brothers had been murdered as part of this vendetta, rather than just becoming the victims of random street crime. This was because he was worried and upset and unsure of how much of his real circumstances he should disclose. He was also aware that applying for refugee status would be a very serious step. However, after his appeal to the Removal Review Authority was declined he made a claim for refugee status setting out his true circumstances. After being out of touch with GG for some time, he resumed contact with him and arranged for GG to send him documents in support of his appeal. GG has had no further news of his family.

[16] Since being in New Zealand, the appellant has received anonymous threatening email messages. He received one such message on 20 February 2009. This message, which was titled "War message" attached a scanned, hand-written note which read:

"I write to advise you that we know you are far away, however, you are in danger, as you do not have political protection in this country after what happened with your father. Since you intend to come back, there is no way for you to escape. We have already started. General Anonymous"

[17] The appellant fears that should he be returned to Angola, he will suffer the same fate as his brothers and will be murdered as part of AA's vendetta against his family.

DOCUMENTS RECEIVED

[18] The appellant filed written opening submissions. He also filed the following documents in support of his appeal:

1. his brother, DD's, death certificate. This document is in Portuguese, however the appellant filed a translation into English which he had prepared;
2. a printout of an email received by him on 20 February 2009, entitled "Message of war" attaching a hand-written note in Portuguese;
3. an official translation into English of the handwritten note;
4. a print out of his Yahoo email in-box, showing messages received between 16 January and 3 March 2009;
5. two affidavits by the appellant, sworn on 3 June 2009;
6. a written statement by his friend, GG, dated 21 March 2009;
7. three photographs of an abandoned building;
8. a colour photocopy of his father's MPLA membership card;
9. the appellant's mother's MPLA membership card;
10. the appellant's father's national identity card;
11. the appellant's mother's national identity card;
12. a photocopy of GG's national identification card; and
13. an article about Angola entitled "One party rule" *Africa Confidential* Vol 49 No 15 (4 July 2008) p6.

THE ISSUES

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

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

[20] 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

[21] Prior to determining the framed issues, it is necessary to make an assessment of the appellant's credibility. The Authority did not find the appellant to be a credible witness. He has presented an account of a vendetta against his family that has both changed and escalated during the refugee determination process. Throughout this process, he has added new details of the persecution of his family but, as will be seen below, has also failed, at times, to remember these details. His evidence before the Authority was, at times, confused, mobile and contradictory. The Authority has concluded that the problems with his evidence were not the result of stress and anxiety, but rather the fact that he found it difficult to recall the details of a fabricated account and, at times, was unable to resist spontaneous embellishment of that account.

[22] In eloquent oral closing submissions, his counsel, Mr Woods, submitted that it was difficult for the appellant to establish the credibility of his claim, but that country information about Angola revealed that the types of events the appellant alleges really do occur, in that there is endemic violence and corruption in Angola and a black market in diamonds. He also noted that AA is a real person, as an article sourced from the Internet, discussed at the hearing, established that.

[23] While counsel's submissions are accepted concerning the existence of corruption, violence and a bloody trade in black market diamonds in Angola, the Authority is not persuaded that the appellant has given a truthful account.

Late presentation of "real" story in refugee claim

[24] As recorded above, the appellant entered New Zealand as a visitor. He applied for refugee status having exhausted all other avenues for extending his stay in New Zealand including an appeal, on humanitarian grounds, to the Removal Review Authority. The account he presented in support of his refugee claim was entirely different to the one he presented to the Removal Review Authority. Significantly, there was no mention of the vendetta against his family or the risk he faced of being murdered in Angola as part of this vendetta. Instead he

presented two main reasons for not wishing to return to Angola. One was the pressure of having to support a large extended family, aggravated by the recent death of two paternal uncles. The second was the lack of safety in crime-torn Luanda. This crime had resulted in the deaths of two of his brothers and left him fearful for his own safety.

[25] The appellant also made various representations to the DOL regarding his family situation in correspondence in support of his work permit. No mention was made of the vendetta he now claims is the real reason why he seeks to remain in New Zealand.

[26] In the RSB interview report, the appellant was asked to comment as to why he had presented a different claim to the Removal Review Authority. His counsel replied on his behalf that he was afraid to reveal the “real situation” because he would place his family in more danger if AA and the government learned that he had revealed his name and activities overseas. When asked at the appeal hearing why he had not told the Removal Review Authority his real reason for wanting to stay in New Zealand, he did not mention a fear of AA finding out what he had said. Rather he said that he was in a desperate situation with no money and that he wasn’t sure if claiming refugee status was the best way as it was a “heavy and serious” thing to do and so he kept his account “general” instead.

[27] When asked, he stated that the account he gave of financial pressure caused by an obligation to care for a large extended family was true as was the allegation he had made regarding the recent deaths of two paternal uncles which would have increased this pressure.

[28] The Authority is not persuaded by the various explanations the appellant has provided for his failure to earlier present his “real” story. It finds that it is a last minute fabrication put together for the purpose of manufacturing a refugee claim when other avenues for staying in New Zealand were exhausted. This finding is based on the appellant’s lateness in presenting his diamond vendetta story and the fact that he had previously presented a quite different (and largely true) story in support of a humanitarian appeal to remain here. It is also based on the difficulty the appellant had in giving a consistent or credible presentation of the vendetta story, suggesting that it was fictitious and therefore difficult to remember. The reasons for rejecting the credibility of the appellant’s account are set out below:

Escalation/evolution of story

[29] The appellant's refugee account escalated and evolved over the course of the refugee determination process. He appeared to have difficulty remembering recently added details. For example, in his statement filed shortly before the hearing, he claimed that his brother, CC, had been shot at and attacked with a broken bottle, which led to his hospitalisation for a week. At the hearing, he was asked what the worst thing that had happened to CC was. He replied that CC had been lucky and that the worst thing that had happened to him was that he had been grazed by a bullet. When questioned as to why he did not mention CC's attack with a bottle and his hospitalisation, he said that he had thought that his gunshot wound was more serious and there had been so much blood that there were fears that CC would lose his leg. Moments earlier, he had characterised this same wound as a "graze". He appeared to have simply forgotten the alleged bottle attack and the resultant hospitalisation.

[30] Similarly, in his evidence the appellant stated that his mother had been attacked and was hospitalised for one month as a result. At his RSB interview, and in his written statement, he had claimed that although his mother was subjected to frequent attacks, there had been a particularly vicious attack which had led to her hospitalisation for three months. Before appearing before the Authority, he had never claimed that following an attack, his mother was hospitalised for a one month period. When asked, he claimed that his mother had been subjected to two particularly serious attacks and accordingly hospitalised on two occasions, once for one month and once for three months. He also said that there were repeated attacks on both his parents.

[31] A month is not an insignificant period of time in hospital. If the appellant's mother had really been attacked, leading to a month's hospitalisation, the Authority would have expected him to have given details about this earlier in the process, especially as he gave details of an attack following which his father was hospitalised for only one week (although at the hearing, contrary to his account at his RSB interview, he claimed that this had been for two weeks). The Authority was left with the impression that the appellant spontaneously fabricated an additional period of hospitalisation for his mother when giving his evidence.

DD's cause of death

[32] In the written statement filed in support of his refugee claim, the appellant stated that in February 2007, his brother, DD, was murdered, that he had been

tortured to death, that he was found dead in a lake of water and that “we” saw the marks on his body. At his RSB interview, he was asked for more detail about what had happened to DD. He stated “They had ropes and hanged him, and beating him, basically they hanged him and that’s how he died.” Prior to the hearing, the appellant filed DD’s death certificate. This certificate stated that the cause of death had been electrocution. When asked about this discrepancy, the appellant claimed that DD’s attackers had killed him by choking him with an electric cord around his neck and that they then plugged it in and gave him a shock, which is why electrocution was mentioned as the cause of death on the death certificate. He then changed his evidence and said that the electric cord had been placed around DD’s neck and then plugged in and that it had been the electric shock that had killed him. Although he made a valiant attempt, the appellant was simply unable to reconcile his account to the RSB that DD had been hanged with the stated cause of death on his death certificate.

[33] In a letter to the DOL, written in or around June 2008, in support of his application for a work permit, the appellant stated that DD had “passed away last year by an accident”. When asked why he had represented to the DOL that DD had been killed in an accident when he had in fact been murdered, the appellant claimed that he had been uncertain around this time how much of the truth he should reveal to the DOL and that he was trying to be discreet. This explanation is rejected. Had the appellant, for some reason, not wished to disclose that his brother had been murdered, he could have simply noted his death without making a fabricated claim that he had died in an accident.

[34] The Authority finds that the appellant’s brother, DD, was indeed accidentally electrocuted in Angola and died as a result, as recorded on the death certificate and that the appellant has attempted to use this event as “evidence” supporting a fabricated account of a vendetta against his family involving the serial murders of his siblings.

Contact with people in Angola

[35] At his RSB interview, the appellant was asked whether he was in contact with anybody in Angola. In reply, he stated he was only in contact with his friend, GG, but that he had not contacted him since September. He was asked whether he had had any other contact with anybody else in Angola since he had left, in the form of email, telephone or letter. He replied that he had not. Prior to the hearing,

the appellant filed a printout of his email inbox. This printout identified the title and senders of messages he had received between 16 January 2009 and 3 March 2009. Included amongst these were messages from five people in Angola whom, when asked, the appellant identified as his friends. In his evidence, he also disclosed that he had communicated twice with his sponsor, who was still in Angola. When asked why he had told the RSB that he was not in contact with anybody, when he seemed to be in contact with a number of friends, he replied that the emails his friends had sent him were trivial and that he had not contacted anybody, other than his closest friend, GG, about his family.

[36] The Authority does not accept this as an explanation for representing, to the RSB, that he was not in touch with anybody in Angola and finds that this is a further example of the appellant's untruthfulness.

Involvement of supervisor in procuring visa

[37] The appellant's application for a visitor's visa was supported by a letter from his supervisor at the school, HH. In this letter, HH stated that the appellant had employment for the 2008 to 2009 academic year and that his contract had been extended until 31 July 2009. This letter was filed with the DOL after they had raised concerns with the appellant that he would not return to Angola following the expiry of his visitor's permit.

[38] At the hearing, the appellant was asked whether HH had known his true situation (the claimed vendetta against his family by AA) when he had written the letter. The appellant replied that he thought HH knew he was looking for a way of running away and that he was not sure if HH had thought he would return to Angola. When the Authority suggested that HH's letter had misled the DOL, he retracted his evidence and stated that he had explained his true circumstances to HH as he was about to leave Angola some time after the letter had been filed with the DOL. The Authority formed the impression that the appellant was attempting to protect HH from any accusation that he had been an accessory to immigration fraud. However, his willingness to make statements in evidence and then to retract and change them at will illustrated his lack of reliability as a witness.

[39] In a similar vein, the appellant's evidence was mobile when he was asked whether, and at what point, he had disclosed his true problems to the New Zealand citizen who had sponsored his application for a visitor's visa. At first he said he had disclosed the truth to her in the second of two emails he sent her from

New Zealand and that she did not reply to the second email. Later in the hearing, when discussing the same correspondence, he said that after he disclosed the vendetta against his family in an email to his sponsor, she had replied and informed him in response that she had been advised that she only had financial responsibility for him until June 2008.

[40] At the hearing, the appellant seemed to have difficulty remembering what he had said previously, whether earlier in evidence or at his RSB interview, and consequently difficulty in maintaining a consistent account, even about trivial matters such as the email correspondence discussed above. This contributed to the Authority's impression that he was presenting an untrue account in his evidence.

Movements of family in Angola

[41] The appellant claimed in his account that after AA's vendetta against the family began, the family moved frequently to avoid their attackers. At his RSB interview, he claimed that the family moved four times after the problems started and that they had been at their final address, in X suburb, for approximately six months prior to his departure from Angola for New Zealand. His evidence at the hearing about the family's various relocations was confused and he seemed unable to remember the order of places he had claimed the family had moved between and where they had been living when major events, such as the serious attacks on his mother leading to her hospitalisation, took place. For example, at the hearing he claimed that the first place the family moved to to escape their attackers was Y suburb, where the family remained for three months before moving to Z suburb. At his RSB interview, he had claimed that Y suburb was the last place the family had moved to before taking up residence at X suburb. The Authority formed the impression that the appellant was simply unable to remember the complex but fictitious series of moves that he had presented at his RSB interview.

[42] The appellant had claimed to the RSB that the house at X suburb had been destroyed by explosives while he was in New Zealand, leading to the disappearance of his family and that he had been informed of this by GG. In support of this allegation, the appellant filed three colour photographs which he claimed had been sent by GG. These photographs, which are over-exposed and of poor quality, show what appear to be long-abandoned industrial buildings,

covered with graffiti and set in rubbish-strewn yards. There was no obvious structural damage to the buildings shown in the photographs, although the appellant claimed that the roof was missing. It was not apparent from the photographs whether this was the case or whether the photographs were simply too over-exposed to distinguish between the roof and the sky. One of the photographs showed a burnt-out van in the yard in front of the building. At the hearing the appellant spontaneously claimed that this was his family's vehicle. He had not previously claimed the existence of such a vehicle or the destruction of property other than the house.

[43] There is no evidence, other than the word of the appellant, that the photographs are of a residence formerly occupied by the appellant's family and, given his lack of credibility and unreliability as a witness, the Authority places no reliance on them.

Death of EE

[44] In the written statement filed in support of his refugee claim, dated 21 January 2009, the appellant stated that his brother, EE, had been shot in January 2008. At his RSB interview, he claimed that EE had been shot in March 2008. He also claimed that he had found out about his death on his return from work. Because he had told the RSB officer that he had ceased work in January 2008, this was put to him for comment as a credibility concern in the interview report produced following the interview. In the written response to that report, dated 11 March 2009, his counsel stated that EE had indeed been shot in January 2008. At the hearing before the Authority, the appellant claimed that EE had been shot in March 2008, shortly before he came to New Zealand.

[45] Although he had obtained and filed his brother DD's death certificate, no similar certificate was filed in respect of EE. At the hearing, the appellant stated that he was making attempts to obtain this certificate, which presumably would resolve the uncertainty around EE's date of death. Even if the date of death were established by production of the death certificate, the appellant has made no proper explanation for his mobile evidence concerning the date of EE's death or why he characterised his death as an incidence of random street crime to the Removal Review Authority. Production of the certificate would not lend weight to or lead to the acceptance of the appellant's account.

Threatening email from Angola

[46] The appellant claimed that while in New Zealand, he had received two threatening email messages from the perpetrators of the vendetta against his family. Prior to the hearing, he filed an email, dated 20 February 2009, entitled *Mensagen de guerra* (in English, "Message of war"). Attached to the email was a scanned hand-written note, dated 4 September 2008, the text of which appears at paragraph [16] above. When asked why an anonymous threatening email would enclose a hand-written note, which could identify its author on an examination of the hand-writing, the appellant simply replied that in Angola everything is done in hand-writing. When put to him that AA could be identified through the handwriting he suggested that perhaps AA would have had someone else hand-write it for him to avoid being identified as its author.

[47] The Authority finds the appellant's evidence far-fetched and implausible. His general unreliability as a witness means that little reliance can be placed on documentary evidence provided by him that is incapable of independent verification. As has been previously noted by the Authority, the ease with which certain types of documentary evidence can be obtained to support refugee claims means that findings as to the reliability of documents will usually follow findings with regard to the credibility of witnesses: *Refugee Appeal No 72570* (11 November 2002) and *Refugee Appeal No 75794* (23 May 2006) at [56].

CONCLUSION

[48] After hearing the appellant's evidence over two days, the Authority was left in no doubt that the account he presented of a vendetta against his family, which had its origin in a diamond-smuggling deal gone wrong, was entirely false. It prefers the account he provided to the Removal Review Authority that his family has been under extreme financial pressure, which has recently been further aggravated by the accidental deaths of two uncles and that two of his brothers were killed in brutal acts of random street violence, which have left him fearful of returning to live in Angola (although the Authority has found that the older brother was not murdered but died in an accident).

[49] The appellant has not established that he has a well-founded fear of being persecuted in Angola for any reason. The first issue framed for consideration is answered in the negative. The second issue of Convention ground therefore does not arise.

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

"M A Roche"
M A Roche
Member