

0904954 [2009] RRTA 1064 (23 November 2009)

DECISION RECORD

RRT CASE NUMBER: 0904954

DIAC REFERENCE(S): CLF2008/158259 CLF2009/86006

COUNTRY OF REFERENCE: Nigeria

TRIBUNAL MEMBER: Peter Tyler

DATE: 23 November 2009

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Nigeria, arrived in Australia [in] November 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2008. The delegate decided to refuse to grant the visa [in] June 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] June 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant and the department's file relating to other visa applications made by the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Application for Protection Visa

20. The following written claims are contained in a statutory declaration dated [in]December 2008 and lodged in support of the applicant's protection visa application lodged [in] December 2008:

I, [the applicant] of [address], Melbourne, unemployed make the following declaration under the Statutory Declarations Act 1959:

1. I was born on [date] into the royal family of Prince [name] and Princess [name] in the village of [Village 1], Ogbomoso, Oyo State, Nigeria. My parents were not particularly religious. My father, in particular, was required to observe customary traditions regardless of religion, and this prevented him from actively practising as a Christian.
2. My father became King of [Village 1] on the [date] after the death of his father who was the previous King of [Village 1].
3. [Information re family composition deleted: s.431(2)]
4. I am the only son in the family and being the only son my father was very close to me.
5. I attended [name] Primary School at the age of five and then continued on my schooling with the [name] School and [name] High School all in Lagos State, Nigeria. I was 20 years old when I finished my schooling.
6. I began working in 1986 as a factory worker with [employer] in Lagos for 6 years. In 1992, I started working as an accounting officer with [employer] in Lagos.
7. I commenced attending church in 1978 due to the fact my neighbours attended the Methodist Church, [location], Lagos. I would attend services with them. My mother and sisters would also attend church services.
8. In 1991, I met my wife [Mrs A], who is also a Christian, in the Methodist Church in Lagos.
9. In 1993, I commenced a course with the Institute of Chartered Accountants of Nigeria, and studied part-time while continuing to work as an accounting officer. I completed this course in 1994.
10. In 1996, I began my own business, [name] in Lagos, which is a trading and importation company of general goods and products.
11. In this same year, May 1996, I wished to transfer from the Methodist church to a Pentecostal church and decided to reaffirm my faith as a Christian and took part in a service to be a 'born again' Christian. I felt that I needed to be stronger in my faith.
12. On the [date] December 2000 I married [Mrs A] in Surulere Local Government Registry, Surulere, Lagos.
13. We had our first child, a daughter, [Child A], on [date]. The following year, on [date], we had our second daughter, [name]. On [date], we had twin boys, [names].

14. For several years, I did not experience any problems. As a child from a royal family, life was very easy. My business was very successful and I was able to travel overseas to countries including Germany, Republic of Benin, South Africa and Australia for business many times. I was able to incorporate my own company in South Africa which is [name], on the [date] July 2007.

15. All this changed however on the [date] 2008 when my father died of natural causes.

16. According to the customary tradition of [Village 1], as the only son of my father I was supposed to be the next king.

17. The kingmakers or `chiefs', who are the elders of [Village 1], called me a few weeks after my father's death to inform me that to become king of [Village 1], I would be required to eat the heart of the former king, my father, as a sacrifice.

18. I immediately informed the kingmakers that as a born again Christian it was contrary to my religion and the bible to engage in this cannibalistic practice. I therefore informed them that I would refuse to engage in this practice.

19. I was informed that it was a taboo to reject the custom and tradition of the land. They informed me that they were angry that I would not engage in the practice, and I was told that they would give me some days to think about it.

20. I informed them that I would not need anymore time to consider my decision.

21. Approximately three or four days later, the kingmakers sent a parcel to my house with the feather of a chicken in Lagos This parcel constituted a threat indicating that they would put a death sentence on my lineage if I did not eat my father's heart.

22. When I received the parcel, I did not believe that anything would happen to me. I had faith in God that he would protect me.

23. However, after approximately two weeks of receiving the parcel, my house in [Village 1] was bombed with one egg of the local hen. The egg contained a local medicine that resulted in the house burning down. This is the consequence of having refused to take part in the tradition of eating my father's heart. It signified the commencement of a war against my lineage. At the time my house in [Village 1] was burnt down, my wife and children and I were living in Lagos.

24. On the [date] of October 2008 at approximately 6am, I was sleeping in my house in Lagos with my family when I heard my twins screaming from their sleep. We were all in the same room. We raced over to them to see what had happened however they died within 2 to 3 minutes afterwards. We did not know how or why they died.

25. I consulted the elders in Lagos about my sons' deaths as I did not understand why they died. They indicated that because I had come from a royal family and had refused to take up the position of King, these disasters were occurring to my family and would continue to occur.

26. I decided after this occurred to leave the country.

27. I travelled to South Africa on the [date] November 2008 because I had a current business visa for South Africa. I decided that my wife and daughters should remain in Lagos because they could not travel with me on my business visa and I believed that if I left the country, this would alleviate the main problem.

28. However when I arrived in South Africa, one of the managers of my small business in South Africa, who was originally from [Village 1], informed me that the kingmakers knew that I was in South Africa and were planning to come and force my return or kill me because if I am still alive they could not choose another King according to custom and tradition.

29. I decided I had to leave South Africa, and my last option was Australia as I also had a current business visa for Australia and that is why I moved to this country.

30. I entered Australia on my business visa, but on the first possible opportunity, applied for a protection visa.

31. Approximately three weeks ago, my wife was threatened by the elders of [Village 1] to give information as to my whereabouts. My wife decided that it was unsafe to continue to live in Nigeria and moved to Ghana with one of my daughters. The other daughter, [name], is with the mother of my wife and had been living with them for a few years in [town], Ogun State. The people of [Village 1] do not know that [Child A] is living with my mother in law.

32. I have no option to return to Nigeria because I will be killed due to my religious beliefs that are preventing me from partaking in the customary traditions of my Village 1. The government authorities and the state cannot provide me with protection because they recognise the supremacy of customary laws and traditions and they would not interfere with these traditions and customs.

21. [In] June 2009 the Department received a further statutory declaration from the applicant stating as follows:

I, [applicant's name and address], Melbourne, school officer, make the following declaration under the Statutory Declarations Act 1959:

1. I am a Nigerian national.
2. I lodged an application for a protection visa on [date] December 2008 with the Department of Immigration and Citizenship ('DIAC').
3. On [date] December 2008, I submitted a copy of an article to the DIAC from [magazine] entitled '[title]' which provides support for my claims outlined in my protection visa application.
4. I have been informed by the DIAC by letter [date] May 2009 that the Department of Foreign Affairs and Trade indicated that no article in relation to myself was contained in the published version of the magazine on that date or at any other time.
5. I understand that [magazine] is [information deleted: s.431(2)] available throughout Nigeria, particularly Lagos.
6. I believe that [magazine] is also available on the internet but in a more limited format whereby not all the articles from the hard copy of the magazine are displayed.
7. It is also my understanding that [magazine] can publish several different editions of the magazine within the week with updated information. I believe there is a possibility that the Department of Foreign Affairs and Trade could have found a different version of the magazine (i.e either an earlier or later edition) than the one in which the article about myself appears.
8. I was contacted by a friend, [name], who lives in Port Hacourt, Rivers State, Nigeria and informed that there was an article about me in the [magazine]. He then sent me this copy.
9. After I was advised by DIAC that there were doubts about the veracity of the article, I contacted [name] who then obtained a letter from [name] from [the magazine] confirming that the article about me was published in the [the magazine] on [date] 2008.
10. I have attached this letter from [name].

Application for Review

22. Following the primary decision to refuse the protection visa an application for review was lodged [in] June 2009.
23. [In] August 2009 the applicant's representative provided the Tribunal with a written submission which included the following; list of the applicant's lineage dating back to 1830; copies of asylum seeker temporary permit visas for the applicant's wife and daughter issued by the South African Department of Home Affairs; colour photograph of the applicant and his father; country information in relation to Nigeria and its customs.

Evidence at the first Hearing

24. The applicant appeared before the Tribunal [in] August 2009 to give evidence and present arguments.

25. The applicant was represented in relation to the review. The representative attended the Tribunal hearing.
26. The Tribunal observed that country information supported the applicant's claim that cannibalism occurred in parts of Nigeria and that if the applicant was aware that he would inherit his father's position as king he would have to engage in the practice of cannibalism. The Tribunal said that this being the case and given that the applicant had travelled widely and frequently, why had he not sought refuge in one of the countries to which he had travelled in the past. The applicant responded by saying that he did not know about the practice of eating a heart until his father died.
27. The Tribunal asked if the applicant had any supporting evidence concerning his father's death and the applicant said that he had no such evidence but that his father was buried in his home town. He told the Tribunal that there was a big family palace in his home town and the title to it was in the palace. The applicant's representative said that he was unable to go back to Nigeria and get the title.
28. The Tribunal referred to a report on the Department's file from an officer of the Department of Foreign Affairs and Trade which was in response to some enquiries put to it by the Department of Immigration and Citizenship. The report indicated that; the applicant's family was not well known in the area; no reports could be found on the death of the applicant's father; ritualistic and cannibal acts were mainly inflicted on people on the margins of society; the police tended to hold the same beliefs as those in the local area and would be unlikely to assist the applicant unless he had a significant status; and the article referred to in the [magazine name deleted: s.431(2)] could not be found on-line.
29. The applicant told the Tribunal that no one from his family was a government official.
30. The Tribunal referred the applicant to the list of previous kings of his clan which the applicant had provided to the Tribunal and asked him how the list of 37 names was compiled. The applicant said that he learnt to recite the list and when asked to recite it to the Tribunal he did not do so but told the Tribunal that the list had been passed on to him over the phone by someone in the United Kingdom. He said that the person was not available as a witness.
31. The Tribunal pointed out that it thought his evidence in regard to the list was contradictory because on the one hand he had said that it was passed down to him and on the other hand he said someone from the United Kingdom gave him the information over the phone. The applicant said that he did not have the phone number of the person with him.
32. The hearing was terminated and the matter constituted to another Member.

Evidence at the second Hearing

33. The applicant appeared before the Tribunal as presently constituted [in] September 2009 to give evidence and present arguments. The Tribunal also received oral evidence from [Mrs A], the applicant's wife.

34. The applicant was represented in relation to the review. The representative attended the Tribunal hearing.
35. Immediately before the hearing the applicant's adviser provided the Tribunal with three photocopied document purporting to be; "Recognition as a Traditional Ruler" in relation to the applicant's father and issued by the Government of Oyo State [in] March 1980; "Certificate of Recognition as a Chief or Traditional Ruler of a Community" dated [in] April 1983 and in relation to the applicant's father; "Certificate of Membership" of the Oyo State Council of Traditional Rulers dated [in] October 1980 in relation to the applicant's father.
36. The applicant confirmed to the Tribunal that the contents of his Statutory Declaration in support of his application were true and correct and that he stood by the claims he made in the declaration.
37. The applicant said that he was born in Lagos and has always lived there. [Village 1] is located approximately [number deleted: s.431(2)] kilometres from Lagos He claims to be from the Yoruba ethnic group, which comprises approximately 40% of the total Nigerian population.
38. The applicant told the Tribunal that he is a Christian, having been brought up in the Methodist Church, however, in 1992 he started attending a Pentecostal church and claims to attend a Pentecostal church in Australia.
39. The applicant was married [in] December 2000 and has two daughters, one living with his wife in South Africa and the other living with his mother-in-law in Nigeria. He claims to maintain contact with his wife.
40. According to the applicant he has only completed one year of accounting studies although he calls himself an accountant.
41. The Tribunal asked the applicant if he had death certificates in relation to the deaths of his sons, and he said that the certificates were not issued as the boys were under the age of 18 years. The Tribunal stated that country information indicated that it was compulsory to register deaths in Nigeria and the applicant agreed with this, but confirmed that he did not do so. The Tribunal asked if there had been any post mortem or doctor's certification of death, and he stated that he called a friend who is a medical practitioner to confirm the death. He said that the doctor may have registered the death although the applicant had not requested a death certificate. He also stated that the doctor was unable to determine the cause of death. He said that there was no funeral for the children as is the custom in Nigeria. He also said that there was no coronial inquest or police involvement. He also said that he did not want any post mortem tests done in relation to his sons and that this was not high on his list of priorities.
42. The applicant said that he went to some elders to determine the cause of death of the boys and was told that it was because of his refusal to take up the former role of his father. The Tribunal asked him how this explanation fitted in with his Christian faith, and he said as a Christian he did not believe in Voodoo although Voodoo is working in Africa.

43. The Tribunal asked the applicant if there was any evidence of his father's death, and the applicant said that it was forbidden in his culture to say that the king is dead. The culture says that the king belongs to the community. The applicant and his wife attended a funeral for his father 20 days after his father died.
44. The applicant told the Tribunal that his father died in the village where he had always lived although he was living in Lagos before he was crowned as king. The applicant said that his father died [in] 2008.
45. Pursuant to Section 424AA the Tribunal showed the applicant a copy of his marriage certificate that he had produced in support of his Business Visa application, which indicated that he was married [in] December 2000 and that at that time, his father was listed as deceased. The Tribunal told the applicant that the information contained on the marriage certificate indicated that his father did not die [in] 2008 and that the applicant's evidence in this regard was untrue. Subject to the applicant's response, the Tribunal may find that his evidence in this regard was not true, which in turn might lead the Tribunal to find that his evidence as a whole is not true and that his claims are not true, which in turn may lead the Tribunal to find that he is not a refugee. The Tribunal asked the applicant if he required time to consider his response, and whilst he initially indicated that he was prepared to answer immediately, on the advice of his representative, he requested time to consider his response. After an adjournment the applicant said that his father did not approve of his marriage to his wife because she was not of his clan and did not come from the area in which his clan lives. He said that according to the law his father was required to be present at the applicant's marriage to indicate his consent by signing the documents. The applicant told the Tribunal that the certificate was signed by an uncle from his mother's side of the family.
46. The applicant said that he often visited his father in [Village 1] and over time his father forgave him about his marriage.
47. The Tribunal asked the applicant how it was that an egg could cause his house to burn down, and he said that it was a matter of tradition and that the egg did cause the house to burn down. He said that he had no documentation regarding the fire. The Tribunal asked the applicant to explain from a scientific point of view how it was that the egg caused the house to burn down and he said that he could not do this, but that he believed it was the cause of the fire.
48. The applicant told the Tribunal that there has been no new king appointed to replace his father, but that it has been announced by the oracle that the applicant is to fill that role. He said that if the kingmakers do not see him for another six months they will appoint a caretaker king. He said that the actual role of king does not become his until he undergoes the rituals.
49. The Tribunal asked the applicant why he did not marry in a church given that he was a practising Christian, and he said this was because of the lie contained about his father's death as indicated in the marriage certificate.
50. Pursuant to Section 424AA the Tribunal showed the applicant two original birth certificates that were contained in the department's file relating to his Business Visa application, which indicated that although both documents were noted to be originals they had differing serial numbers, were signed by different people, and had certain

particulars within the documents that differed from each other. The Tribunal told the applicant that this was important information because, depending on his response, the Tribunal might find that the documents are fraudulent and untrue, which may in turn lead the Tribunal to find that the evidence generally of the applicant was untrue, which in turn may lead the Tribunal to find that he is not a refugee. The Tribunal offered the applicant time to consider his response, but he elected to respond immediately. He pointed out that the handwriting on the document contained in his Business Visa application was in his own handwriting and that his wife filled out the particulars on the other certificate. He said that he had told his wife he did not want the children to have his father's name because he wanted to start using his own name and that he did not want his father's name to be included in his wife's name.

51. The Tribunal told the applicant that it could not see why he had changed his name in relation to other family members given that he still used the name [family name deleted: s431(2)] when referring to himself. The applicant said that one of his grandfather's names was [name deleted: s.431(2)], and the Tribunal referred him to the family's lineage provided by his advisor where that name had not been used in relation to his grandfather. The Tribunal then asked him for the name of his grandfather and he was unable to answer that question.
52. The Tribunal then spoke with the applicant's wife who was living in South Africa, and she told the Tribunal that they were married [in] December 2000 at the Civil Registry Office in Lagos. The Tribunal asked who attended, and she said that both families, friends, and people from the church attended. She said that both her mother and father attended and that both of the applicant's parents attended. After the civil ceremony they went to the church for a blessing.
53. The applicant's wife confirmed that the death of her two sons was not registered according to tradition. She also said that incidents such as the egg burning down the house do happen in Nigeria. She told the Tribunal that the applicant was very close to his father and that she also got on well with her father-in-law. She said that there were no problems with the relationship with her father-in-law and that he approved of the marriage. She denied that the marriage certificate indicated that the applicant's father was deceased.
54. Pursuant to Section 424AA the Tribunal referred the contents of the applicant's wife testimony to the applicant indicating that it was in conflict with the evidence that he had given, which may cause the Tribunal to find that his evidence was not truthful, which in turn might lead the Tribunal to find that the whole basis of his claim was not credible, which in turn may lead the Tribunal to find that he is not a refugee. The applicant elected to respond immediately and said that his wife was confused, his father did not attend the wedding, and that his father was alive at the date of the wedding.
55. The Tribunal referred the applicant to a copy of the internet search it had conducted in respect of the [magazine deleted: s.431(2)] he had produced to the Department, which indicated that the site was not connected to a news outlet and that it appeared to have more references to Australia than anywhere else. It was agreed that the applicant would respond to the Tribunal's queries concerning the website and that the response would be provided [in] October 2009.

Post-hearing submission

56. [In] October 2009 the Tribunal received a submission from the applicant's representative in which she states that she made a telephone call to the number listed on the letterhead on the Department's file from [magazine deleted: s.431(2)] and she spoke to person who identified himself as [name deleted: s431(2)] and who claimed to be a director of the business. The person told her that [name deleted: s431(2)], the person who signed the letter on the Department's file, was a researcher with the company. The person also claimed to own the website on the letterhead and confirmed the address of the business as that on the letterhead. The representative included a statutory declaration in support of these matters.
57. The representative also submitted evidence to indicate that there was a low level of compliance with the legal requirement to register deaths in Nigeria.
58. The representative also submitted that when the applicant's wife told the Tribunal that the applicant's father attended their wedding in 2000, she was referring to his uncle as she considered the uncle to be taking the place of his father. It was also submitted that she did not disclose her father-in-law's disapproval of the marriage because it was a private matter, that she did not want to disclose the fact outside the family and the relationship with her father-in-law had improved by the time of his death.
59. The representative stated that the applicant's explanation for the existence of two birth certificates for his daughter was that he sought to have the original birth certificate modified to ensure that his name, as opposed to his father's name, was used in his wife's name and carried on through his family. The representative also indicated that the applicant wished to confirm that the names listed in the lineage table are not necessarily direct descendants. The representative also states that the person stated to be the applicant's grandfather is not the name included in the list as his grandfather.

FINDINGS AND REASONS

60. The applicant claims to be a national of Nigeria and arrived in Australia on a Nigerian passport. The Tribunal accepts that the applicant is a Nigerian national and, for the purposes of the Convention, has therefore assessed his claims against Nigeria as his country of nationality.
61. The Tribunal observes that the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that he or she satisfies all of the required statutory elements. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)
62. In determining whether an applicant is entitled to protection in Australia the Tribunal must first make findings of fact on the claims he or she has made. This may involve an assessment of the applicant's credibility and, in doing so, the Tribunal is aware of the

need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims.

63. On the other hand, as stated previously, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). On the other hand, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).
64. The Tribunal finds the applicant to be a witness who lacks credibility. His evidence was inconsistent and lacked plausibility in significant respects, namely:
 - The main event on which the applicant's claim is based is that his father's death which the applicant claims to have been [in] 2008. In support of his Business Visa application the applicant provided the Department with a copy of his marriage certificate indicating that he was married [in] December 2000 and that his father was deceased at that time. When the inconsistency was pointed out to the applicant he said that the marriage certificate contained false information as to his father because his father did not approve of his marriage and did not therefore attend his wedding. He said that an uncle from his mother's side of the family stood in for his father and they had to account for his father not being there by saying he was deceased;
 - The applicant's wife told the Tribunal that his father did attend the wedding. On being questioned with regard to this further inconsistency, the applicant said that his wife was confused. In a submission by the applicant's representative after the hearing, she stated that the applicant's wife said she considered, as the applicant's uncle attended in the place of his father, she answered that his father attended the wedding;
 - The applicant told the Tribunal that his father did not attend the wedding because he did not approve of the marriage. The applicant's wife said that his father approved of her and the marriage;
 - At the first hearing, the applicant said that he had memorised the list of his ancestors who held the position of chief or king of his tribal group. When the Tribunal, at the second hearing, asked him for the name of his grandfather, he did not know it; and
 - The applicant had provided the Department with two Certificates of Birth in relation to his younger daughter. Both certificates claim to be "Original" and are dated the same date. However, they have different serial numbers

and the names of the parents differ. The applicant said that this was because his wife filled out the forms and he insisted she change the parent details on the initial one because he did not want his children to have his father's name as part of their names.

65. Whilst the Tribunal accepts that many people in Africa, including Christians, believe in the powers of voodoo it does not accept that the applicant's house was burnt down when an egg was thrown at it or that the claimed death of his sons was caused by voodoo. It accepts that the applicant believes these events were caused by voodoo but the applicant, who claims to have a reasonable level of education, was unable to explain the practical aspects of the events.
66. The inconsistencies and the unsatisfactory answers set out above and below leads the Tribunal to believe that the applicant is not a credible witness and that his claims have been contrived for the purpose of his protection visa application. The death of the applicant's father [in] 2008 is the pivotal event from which his claims flow. The applicant has provided no supporting evidence as to the death of his father who he says was a significant figure in his community. The only official record concerning his father is the applicant's Marriage Certificate which notes that in the year 2000, the applicant's father was deceased. In its efforts to clarify the situation the Tribunal asked the applicant and his wife if his father was at the wedding. The applicant said he was not present, although he was alive, but his wife said his father was present. In their oral evidence, the applicant and his wife differed as to the applicant's father's view about the marriage. The differences in the evidence of the applicant and his wife causes the Tribunal to find that their evidence is unreliable. The Marriage Certificate clearly states that the applicant's father was deceased at the time of the marriage and the Tribunal accepts that this is the case. This means that the applicant's father could not have died in 2008 as claimed and therefore the chain of events claimed by the applicant has been fabricated.
67. Accordingly, the Tribunal does not accept that the applicant's father died [in] 2008, that the applicant is required to eat his father's heart and take the position of king of his tribe, that the king-makers have been pursuing him to take on the role of king, that his house was burnt down because an egg was thrown at it or that the applicant's sons died due to voodoo. The Tribunal does not accept that his evidence is plausible and therefore finds that he has not suffered serious harm in the past or that there is a real chance that he will suffer serious harm in the future.
68. Accordingly, the Tribunal is satisfied that the applicant does not have a well founded fear of persecution within the meaning of the Convention if he returns to Nigeria now or in the reasonably foreseeable future.

CONCLUSIONS

69. The Tribunal is satisfied that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36 (2)(a) for a protection visa.

DECISION

70. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer's I.D. prrt44