

1110779 [2012] RRTA 130 (5 March 2012)

DECISION RECORD

RRT CASE NUMBER: 1110779

DIAC REFERENCE(S): CLF2011/127318

COUNTRY OF REFERENCE: Nigeria

TRIBUNAL MEMBER: Nicole Burns

DATE: 5 March 2012

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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2011 and applied to the Department of Immigration and Citizenship for the visa [in] August 2011. The delegate decided to refuse to grant the visa [in] September 2011 and notified the applicant of the decision.
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] October 2011 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, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
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.
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. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

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. 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.
20. The applicant is a [age deleted: s.431(2)] man who was born in [City 1] [State 2], Nigeria. He claims in his application form to be a Christian of Igbo ethnicity. He married in 2006. He came to Australia on a short term business visa in July 2011. He lived in Lagos from 2008 and worked [in a senior position at packaging company].
21. In his application form the applicant claims that a group in his village – [Village 3] – want to harm him because he was chosen by an oracle as the new traditional ruler of the village six months after the previous ruler died [in] October 2007. He moved his family to Lagos to escape the problems. The applicant claims to have secretly returned to his village to discuss the situation with the elders and there was an attempt on his life. He also states that his ‘closest partner’, [Mr A] was killed. The applicant claims that there was another attempt on his life when he visited the village in August 2010 and again [in] January 2011. The applicant claims he will not be protected by the authorities because he is at war with people who are “richer and more connected with the police” He claims he has tried to get the authorities involved, but to no avail. The applicant also claims to have had to hide in a church and therefore he cannot live freely in Nigeria. The applicant claims that his fears remain well-founded because his wife and three daughters were attacked days after he left Nigeria, [in] July 2011, in Lagos.
22. During his interview with the Department the applicant provided coloured photocopies of photographs of an infant girl, purportedly his youngest daughter, as well as three letters signed by a medical officer, [General Hospital], Lagos dated [July] 2011 in relation to his three daughters. It states that their injuries were “sustained by coming back from a friend’s house, they were attacked my member of their community from their village”. The applicant’s daughters’ injuries are described in the letters as follows:
 - [name and age deleted: s.431(2)] presented [in] July 2011 with multiple body injuries (laceration on face anterior region of the head, both upper and Lt lower limb)
 - [name and age deleted: s. 431(2)] presented [in] July 2011 with multiple body injuries (injury to left eye and laceration at the upper lip).

- [name and age deleted: s. 431(2)] presented [in] July 2011 with multiple body injuries (wounds on face, back and swelling of both upper limbs).
23. [In] September 2011 the delegate refused to grant the applicant a protection visa.
 24. [In] October 2011 the applicant applied for a review of the delegate's decision.

Tribunal hearing

25. The applicant appeared before the Tribunal [in] February 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Igbo and English languages. The applicant's registered migration agent attended the hearing.
26. The applicant confirmed that he is from [City 1], [State 2] in Nigeria. Prior to coming to Australia in July 2011, he lived in Lagos, since June 2008. He ran a [packaging business] there, attached to a friend's business [name deleted: s.431(2)]. When asked, the applicant said his wife and a man who did the graphics worked for him. Asked if his business is still operational, the applicant said he handles jobs that can be done outside the country but his wife has not handled the internal jobs since she was attacked. Asked where his wife is now, the applicant said she is currently in [State 2] with her parents and their daughters.
27. The applicant said he left Nigeria [in] July 2011 and his wife and children were attacked [three days later]. His children suffered injuries as a result. Describing the incident as it was told to him by his wife, the applicant said his wife's car was blocked by three men driving a bus (van) on return from a friend's house. After stopping her car his wife ran into a nearby building. From there she heard her children, who were still in the car, crying and calling out for her. When his wife returned to the car she saw that her children were bleeding and the last one had been hurt badly because she was sitting in the front of the car. When asked, the applicant said the attack took place during the day and the building his wife hid in was like a general compound, where people sublet rooms. There was no one there at the time because people were at work. When asked why he thinks his wife left their children in the car, the applicant said there was no way she could have taken her three children with her. The applicant added that when frightened, people make certain decisions.
28. The applicant said on return to the car his wife saw that someone had poured some substance over their youngest daughter. She rushed her to hospital where his daughter was treated. Asked what kind of substance, the applicant noted that it is not mentioned in the doctor's report. When asked, the applicant said his youngest daughter was not otherwise harmed. The Tribunal asked if only his youngest daughter was injured by having substance poured on her. The applicant said "yes" His other two daughters were hit with something hard; his eldest daughter was hit on her waist and the middle daughter on her arm. The Tribunal asked if any of his children suffered fractures or broken bones from the attack. The applicant referred to the treatment reports and added that he is not sure because he was not there and he did not ask his wife to that extent. He said his children went for treatments for weeks ongoing for months. Asked why so long, the applicant said they often went to hospital for check-ups.

29. The applicant said he called his wife from [Australia] and she told him about the attack. She was at the Lagos General Hospital (Solo) at the time, around 15 minute's drive from their house. Asked if his daughters stayed in hospital overnight, the applicant said he thinks they did because of the injuries his youngest daughter sustained. The Tribunal asked the applicant who took the photographs of his daughter purportedly injured, which he provided to the Department. He said he cannot say who took them but when he asked his wife to give more details he told her to take photographs. The applicant said he believes his wife engaged a photographer. He received the photographs via email from his wife.
30. The applicant said his daughters are aged [age deleted: s.431(2)]. His eldest was born when they were living in Imo state and the youngest two in Lagos.
31. The Tribunal asked the applicant when his wife and children moved to his parents-in-law house in [State 2]. He said in November 2011. Asked where they lived in Lagos, the applicant said after the attack his wife was not comfortable staying at their house and therefore they stayed at the church for two months. They returned home when they felt a little safer and made arrangements to move back east. When asked, the applicant said his house is rented. His furniture is still there, as he has paid rent in advance.
32. The applicant said his father-in-law helps to financially support his wife and children.
33. The Tribunal asked the applicant the name of the church his wife and children stayed at during this period. He hesitated, then said there are two churches – one called [church deleted: s.431(2)] but his family stayed at the church called the [church deleted: s.431(2)] which is situated further from their house.
34. The applicant said that he and his family lived in [City 5 in] Imo state, from 2004 to 2008. There he worked for the [government]. His wife had a small business selling children's [wares] but they had to close it before he left for Australia.
35. The applicant confirmed that [Village 3] is his village, where he lived before moving to [City 5] for work in 2004. He was not born there but, looking at a map of Nigeria, it is not far from where he was born, in [City 1]. Asked when he first started living there, the applicant said in Nigeria people return to their communities for holidays at the end of each year, which meant he often went home. He started living in [Village 3] from around 2002/03, but had often gone there beforehand, because it is his father's village. When asked, the applicant said his parents currently live in [City 1], [State 2]. They do not work anymore. His father used to be a contractor with a foreign oil company (*Total*). Asked about his siblings, the applicant said he has seven siblings. [Four] live in Lagos, [one lives in] [place deleted: s.431(2)] and the rest live in [City 1], [State 2].
36. The applicant said there are between 60,000 to 100,000 people who belong to the [Village 3] community, but not all reside in the village. They are predominantly Ibo and Christian.
37. The applicant confirmed that he married his wife in 2005. She is Ibo and a Christian.
38. The applicant came to Australia in July 2011 to attend an exhibition in [Sydney]. When asked, he said he attended the program.

39. The applicant was asked why he wanted to leave Nigeria permanently. He said the situation is very painful to narrate, but he does not have an option. The applicant explained that the king of the [Village 3] community died in October 2007 and, based on a rotation between villages within the community, his [village] was next in line from which the king was to be chosen. Six months after the king died, the applicant was chosen by the oracle as the next king. However some groups from other villages did not accept the way he was chosen by the oracle. The applicant explained that these days there are incentives for the rich to control the kingship position; that is to get government contracts and so on. After he was chosen as king the group objected to it and started causing problems. The situation escalated out of control and people were killed and kidnapped. As the target, he was advised by the elders to leave and he relocated to Lagos with his family. The applicant said he could not go to the Niger Delta because of the problems there, and it is not safe for Ibos in the north or in many other parts of the country. Lagos was the safest area because it is a business area and open for many. Other parts of the country are not safe because of either religious or tribal problems.
40. The applicant said during this period he sometimes returned to his village, trying to settle the problem to pave the way for his coronation. At the time he believed the kingship was his right and that he could settle the matter, however the other group was violent. The applicant added that he did not have money to groom youths to fight or buy guns. He believed that the gods would fight for him but after there was killing he realised he had no other option but to hide. The applicant said when he visited the village he would do so in disguise, not take his car, and he never slept there.
41. The applicant described the attempted attacks against him on two of his visits home to his village. The first time occurred in August 2010 when he was driving to his village to meet with the elders. On the way he sensed that there may be a problem and saw a group of youths armed with machetes rushing towards him. He reversed the car and left, returning to Lagos via [City 5].
42. The next incident occurred when the applicant returned to his village at Christmas time in 2010. He thought he would not be harmed, because it was Christmas and members of the council of elders had told him over the phone they thought the situation was safe enough. After spending two days in his village he took his family to his in-laws place in [State 2], then returned to his village. On 10 January 2011, when driving back from [City 5] to his village, the applicant said he saw a bus coming towards him in his lane "with full force" The applicant pulled over, left his car and ran away. Three men jumped out of the bus and chased him into the bush. He was able to outrun them because he had started running earlier, and the men had machetes, not guns. Asked where he ran to, the applicant said all he knows is that they were inside the bush. When he noticed they had stopped following him he found a taxi to [City 5]. Asked what happened to his car, the applicant said he called a friend in the village [who] picked up his car and drove it to his hotel. When asked, the applicant said he left the keys in the ignition. He left for Lagos the next day, after picking up his family in [State 2].
43. The applicant said he has not returned to his village since.
44. Asked the name of the last king of the [Village 3] community, the applicant replied [name deleted: s.431(2)] from [place deleted: s.431(2)]. When asked if he knew [him]

personally, the applicant said he did and added that he was a teacher. He died of old age, after sickness. The applicant said he was living in [City 5] when he died.

45. The applicant was asked how he found out that he had been chosen to be the next king. He said the secretary of the council of elders called him, [Secretary B]. He was in [City 5] at the time. He was astonished. Asked why he was chosen, the applicant said he cannot say but noted that when he worked for the government he was able to help some youth enrol in trades and attract some benefits for farmers, such as fertilisers. So he assumes that his community felt that he was suitable, given this community development work. Asked the name of the oracle, the applicant said [name deleted: s.431(2)], who is from his own village. He does not know the process, but knows that the position rotates; it is not passed down.
46. The Tribunal asked the applicant why the other groups objected to the process of choosing the next king. The applicant said there are a few people in the village, which is growing, who have money and think they can decide what is happening. The rich can do what they want in Nigeria. The applicant said there is a man who is rich and outspoken from the village of the last king called [name deleted: s.431(2)] whom, the applicant believes, is behind everything.
47. The Tribunal asked the applicant to explain further about his claim earlier that people were killed and kidnapped as a result of this dispute. The applicant said he was referring to what happened recently and presented an article from [a] newspaper about the murder of [Mr D] [in] October 2011. The applicant said the victim was his uncle who was a [Country 6] and killed on a visit home. The applicant said a man called [Mr C] from his village was also kidnapped then released, in 2009. [Mr C] was an architect based in [place deleted: s.431(2)]. On a visit back to the village he was kidnapped, because he was considered a supporter of the applicant's kingship, for three weeks before being released.
48. The Tribunal asked the applicant to provide more details about the death of his uncle. He clarified that it was his father's brother. He visited Nigeria from [Country 6], when the applicant was already in Australia. He had funded the building of a church in their village. He was attacked when driving, about 15 minutes away from their village. He said the police are still investigating the matter. Asked if there are any rumours about who was behind the killing, the applicant said he cannot propagate rumours. Asked how he found out about the death of his uncle, the applicant said he called his wife and she told him, [two days] after the incident.
49. The Tribunal asked the applicant if he thinks his uncle's death had anything to do with him. The applicant said if one analyses the situation, his uncle did not have any problems in America and if he had a problem with others they would not have targeted him close to his village. Because his uncle was influential this group believes he has interest in getting the issue with the kingship settled.
50. The applicant said the article shows what his uncle had been doing in the community. He said he thinks that this group is bent on removing anyone who stands in their way. Asked about the paper in which the article appears, the applicant said that [Newspaper 7] is a local newspaper in Imo state. His wife sent him the newspaper article. It states that police are investigating, and referred the Tribunal to the article, noting that there have been no arrests as yet.

51. The Tribunal asked the applicant if anyone has taken on the role of King of [Village 3] in his absence. The applicant said just the eze-in-council for the whole community. Asked how long the position is kept open for, the applicant said if he does not assume the throne after five years, it will rotate again. The applicant said the only thing to make it rotate faster is if he dies.
52. The Tribunal asked the applicant if he could refuse the role. He explained that the decision is made by the gods through the oracle and therefore there is concern that you might die or start going mad if you refuse. He said the fact is that he has run away; he has not said that he does not want it.
53. The Tribunal asked the applicant what his role as king would be. He said kingship in Nigeria does not mean that the king must live in the village – some kings live in the US. Only crucial issues require the king's input. He could have run his business as well as been king. The Tribunal asked the applicant about the main role of the king. He said before now kings were bestowed to take care of traditional issues, but now kings take part in politics because the Nigerian government recognises kings. Kings deal with traditional issues and have control over telling the government what the community needs either directly or through a councillor attached to the community, which is an elected position. After coronation, the king lives in a palace.
54. The Tribunal asked the applicant if he thought [name deleted: s.431(2)] would continue to arrange for the removal of those next in line to be king until the kingship rotated back to his village. The applicant said he does not know. In Nigeria kingship has a lot to do with attracting contracts or recommending people for government contracts.
55. The Tribunal asked the applicant if he has any documents showing that he was chosen as king. He handed a letter to the Tribunal, dated [April] 2008 from the [Village 3] community council of elders, advising of his election as the "eze" and head of council of [Village 3] community. Asked when he was given the letter, and how, the applicant said the date is on the letter. Asked again, the applicant said that the Tribunal can see the date on the letter. He noted that the problems had already started. The secretary gave it to him, in [City 5]. The Tribunal asked the applicant if he brought the letter with him to Australia. He said it just arrived last week, sent by his wife who retrieved it from a file at his home. The Tribunal asked if this was the letter he told the delegate at the interview that he would provide. The applicant said it was, however he did not have enough time and his wife told him she did not have enough money, because it cost \$200 to courier.
56. The Tribunal asked the applicant if his wife reported the attack against their children to the police. He said he does not think she reported it. He said women handle their issues differently and back home Nigerians are not developed like here where such incidents have to be made known.
57. The Tribunal asked the applicant what he is afraid will happen if he returns home to Nigeria. He referred to his uncle, who was much respected.
58. The Tribunal asked the applicant if he could avoid the harm he fears in [Village 3] community by living in Lagos, as he did for two years before coming to Australia. He said that his children were attacked in Lagos. When asked why, he thinks, this attack occurred many years later, the applicant said he was attacked in 2010 and January 2011

and 'they' know he was still trying to resolve the problem so they are always looking for ways to scare or kill him.

59. The Tribunal asked who [Mr A] was whom he referred to in his application form. He said he is from his village and was one of the people who supported him. He was killed in cold blood in 2010. The applicant was in Lagos at the time and received a phone call from one of the elders. The applicant said when things were getting out of hand he started making plans to go elsewhere for safety (and showed the letter inviting him to Australia for a business trip). The Tribunal asked again how [Mr A] was killed and by whom. The applicant said he cannot say because he was in Lagos when it happened.
60. The Tribunal asked the applicant whether he was in hiding in Lagos. He said after the attempted attack against him in January 2011 he was fearful and stayed at the [church deleted: s.431(2)] until April. The applicant said that his family stayed at home, noting that it is difficult to relocate completely. The Tribunal asked if he had an office. The applicant said he did at home and sometimes at his friend's office. However during that period he did not go to any office, instead he serviced existing customers. After April the applicant said he returned home, noting that fear comes then after some time normalcy returns. He wanted a normal life again. The Tribunal asked if he thought about taking his wife and children to stay at the church with him during that period. He said he thought he was the target. When asked, the applicant said his children still went to school and day care during that period, which was close to their house.
61. The applicant confirmed that he studied [at university] from 1997 to 2003.
62. Noting the delegate's concern in the decision record that he had not provided proof to show it was his daughter in the photographs, the applicant submitted copies of his daughters' birth certificates and photographs of him together with his family.
63. With respect to the issue of relocation, the applicant noted that articles about killings in the north recently show that it is not safe. He might be able to go north and not be located by the people after him, but it is not safe for him there as a Christian and Ibo.
64. In December 2011 the applicant told his family to relocate to [State 2]. They originally stayed with his sister in Ebony state because he did not want his wife and children to see his parents-in-law. That is because they want his wife to divorce him, blaming him for endangering her life. However his wife has now left his sister's place because of communal clashes there. Having nowhere else to go, she went to her parents' house.
65. The applicant reiterated that relocation for him would be very difficult Ibos are moving from the north. He said that Nigeria is a lawless place. The applicant added that he has been depressed and is unsure what to do, when he thinks that his children do not have fatherly care. He said he felt like killing himself when he heard about the death of his uncle.
66. The representative said she is satisfied that the applicant has raised all of his claims. She has talked to Asylum Seeker Resource Centre (ASRC) who confirmed that he is going through trauma and has problems with depression. She reinforced his claims to fear persecution in Nigeria because of his kingship, and dangers as a Christian. She agreed to provide a further submission on these points to the Tribunal by 17 February 2012.

67. At the hearing the applicant submitted the following documents:

- Copies of birth certificates for the applicant's children;
- Copies of photographs of the applicant together with his family;
- A colour copy of a letter signed [Secretary B], Council Secretary, The Eze in Council, [Village 3] community council of Chiefs and Elders 2006 – 2013, Nkwerre Local Government Area, Imo State, Nigeria dated [April] 2008 addressed to [“the Eze elect”], [Village 3] Autonomous Community, Nkwerre Local Government Area, advising of his confirmation of election as the eze and head of council of [Village 3] community;
- A copy of an article in [Newspaper 7], November 7-8, 2011 with the following headline [headline deleted: s.431(2)]. The article reports the death of [the applicant's uncle] by “unknown gun men” [in] October 2011. Also provided is a copy of the internet version [URL deleted; S.431(2)];
- A copy of a notice for a funeral service [the applicant's uncle] at St Matthew's Church, [Village 3], Imo state [in] December 2011; and
- Print outs of internet articles about Boko Haram's activities and killings of Ibos in Northern Nigeria and fighting over land disputes in Ebony state.

Country Information

Sectarian conflict in Nigeria

68. Reports dated 2011 assess that sectarian conflict continues to be primarily concentrated in Nigeria's “Middle Belt”,¹ with significant incidents of extremist activity perpetrated by Boko Haram also occurring in the north.^{2 3} Jos in particular, the capital city of Plateau State in central Nigeria, has been the site of recurring “ethno-religious” violence.⁴ Previously, major outbreaks of violence have occurred in Jos in September 2001, November 2008, January and March 2010⁵ and in December 2010 which continued into February 2011.^{6 7} The International Crisis Group (ICG) noted in 2010 that ethno-religious violence was a “major feature” of the Middle Belt. The ICG noted

¹ ‘UN rights office calls on Nigeria to address renewed ethnic, religious violence’ 2011, UNHCR Refworld website, source: *United Nations News Service* ‘, 9 September
<http://www.unhcr.org/refworld/docid/4e6f17c12.html>

² Jamestown Foundation 2011, ‘Boko Haram Exploits Sectarian Divisions to Incite Civil War in Nigeria’, *Terrorism Monitor*, Vol. 9, No. 18, UNHCR Refworld website, 5 May
<http://www.unhcr.org/refworld/docid/4e3f9fd22.html>

³ Internal Displacement Monitoring Centre 2011, *Nigeria: Fear of violence displaces thousands in the north*, UNHCR Refworld website, 7 October <http://www.unhcr.org/refworld/docid/4e92dfb82.html>

⁴ Fawole, O. A. & Bello, M. L. 2011, ‘The impact of ethno-religious conflict on Nigerian federalism’, *International NGO Journal*, Vol. 6, No. 10, Academic Journals website p. 212
<http://www.academicjournals.org/ingoj/PDF/pdf2011/Oct/Fawole%20and%20Bello.pdf>

⁵ International Crisis Group 2010, *Northern Nigeria: Background to Conflict*, Asia Report No. 168, 20 December, pp.32-33

⁶ Human Rights Watch 2011, ‘Nigeria: New Wave of Violence Leaves 200 Dead’, 27 January
<http://www.hrw.org/en/news/2011/01/27/nigeria-new-wave-violence-leaves-200-dead?print>

⁷ ‘Attack in central Nigeria kills at least four’ 2011, *Reuters*, 28 February
<http://www.trust.org/alertnet/news/attack-in-central-nigeria-kills-at-least-four/>

that, besides Jos, violence tended to occur in urban centres with large migrant populations, particularly in Kaduna but also in Kano and Bauchi.⁸ The US Department of State (USDOS) reported that during 2010, violence, tension and hostility between Christians and Muslims in the Middle Belt increased, and was exacerbated by indigene and settler laws, discrimination in employment practices, and competition for resources.⁹

Treatment of people belonging to the Ibo ethnicity

69. The Central Intelligence Agency website states that the Ibo (or Igbo) ethnic group is one of “the most populous and politically influential” groups in Nigeria, constituting 18 per cent of the population.¹⁰ The Igbo people originate from south-eastern Nigeria, and reportedly tend to live in small independent villages¹¹ Christianity is the predominant religion amongst Igbo people.¹²
70. There are reports of Igbo migrants being harmed in central and northern Nigeria. Human Rights Watch reported that, on 8 January 2011, Muslim youths conducted indiscriminate attacks on Jos Christians, most of whom were Igbo market traders.¹³ Also in January 2011, the United States Commission on International Religious Freedom (USCIRF) reported that 40 Igbo passengers were taken from a bus and killed after the bus had entered a predominantly Muslim area in Jos. The USCIRF assessed that sectarian violence in Jos had not previously involved the Igbo population. The USCIRF stated that “[t]his expansion risks widening the conflict beyond the Middle Belt region and could cause the Christian community in Igbo-dominated areas to be more aggressive and mobilised along religious lines”.¹⁴

FINDINGS AND REASONS

71. Based on a copy of his passport on file, the Tribunal finds that the applicant is a citizen of Nigeria.
72. The Tribunal notes that at the hearing the representative stated that, according to ASRC, the applicant is going through trauma and depression. The applicant also said at the hearing that he has been depressed. Although there has been no documentary evidence provided, the Tribunal is willing to accept that the applicant may be depressed. However, with respect to his ability to give evidence, the Tribunal discussed relevant issues with the applicant at length during the hearing. While the Tribunal has exercised some caution in assessing the overall coherence of the

⁸ International Crisis Group 2010, *Northern Nigeria: Background to Conflict*, Africa Report No. 168, December, p.2

⁹ US Department of State 2011, *2010 International Religious Freedom Report (July-December)*, 13 September, Introduction

¹⁰ Central Intelligence Agency 2010, *The World Factbook: Nigeria*, CIA website, 29 September <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>

¹¹ United States Commission on International Religious Freedom 2011, *Annual Report 2011 – Countries of Particular Concern: Nigeria*, 28 April, p. 99

¹² ‘Nigeria: Culture’ (undated), Embassy of the Federal Republic of Nigeria, Moscow website <http://www.nigerianembassy.ru/Nigeria/culture.htm>

¹³ Human Rights Watch 2011, ‘New wave of violence leaves 200 dead’, Human Rights Watch website, 27 January <http://www.hrw.org/en/news/2011/01/27/nigeria-new-wave-violence-leaves-200-dead>

¹⁴ United States Commission on International Religious Freedom 2011, *Annual Report 2011 – Countries of Particular Concern: Nigeria*, 28 April, p. 99

applicant's evidence, given these considerations, nevertheless it finds that he had a real opportunity to describe to the Tribunal his past experiences and reasons why he still fears returning to Nigeria.

73. The Tribunal accepts that the applicant is a Christian who belongs to the Igo ethnicity. It accepts that he lived in [City 5], Imo state from 2004 to 2008, working for the government. It accepts that he lived in Lagos from 2008 until he came to Australia in mid-2011 and ran a [packaging] business whilst there. Based on copies of birth certificates and photographs submitted, the Tribunal also accepts that the applicant is married and has three daughters, who currently reside with his parents-in-law in [State 2] state, Nigeria.
74. The applicant claims to fear being killed by members of the [Village 3] community who come from a different village to his own and dispute his claim to be the next king. Although he has not specifically articulated a Convention ground, his fears appear to be related to his membership of a particular social group of 'traditional rulers/leaders' However, before the Tribunal considers whether or not this constitutes a particular social group for the purposes of the Convention, and whether or not the applicant is a member, the Tribunal has first considered if the applicant is a member of the [Village 3] community, and next in line for king, as claimed.
75. The Tribunal has some doubts as to whether the applicant is a member of the [Village 3] community, primarily because of inconsistent information he provided about when he purportedly lived there. For instance, in his protection visa application the applicant states that he lived in [Village 3] from 2007 to 2008, *after* he lived in [City 5], Imo state from 2004 to 2007 (working for the poverty alleviation bureau). However, at the Tribunal hearing the applicant said he lived in [Village 3] in around 2002/2003, *before* he lived in [City 5] from 2004 to 2007. Despite these concerns, the Tribunal notes that at the hearing the applicant claimed that he belonged to the [Village 3] community because his father's [village] is part of that community, and that he often visited the village at the end of the year for holidays, as is custom. Given such a scenario, it is possible that the applicant has not actually lived in [Village 3] in the past, but has visited and is considered part of the community because his father is from there. On this basis, the Tribunal is willing to give the applicant the benefit of the doubt and accepts that he is a member of the [Village 3] community, and perceived to be, even if the Tribunal doubts that he has spent much time there in the past.
76. The Tribunal does not, however, accept that the applicant was chosen by the oracle to be the next king of [Village 3] community, primarily because the Tribunal found the applicant's evidence about his claimed kingship and threats and harm that purportedly followed, to be vague, general, and at times implausible. It also found some of his oral evidence contradicted written evidence provided. Based on the various inconsistencies and implausibilities in the applicant's evidence, discussed below, the Tribunal finds that the applicant is not a credible witness.
77. For instance, the applicant claims that [in] July 2011, three days after he left Nigeria, his wife and children were attacked whilst driving home from a friend's house, and his children were injured. Although the Tribunal notes that it appears strange for his wife to leave her children in the car, it is not necessarily out of the question. However, at the hearing the Tribunal found the applicant's description of these events to be vague, lacking detail, and sometimes evasive, and sometimes did not correlate with the

doctor's reports provided. For instance, in the application form the applicant states "leaving my kids with wounds and peeling their skins because of hot substances they poured my last daughter of a year and a month". However at the hearing the applicant was unable to describe the substance, or the injuries his children sustained in any detail and when the Tribunal asked he told the Member to look at the doctor's reports. Further, what information he did provide was inconsistent with the description of his children's injuries in the doctor's report. That is, at the hearing the applicant said his youngest daughter was injured from the pouring of a substance and was not hurt in any other way. However the doctor's report for his youngest daughter states that she suffered wounds on her face, back and swelling to both upper limbs but does not mention injuries from a substance. Also, at the hearing the applicant said his eldest daughter was hit with something hard on her waist and his middle daughter on her arm. However, in the doctor's report it is stated that the eldest daughter suffered laceration to her face and upper and lower limbs and the middle daughter suffered an injury to her eye and laceration to her upper lip. At the hearing the applicant was also unclear whether his daughters stayed in hospital overnight, only answering in general terms that he thinks that they went for treatments for weeks, going on to months. He was also unsure whether his wife reported the incident to the police. At the hearing the applicant said he did not ask his wife much about his daughter's injuries. However the Tribunal does not accept this as a plausible explanation for his lack of knowledge about what happened to them because, as an educated man, the Tribunal would expect him to have enquired more about the nature of their injuries, the treatment required, and their recovery. For these reasons, the Tribunal does not accept that the applicant's daughters were attacked and harmed in July 2011 as claimed.

78. In reaching its conclusion the Tribunal has had regard to the photographs submitted of the applicant's youngest daughter. However, although the Tribunal accepts that the subject in the photographs is his daughter, based on other photographs of her and the applicant together submitted to the Tribunal, it is not clear from the photographs what injuries she has sustained, if any. Coupled with its concerns about the applicant's credibility as discussed above, the Tribunal gives these photographs little weight. Similarly, the Tribunal gives the letters from the hospital little weight.
79. At the hearing the applicant raised for the first time a claim that his uncle [Mr D] was murdered near his village [in] October 2011. In support of his claims he provided copies of a newspaper article from a state-level newspaper in Nigeria and notice of his funeral service. He speculated at the hearing that his uncle was murdered because of his influence and potential to sort out the kingship issue. Whilst the Tribunal is willing to accept a man called [Mr D] was killed as reported, there is nothing to show that the applicant is related to him as claimed. When asked questions about the circumstances of his uncle's death at the hearing, the applicant referred to the newspaper article a number of times, and then spoke of another man from his village [Mr C] who was purportedly kidnapped in 2009. What information he subsequently provided to the Tribunal about his uncle's purported murder was, in the Tribunal's view, general, lacking in detail and only reflected what was reported in the newspaper article submitted. Whilst this may be because the applicant himself is not aware of the details, given the Tribunal's broader credibility concerns in this case, the Tribunal does not accept that his uncle was murdered as claimed.

80. In the application form the applicant states that people were beaten, kidnapped and killed if they had been outspoken in supporting the oracle's decision. He also states that houses were burnt. At the hearing he referred to people being killed as a result of the problems stemming from the oracle's decision. However, when the Tribunal asked him at the hearing what he meant, he said he was referring to the murder of his uncle. The applicant has provided no details about who was killed or kidnapped or beaten, or when or how it relates to him specifically apart from general claims that the problems were a result of the kingship issue.
81. In the application form it is stated that the applicant's "closest partner" [Mr A] was killed because of the kingship issue. However when asked about [Mr A] at the hearing, the Tribunal found the applicant's response was vague and evasive. Apart from saying that he was someone from his village who supported him who was killed "in cold blood", he was unable to answer why he was killed or by whom or when. Therefore, even if the Tribunal accepts that someone from the applicant's village was killed in the past, the Tribunal is not satisfied that he was the applicant's "closest partner" or that he was killed for reasons related to the applicant's claimed kingship position.
82. For these reasons the Tribunal does not accept that the applicant was chosen by an oracle to be the king of [Village 3] community. It does not accept that a dispute between members of the [Village 3] community who supported this decision and those who contested it erupted as a result. It follows that the Tribunal does not accept that the applicant escaped two attempts on his life in August 2010 and January 2011 to remove him from this position as claimed. Nor does the Tribunal accept that his wife and children were attacked and harmed as claimed. Nor that he or his family were ever forced to flee or hide. Further, the Tribunal does not accept that a friend, [Mr A] was killed or that other members of the community were kidnapped, beaten, killed or that houses were burnt. Further, the Tribunal does not accept that the applicant's uncle was murdered close to their village in October 2011 as claimed.
83. Therefore the Tribunal is not satisfied that the applicant was or is a member of a particular social group of 'traditional rulers/kings' in Nigeria or that he or his family were ever harmed or threatened on this basis or for any other Convention reason in the past in Nigeria. He does not have a well-founded fear of persecution on this basis. Given such a finding, it is not necessary for the Tribunal to consider if there is a real chance that the applicant would be persecuted for belonging to such a group if he were to return to Nigeria now or in the reasonably foreseeable future. Nor is it necessary to assess if state protection is adequate in the applicant's case, given the Tribunal's findings that he is not being targeted by non state actors for a Convention (or any other) reasons.
84. In reaching this conclusion the Tribunal has considered the letter submitted dated 10 April 2008 from the [Village 3] community council of elders, advising of the election of the "eze" and head of council of [Village 3] community. The Tribunal notes that the letter is not actually addressed to the applicant in particular. Given the Tribunal's credibility concerns with the applicant's claims as discussed above, the Tribunal gives the letter little weight.
85. At the hearing the applicant's representative said the applicant's fears of persecution are because of his kingship and dangers as a Christian and she promised to provide a written submission to the Tribunal by 17 February 2012, however no further

information has been received. Whilst the Tribunal accepts that the applicant is a Christian, it notes that his claims in this regard go to the question of whether he is safe to live elsewhere in Nigeria (in particular the north) as a Christian to avoid the harm he fears from members of the [Village 3] community. However, as the Tribunal finds that the applicant's fear of persecution from members of the [Village 3] community is not well-founded, it's consideration of the issue of relocation is not necessary.

86. Although not explicitly made out by the applicant, the Tribunal has considered if he has a well-founded fear of persecution based on his Christian religion or Ibo ethnicity. Apart from arguing that he is unable to move north to avoid the harm he fears because it is unsafe there as a Christian and Ibo, the applicant has not put forward any specific claims in this regard and there is nothing to indicate that the applicant has experienced problems in the past in Nigeria on account of his Christian religion or Ibo ethnicity.
87. Looking to the future, based on country information the Tribunal accepts that sectarian violence occurs in the north and middle belt of Nigeria. However the Tribunal finds that the applicant could relocate to other parts of Nigeria, in particular the Christian-dominated south, to avoid any harm he may fear as a Christian. On the available evidence the Tribunal finds that the applicant does not face a real chance of persecution for reason of his religion if he were to return to Nigeria now or in the reasonably foreseeable future.
88. Similarly, whilst country information indicates Ibos facing some problems in the north, the applicant would be able to avoid these problems by living elsewhere in Nigeria. The Tribunal notes country information indicates a level of discrimination against Ibos in general, but there is nothing to suggest such discrimination amounts to persecution. On the available evidence the Tribunal finds that the applicant does not face a real chance of persecution for reason of his ethnicity if he were to return to Nigeria now or in the reasonably foreseeable future.
89. Having considered the applicant's claims individually and cumulatively, based on matters set out above, the Tribunal finds that the applicant does not face a real chance of serious harm amounting to persecution from non state actors (i.e. members of the [Village A] community) for reasons of belonging to a particular social group of 'kings/traditional rulers' or for any other Convention reason if he returns to Nigeria. The Tribunal finds that the applicant does not have a well-founded fear of being persecuted in Nigeria for a Convention reason now or in the reasonably foreseeable future.

CONCLUSIONS

90. The Tribunal is not satisfied that the applicant is 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

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