

071602371 [2007] RRTA 302 (13 November 2007)

DECISION RECORD

RRT CASE NUMBER: 071602371
DIAC REFERENCE(S): CLF2006/123853
COUNTRY OF REFERENCE: Nigeria
TRIBUNAL MEMBER: Ms Christine Long
DATE DECISION SIGNED: 13 November 2007
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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 section 65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Nigeria arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights.

The applicant sought review of the delegate's decision.

The delegate refused the visa application because he decided that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The matter is now before the Tribunal.

RELEVANT LAW

Under subsection 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.

Paragraph 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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.

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.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under subsection 91R(1) of the Act persecution must involve “serious harm” to the applicant (para.91R(1)(b)), and systematic and discriminatory conduct (para.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: subsection 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.

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.

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: para.91R(1)(a) of the Act.

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.

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.

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

The Tribunal has before it the Department's file relating to the applicant, including the delegate's decision record. The Tribunal also has had regard to the material referred to in the delegate's decision. The Tribunal also has before it the applicant's application for review and the material submitted to the Tribunal by the applicant in support of that application.

In his application for protection visa the applicant states that he was born in Nigeria and belongs to the ethnic group Ibo. He states that his religion is Christian. He indicates that he has never married and that he was a student in Nigeria before he came to Australia. He indicates that he attended high school and attended higher education and was expelled without completing his studies. He indicates that he arrived in Australia and entered Australia using a visitor visa and that he lost his Nigerian passport. He indicates that he left his country legally and did not have any difficulties obtaining his travel documents. He indicates that his parents and siblings still reside in Nigeria. He indicates that he travelled to Country A in before coming to Australia. He gives the addresses that he lived in Nigeria prior to his travel to Australia and indicates that he lived for a period of three years at the one address.

Attached to his application for protection visa are photocopies of documents described as a student identity card indicating that he graduated and a Massob membership card, undated.

In a statement attached to his application for protection the applicant gives a brief history of Biafra and Massob and states that his refugee claim is based on his political opinion. He states that he was a student when he joined Massob and gave his full support to that organisation. He states that he was a student leader and prefect and participated in public speaking and "preaching of self determination" and had no fears to do so but was being watched by Nigerian authorities. He states that he was appointed as an on campus recruitment agent for Massob and did his best to recruit members for the group; this was done underground. He was arrested when there was "a raid by Federal Agent netted ring leaders" and was expelled. He became aware that two fellow students arrested in the raid were found dead in police custody. He relocated to City A as he thought no one would know him there but he was watched and followed there, "perhaps by under cover Federal Police Agents". He was watched even though he went into hiding. He did not realise that his membership of/ identification with Massob was the reason that his studies and career came to nothing. He could not get a job in City A. He became a virtual recluse trying to change his life. Without employment his life became intolerable and he had to leave his country; "It became apparent that I had to leave my country, when it got to the point that I was required to renounce my membership of MASSOB or face the consequences of what was coming for me". He realised that he narrowly escaped the extra judicial killings, torture and arbitrary detention that others of his colleagues had encountered.

The applicant states that he became a member of Massob and was arrested several times attending Massob rallies. He states that he was beaten, hit in the head with a rifle and threatened with death if he did not give up his membership of Massob. He travelled from City A for a rally and police and SSS operatives raided those attending the rally and killed many people; he was arrested at a road block and taken to the police command where he was tortured. His people paid a bribe to have him released and he went to City B with the help of

Massob. He has continued to suffer from trauma and confusion in Australia. If he returns to his country he will be harmed/killed but Nigerian secret police. He did not “surrender” when he came to Australia because he was afraid. As a student recruitment agent for Massob he has been marked for extermination in Nigeria and two of his recruits were found dead and will have given his name to authorities. Massob is currently proscribed by the Nigerian government and most of its underground operatives are dead or in police custody; he is lucky to be alive. The authorities are waiting for those who are unlucky enough to be deported from foreign hideouts. He repeatedly suffered as a student leader before he joined Massob as a result of being treated as a second class citizen in his country. He was expelled from his studies (his HND) due to his political activism and involvement as a student recruitment agent for the now proscribed Massob. The Nigerian government wants to keep the Ibos downtrodden. They did not report what was happening to the police as the police waited for them to make a mistake and then they paid with their lives. The authorities of their country cannot/will not protect them; the current order from the Nigerian government is to shoot Massob members. He will fight until the Ibo people are no longer marginalised in Nigeria and until the State of Biafra is realised and he can vote.

In his application for review the applicant essentially repeats the claims made in his application for protection visa. He attaches to the application a further statement essentially repeating his claims including his claims that he was constantly watched/followed by Nigerian secret service agents in Nigeria because of his membership/association with Massob, that he is identified and wanted by the Nigerian government security because he advocates a separate State of Biafra, that authorities have discovered his student appointment as a recruitment agent for Massob, that tortured students and Massob members may have passed on information about him to authorities/police, that he has spoken out about the cause of the Ibo people and his personal experience as an Ibo man, having regard to the attacks on himself, his family and other Ibo people, is one of persecution, that he has been refused the opportunity to finish his education and obtain a career and that he knows that two of five students arrested by police on campus have been found dead in custody and they would have revealed details about him before their deaths. The applicant states that he will be harmed if he returns to his country as state security want him to answer questions about his recruitment of Massob members and his fund raising activities for that group; his colleagues have died in police custody. He states that he was able to depart from Nigeria as he departed from City B many kilometres from his home state, put money in his passport, Nigerian police do not have radio communication links and faces cannot be checked and there is not a strong data base to record national activities links. The applicant refers to country information including a report referring to an incident. He also attaches copies of cards described as his student identity card and Massob membership identity card and a document about Massob casualties during a certain period of time. The latter document lists casualties under a heading “[date]” but refers to events near City C on a different date.

The Tribunal received a further statement from the applicant in support of his claims. He notes that his claims include that he was denied an opportunity to obtain a career in Nigeria as he could not complete his diploma at the education facility which is controlled by the Federal Government in Nigeria who were prepared to destroy Massob members on campus. He also states that his claims include that he participated, underground, in Massob as a student recruitment officer during his studies; his leadership role included becoming a student official representative member of the Executive Committee before he was expelled. He claims that he held a position and his picture was published in an edition/page of a planner of the education facility. He states that he was denied the opportunity to complete his studies “as

I was discovered to be a student recruitment agent for Massob, a proscribed self determination organisation of my Ibo race”. He attaches a copy of the document he refers to and three photographs described as taken at his matriculation. He also attached a document he describes as his Massob delegate card and invitation to attend Massob National Day fellowship. He states that he was one of a number of students summoned to the office but as he was suspicious he went into hiding. A number of students were handed over to the Federal Police and his name was given and this led to his expulsion from the institution; for this reason he will be persecuted by the Nigerian authorities if he returns to his country. It is not safe for him to return to Nigeria without renouncing his fight for his people; the spiritual leader of Massob continues to be held by the Nigerian government without trial. Some students who attended at the office were found dead and he has been informed that one of them gave his name to the police as the Massob leader responsible for Massob human resources on the campus. He will be killed if he returns.

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from his witness, whose name is recorded on the Tribunal file.

In answer to questions from the Tribunal the applicant stated that he did not have his passport. For safekeeping he gave his passport to a friend, whom he had known for about a week after meeting him in Australia. The Tribunal asked him why he would give his passport to someone he had only known for a week. He said that the person knew he had no one and wanted to help him. The applicant said that his passport was issued in his state and he travelled to Australia using this passport. His visa was obtained when he was having problems; he was in hiding and he gave his passport to his friend. He did this in a year after its issue but he did not have his passport with him at the time of the incident. His friend later returned his passport to him a day before his departure.

The applicant gave the Tribunal his student card. The Tribunal notes that a photocopy of this card is on the Tribunal file. The applicant told the Tribunal that he graduated and then he enrolled for the higher diploma straight afterwards, in the same institution. He was expelled from the institution the following year.

The applicant said that he did not have any difficulties getting his passport and does not know whether there was trouble getting his visa. He said that he had his passport before the trouble started for him. He said that he paid a bribe to leave the country; he put money in between the pages of his passport. He had travelled outside of Nigeria before in connection with his studies to different geographical regions; he went to a province across the border for a day and needed his passport and he also went to South Africa in transit on the way to Australia.

The applicant told the Tribunal that he got to Australia and he made his application for protection. He did not know anyone in Australia; his Massob members decided he should come to Australia; he was just a student.

The applicant told the Tribunal that when he was in his country he lived in his hometown which he named and then he went to another state which he named for his schooling. After this he was “on the run”; he went to City A, when he had problems “at school”. He said that he lived there in City A at an address which he gave the Tribunal until he came to Australia. He said however that he went to a “little hamlet” when he was released after the incident. He said that he left his things at the City A address but went to an address which cannot be identified to hide after the incident. The Tribunal asked the applicant whether he had

problems before the incident. The applicant said that he had problems at school first and that is why he moved to City A. The Tribunal asked him how it was that he managed to stay living in his country until the following year. The applicant said that he was detained for roughly three weeks until he was released. He then went into hiding on a farm which was far away from where the incident happened; the farm has no address; it was not really a farm just a shelter. The Massob brought food to him for a year. He did not have any trouble after the incident until he left his country to come to Australia as he kept out of sight. The Tribunal told the applicant that it was of some concern that he could not provide more details about where and how he was living for over a year before he came to Australia and it invited the applicant to provide further details about this. He said he stayed in a farm to save his life; he said "it is bushland, a shelter with grasses.

The Tribunal asked the applicant whether he had ever worked in his country. He said that his family took care of him when he was at school and the Massob gave him food. The applicant told the Tribunal that his family is living in Nigeria; his father is retired. His parents are living in the family home in his home state and his siblings are also living in his home state.

The Tribunal asked the applicant why he did not make his application for protection sooner than he did after arriving in Australia. He said that he was traumatised when he came to Australia and was taken from the cue when he arrived and searched; he was released but there was no one to counsel him. His head was still full of what happened in Nigeria. He did not remember he had to seek protection. He was not detained in Australia but he was fearful. The Tribunal asked the applicant whether he knew he could seek protection in Australia. The applicant said that he came here to seek protection and save his life but he was not directed here. He said that he came to Australia with a visa and then was without a visa and did not know what to do. He was then counselled and told what to do. The Tribunal told the applicant that it was of some concern that he did not make his application for protection for such a long period after he arrived. The applicant said that he was surviving with the help of friends and the church and it was only when he "opened up" when he got this help that he went to see a migration agent.

The Tribunal asked the applicant when the trouble started that caused him to leave his country. The applicant said that he was a member of Massob which is a peaceful organisation and he referred the Tribunal to the fact that he held Massob card and has the original of that card. He said that he moved to the city when he had trouble and then he next had trouble when he went to City C. The Tribunal asked him what happened to him at his school. The applicant said that "they were after Massob". People came and investigated at the campus/school which was in the village. He moved to City A because the students knew about his involvement with Massob and he was afraid that involvement would be discovered. He was a recruiting officer with Massod. Those who came to the campus fired and scared the students and he ran away because he was scared and thought something might happen to him. He used his last money to get a bus to City A. The Tribunal asked him how he survived financially in City A. He said that he had help from people in the villages as Massob members helped students. The Tribunal asked him what he did in City A. The applicant said that he waited for information and went to stay with friends who directed him. He slept at a house before he went to the address which he had earlier given the Tribunal. The Tribunal asked the applicant what happened to him when he went to City A. He said that he felt nothing was going on in his life and he could not continue his education. He said that he applied for a job in City A but his ID was sought. The Tribunal asked him why he would

apply for a job if he was afraid of harm as he claims. The applicant said if they asked for ID he gave up. He decided to go to the rally as it was peaceful and he thought he would not be identified.

The Tribunal asked the applicant about the role he had with Massob. He said that he joined in the early 2000s and was a student recruiting officer. He saw there were no jobs and how people were treated. Massob was non violent and was just to express views. There was a rally in City C. Police were attacking Massob when he arrived. There were roadblocks and cars were being searched. The Tribunal asked him why he would go to such a rally. He said that he went to the rally as he felt he could participate and it was away from his campus and where he lived. He felt his involvement could help and was needed and he was useless where he was. The Tribunal told the applicant that the information sent by him in support of his claims indicates there was a rally on a specified date. He said he was not in that rally and the rally he was in was not the same rally. The Tribunal asked the adviser whether there was any information available about the rally of the earlier date. He said that it may not have made the country information as it may not have been so newsworthy. The applicant said that when he was arrested he was taken to City C police station and was there for a number of weeks. He was released because his parents in collaboration with Massob paid a bribe. He was tortured and beaten and was released with those who were injured.

The applicant said that after he was released he went to the farm and did not come out from there. The Tribunal pointed out that he did in fact come out after that and in fact he left his country through an international airport. He said that he was taken by car. He said that the students went back to school and information about him was released.

The Tribunal asked the applicant whether he has joined any group to support his cause in Australia. He said that he has not done so because people are still looking after him and he only has his one friend. He said that he wants to continue studying.

The applicant told the Tribunal that he got the Massob Convention card from Nigeria two months ago. He said that he has given the Tribunal the photographs to show his educational background. The document sent to the Tribunal entitled, "Movement for the Actualisation of the Sovereign State of Biafra" was first produced when he sent it to the Tribunal; his father sent him this document because when the Tribunal asked if he had more documents he arranged for it to be sent.

The Tribunal asked applicant what was the main reason that he left his country. He said that he was arrested/tortured and could not finish his education. The Tribunal asked him why he did not leave earlier given that he had his passport for a number of years. The applicant said that he relocated and he was unsure; he thought he might be readmitted. The Tribunal asked him why he did not leave earlier if things were so bad. The applicant said "arrangements had to be made".

The Tribunal told the applicant that its main concerns were the lack of details about how he survived and where he lived from the incident until he left his country to come to Australia and the long delay between when he arrived in Australia and when he made his application for protection. The applicant said that after the incident he was looked after by Massob and they provided him with his food. The applicant said that as regards his application for protection he was traumatised when he arrived and was sad that his friends had died; he saw

himself as a dead person. It took him a lot of time because he was traumatised and out of his conscience.

The Tribunal asked the applicant about his witness. He said that he met this person at church earlier last year.

The applicant's witness explained that he obtained a protection visa last year from the department. He said that he himself is Nigerian and a Massob member and he briefly explained his own situation in his country. He said that he did not know the applicant in Nigeria and that they met at a church. He said that the applicant arrived in Australia before he did; he himself arrived in Australia the following year. He was told that the applicant needed a witness about the general situation in Nigeria.

The witness said that the applicant told him he was a member of Massob and that he organised groups and functions. He told the witness that he was arrested for two to three weeks in Nigeria, and about bribery and that it happened a long time ago. The witness said that he did not remember anything about the dates of the incidents that the applicant talked about. The applicant told him about his school. The witness said that he knows the applicant is a Massob; he has a Massob T shirt in Australia. The witness said that a lot of people his age are Massob members in Nigeria but it is a secret society. The Tribunal asked the witness a few times when the applicant first told him he was/is a Massob and about his problems in Nigeria. The witness then said that the applicant first told him he was a Massob member when they first met a year ago and that he had been arrested. The witness said that he did not tell him about the incidents and if he did he (the witness) cannot remember. The witness said that it is not easy for a Massob in Nigeria and he (the applicant) would have been arrested if he was still there. The Massob leader was detained. The witness said that they are trying to organise something in Australia to support Massob but it has not been organised yet and he has told the applicant that when it is organised he will be a member.

The adviser submitted to the Tribunal that if there were to be a Massob organisation here it would have to be underground because "they could not go back". He told the Tribunal that nothing is set up in Australia. The Massob leader is still imprisoned in Nigeria and this shows that the position is not safe.

The adviser submitted that the applicant's delay in making his application for protection was because he was affected by the death of two recruits and traumatised when he came into the country. He had no counselling and was traumatised in police custody. When he was free in Australia he was still affected and it was after he met his friend at the church that he came out of himself and came to see him (the adviser) with his problems. The applicant asked the Tribunal to give the applicant an opportunity to address its concerns and the Tribunal asked the applicant if there was anything further that he wanted to say, including about the Tribunal's concerns which had been mentioned during the hearing.

The applicant concluded that he cannot go back to school because other students were killed. He will still have a problem in his country because Massob members are tortured. If he returns "hidden things will still come out". Also he got out of detention there and if he shows his ID he will be persecuted. He told the Tribunal that he has his Massob membership card at home; the Tribunal noted that a copy is on the Tribunal file.

FINDINGS AND REASONS

The Tribunal finds that the applicant has made a valid application for review under section 412 of the Act and that the Tribunal has jurisdiction to review the delegate's decision under para.411(1)(c) of the Act.

Essentially the applicant claims that he left Nigeria and cannot return there because he feared/fears harm from authorities/police due to the fact that he was/is a member of the proscribed organization, Massob, and was involved in Massob activities, including as a recruitment officer for that group. He says that fellow students/members of Massob/Massob recruits have given his name to police/authorities. He claims that he was constantly watched and followed by Nigerian secret service agents because they thought Massob activities were subversive. He also refers to his Ibo ethnicity and the fact that Ibo people are marginalized downtrodden and oppressed in Nigeria; he claims he will suffer harm in his country because he has spoken out in support of the cause of the Ibo people. He refers once in his statement to the Tribunal to attacks on his family. The applicant claims that he was threatened, detained and ill treated in his country by authorities and was expelled from his school/learning institution, and deprived of the opportunity to get an education and a career, because of his Massob membership and activities and because his name was given to police/authorities. The applicant claims that he fled from his home village and school because of his fear of harm and went to City A, to live. He claims however following his attendance at a political rally at City C he was arrested for two to three weeks and was released when he was included and picked up with those who were injured. He claims to fear harm if he returns also because "I got out of detention there". The applicant claims that he was in hiding in his country after he got out of detention, until he left his country to come to Australia. The applicant claims that he cannot get protection against the harm that he fears in Nigeria.

The Tribunal accepts that: "applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule." The Tribunal also accepts that: "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt". (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para. 196). However, the Handbook also states (at para 203): "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts".

It is for the Tribunal not only to consider inconsistencies but also to determine what evidence it finds credible (Nicholson J. in *Chen Xin He v MIEA*, 23 November, 1995 (unreported) at p.11). The Tribunal does not have to accept uncritically all statements and allegations made by an applicant. (Beaumont J in *Randhawa v MIEA*, 124 ALR 265 at p.278). "The mere fact that a person claims fear of persecution for reasons of political opinion does not establish either the genuineness of the asserted fear or that it is well-founded or that it is for reasons of political opinion.[it is] for the Applicant to persuade the reviewing decision-maker that all of the statutory elements are made out." (*MIEA v Guo and Anor* (1997) 144ALR 567 at 596).

The Tribunal accepts from the independent country information before it, including some of the information submitted to the Tribunal by the applicant and the material referred to by the delegate, that the leader of Massob was arrested by authorities in Nigeria and that there is sometimes violence and human rights abuses by authorities in Nigeria against Massob

members and Ibo people. It accepts that protection is not available against the violence and abuse which sometimes occurs. Clearly however the Tribunal must determine whether the applicant before it has a genuine fear founded upon a real chance of persecution for a Convention reason if he returns to his country.

The applicant did not produce his passport to the Tribunal but there is nothing before the Tribunal to indicate that the applicant is not who he claims to be and a national of Nigeria. The Tribunal accepts and finds that the applicant is a citizen of Nigeria and is who he says he is. It accepts he is of Ibo ethnicity.

The Tribunal accepts from the applicant's oral evidence to it that he left his country and came to Australia and he made his application for protection.

The Tribunal does not accept as true that the applicant left Nigeria and fears to return there for the reasons that he claims, namely that he was harmed/threatened and detained by Nigerian authorities and feared/fears further harm from them because he is Massob and Ibo and has spoken out in support of the cause of the Ibo people and advocated a separate state of Biafra. In the Tribunal's view these claims have been invented by the applicant to assist his application for protection.

The Tribunal accepts the applicant's oral evidence to it that he lived in his hometown and then he went to another state which he named for his schooling. It accepts that he obtained the schooling/education that he claims. It accepts that he matriculated; this is written on the back of the three photographs that he gave to the Tribunal. It accepts that he then did further studies in Nigeria. It accepts that he went to City A. The Tribunal finds that he lived in City A at the address which he gave the Tribunal until he came to Australia.

The Tribunal does not accept as true that the applicant left his home state/his school for the reasons that he claims, nor that he was arrested/detained and mistreated as he claims, nor that police/ authorities have his name, nor that he was in hiding as he claims in his country, for the reasons that he claims, before he came to Australia. It follows that the Tribunal does not accept that the applicant got out of detention because he was let out/picked up with those who were injured. The Tribunal finds that the applicant has given untrue evidence about these claims to assist his application for protection. He could give the Tribunal little detail of where and how he was living and how he survived in his country during this lengthy period; the Tribunal does not find it plausible that he lived in hiding in a little hamlet/a grass shelter for over a year prior to leaving his country and that Massob members brought him food for that time.

The Tribunal also finds that the applicant has not reasonably explained how, if he was of such interest to authorities as he claims, and if his name was with police/authorities, and if he was watched by secret service agents as he also claims, he was able to travel to and through an international airport in his country and leave there using a passport in his own name; this was his oral evidence to the Tribunal. The Tribunal does not accept as true that he was able to do this for the reasons he claims including that he left through City B and put money in his passport when he left the country.

The Tribunal does not consider that it is consistent with the applicant's claims, namely that he came to Australia because he was persecuted in his country and feared further persecution there, that he did not apply for protection for a long period after arriving in Australia; this was his oral evidence to the Tribunal. He told the Tribunal that he came to Australia with a visa

and then was in Australia without a visa and did not know what to do. Given the time that passed before he made his application after his arrival in Australia the Tribunal does not accept that his explanation for this, namely he was so traumatised by the death of friends and afraid because he had been taken from the cue when he entered Australia, is reasonable or plausible.

The Tribunal does not accept as true that the applicant could not complete his education in his country because he was Ibo, supported the Ibo cause, was/is a Massob member and was involved in Massob activities; it is clear that he was afforded the opportunity to study up to his matriculation and then for several more years although he claims that he joined Massob later. The Tribunal does not accept as true that he had trouble and was expelled from his school at that time because he was/is a Massob member and involved in Massob activities and that he relocated to City A for that reason.

The Tribunal does not accept that the evidence of the applicant's witness assists him; the witness did not know the applicant in Nigeria and only met the applicant in Australia. The applicant's oral evidence to the Tribunal was that they met earlier last year. The witness told the Tribunal that he was told that the applicant needed a witness in relation to the general situation in Nigeria. Apart from general evidence about his own experiences in Nigeria and the general situation there, the witness could only repeat to the Tribunal what the applicant had told him. The witness told the Tribunal that the applicant had said that he was/is Massob and had been detained but the witness could not remember any details of the incidents that the applicant claimed occurred; he told the Tribunal that the applicant did not tell him about the incidents and if he did he (the witness) cannot remember.

The Tribunal considered the documents produced by the applicant to support his claims that he is Massob. The Tribunal accepts that the copy of the Massob membership card submitted by the applicant in support of his claims is a copy of a document/card which the applicant has at his home. The Tribunal notes that applicant told the Tribunal that the document entitled, "Movement for the Actualisation of the Sovereign State of Biafra" was first produced when he sent it to the Tribunal, that is after his application for protection was refused by the delegate; his father sent him this document because when the Tribunal asked if he had more documents he arranged for it to be sent. The applicant also told the Tribunal that he got the Massob Convention card from Nigeria two months ago; after the decision was made against him he remembered that he had this card. Because the Tribunal does not consider that the applicant is a truthful witness it does not consider that these documents produced by the applicant to support his claims, including his Massob membership card, are reliable evidence of the facts in those documents; It does not accept as true that the applicant is a Massob member and was involved in the Massob activities that he claims.

There was a reference by the applicant in a statement to the Tribunal about attacks on the applicant's family but there is no plausible evidence before the Tribunal to support this claim; the applicant told the Tribunal that his parents are still living in the family home in his home state and his siblings also live in his home state in his country.

The Tribunal does not consider that the situation in Nigeria will be any different for the applicant than it was previously if he returns there and it finds accordingly. The Tribunal finds that applicant lived and studied in Nigeria for many years prior to coming to Australia. In the Tribunal's view there is no plausible evidence before it that the applicant has suffered, or will suffer in the reasonably foreseeable future, persecution in his country from authorities there,

because of his political opinion/imputed political opinion, because he is a member of a particular social group, because of his ethnicity or for any other Convention reason. In the Tribunal's view the evidence does not establish that there is a real chance that the applicant will suffer persecution for a Convention reason either now or in the reasonably foreseeable future if he returns to his country.

Having regard to the above the Tribunal is not satisfied, on the evidence presently before it, that the applicant has a well-founded fear of persecution in Nigeria within the meaning of the Convention.

CONCLUSIONS

Having considered the evidence as a whole, 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 para.36(2)(a) for a protection visa.

DECISION

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