1310891 [2013] RRTA 670 (19 September 2013)

DECISION RECORD

RRT CASE NUMBER:	1310891
DIAC REFERENCE(S):	CLF2013/51352
COUNTRY OF REFERENCE:	Ghana
TRIBUNAL MEMBER:	Giles Short
DATE:	19 September 2013
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

INTRODUCTION

1. [The applicant] is a citizen of Ghana. He claims that he left Ghana in 1989 because he was fearful for his life. He claims that people from his village want to kill him because he refused to give up his religion as a devout Catholic to become the chief of his village. His application for a protection visa was refused by a delegate of the Minister and he has applied to this Tribunal for review of that decision. A summary of the relevant law is set out at Attachment A. The issues in this review are whether [the applicant] has a well-founded fear of being persecuted for one or more of the five reasons set out in the Refugees Convention in Ghana and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to Ghana, there is a real risk that he will suffer significant harm.

CONSIDERATION OF CLAIMS AND EVIDENCE

Does [the applicant] have a well-founded fear of being persecuted for one or more of the five reasons set out in the Refugees Convention in Ghana?

[The applicant]'s claims

2. [The applicant] is aged in his early [age]. He has said that his ancestral [village] is about 60 miles from the city of Kumasi, but that he did not live there. He has said that he was born and grew up in the city of Kumasi although he attended primary school in [a town], to the south of Kumasi. He explained at the hearing before me that his father had been working in [that town] at the time while his mother had been in Kumasi. After finishing school he worked in [a] company in Kumasi and as an '[occupation]' before going to [another country] where he worked [in an occupation] in [city] from 1983 to 1987. He has said that after he returned to Ghana he worked as [a tradesman] in Kumasi from 1987 until 1989.

3. [The applicant] has said that in [1988] the chief of his village died. He has said that the chief was [a relative] on his mother's side and that, as is common in Ghana, the chieftaincy passed by matrilineal descent. [Information on siblings]. He has said that the kingmakers therefore wanted him to become the chief.

4. [The applicant] has said that he told the elders and kingmakers that he was happy to accept the position but that he would not give up his religion as a Catholic. He has said that he was told that if he accepted the position he would have to worship the Gods of the Stool. At the Departmental interview he said that if he had become the chief he would have had to go to the bush every three months to sacrifice a sheep or a goat and to offer prayers for the ancestors and that he had viewed this as serving another idol or god.

5. [The applicant] has said that the elders gave him three days to think about it and told him that if he still refused he would be eliminated to enable another person to take up the position. He has said that they told him that no one else could be appointed to the position as long as he was alive. At the Departmental interview he said that when he had stated that if he had refused he would have been 'eliminated' he had meant that he would have been kicked out of the village. However he also said that he had been threatened that they would pray to their gods to kill him. He added that sometimes they would do it physically too by which he said he meant that sometimes they might kill the person.

6. [The applicant] has said that on the third day he was kidnapped from his home in Kumasi and taken to his village where he was detained in a small room and beaten very badly. He has said that they threatened to kill him but that he escaped with the assistance of his [brother] who paid a bribe to the guards. He has said that he heard that the guard who had been held to be responsible for his escape had subsequently been killed. He has said that after his escape he went to the next village where he made a complaint to the police. He has said that the police told him that this was a 'village-tribal matter' and that he had to leave immediately before people discovered that he was hiding there. He has said that the police told him that they were afraid to assist him.

7. [The applicant] has said that he caught a bus to Kumasi where he stayed with a friend for two or three days. He has said that during this time all his equipment and tools at his workshop in Kumasi were destroyed and that his workshop was later burnt. He has said that his [brother]'s car was also set on fire because his [brother] had assisted him in his escape. [The applicant] has said that he then caught a bus to the capital, Accra. He said at the hearing before me that there were many bus stations in Kumasi.

8. [The applicant] has said that he stayed in Accra for only about ten days to two weeks. He said at the hearing before me that he had stayed with a friend. He has said that while he was in Accra he met people from his village by accident and that they insulted him saying that he had disgraced his clan He has said that he then decided to flee Ghana because he believed that he would not be safe anywhere in the country.

9. In his original application [the applicant] said (in answer to question 51 on Part C of the application form) that he had crossed the border from Ghana to Ivory Coast by road at Dormaa. At the hearing before me he initially said that he had taken a government transport bus along the coast from Accra to Abidjan on the Trans-West African Highway. However when I put to him that he had said in his original application that he had crossed the border at Dormaa he said that he had gone along the coast as far as Axim and then he had travelled north. He said that along the coast there was a big river and there was no bridge over this river. He said that the highway ended at Axim. I put to him that it appeared from the map that if he had crossed the border at Dormaa he would have gone through Kumasi. [The applicant] said that they had passed through a town called Enchi and had then travelled north.

10. [The applicant] has said that he stayed in Abidjan for a few days because he was waiting for his wife to bring him some money from Ghana. He has said that from Abidjan he had to go north to avoid the civil war in Liberia and that after he crossed the border into Guinea he spent around three days in Nzerekore before catching another bus to the capital, Conakry. He has said that he spent about two months in Conakry where he once again met people from his village who insulted him and said that he had betrayed his clan by refusing to take up the position of chief. He has said that he flew to [Country 1] using a [passport] belonging to a friend and that he applied for asylum in [Country 1].

11. In a submission to the Department dated 22 April 2013 [the applicant]'s representatives said that they were instructed that he had not disclosed the issues he had had in Ghana when applying for asylum in [Country 1] and that he had instead claimed protection on the basis of political opinion. At the hearing before me [the applicant] confirmed that this was correct. He said that he had told his story to a woman who spoke English at the airport but she had told him that if he wanted to stay in [Country 1] 'it should be something against the government'. He said that at that time Ghana had been under military rule so he had written that he had campaigned against the government. He said that he had not in fact campaigned

against the government but some of the Catholic priests had preached about what the government had been doing so he had written the same thing in his application to [that country's] authorities.

12. [The applicant] has said that he left [Country 1] and came to Australia as a student in September 1994. In a submission to the Tribunal dated 16 September 2013 his representatives said that he had left [Country 1] before his application for asylum had been decided as he had not been hopeful of being granted a permanent visa in that country. At the Departmental interview [the applicant] said that that he had not been able to study in [Country 1] because of the language barrier and that the fees had been too high in [certain other countries] when compared to Australia. At the hearing before me he said that he had not been allowed to work in [Country 1] After I put to him that he had said in his original application that he had worked for [a business] in [Country 1] from 1990 to 1994 he said that he had been able to do this because a friend who was a citizen in [Country 1] had given him his papers. He confirmed that he claimed that he had been working illegally using someone else's identity.

13. At the hearing before me [the applicant] said that he had completed two years of a three year [course] in Australia. In his original application he said that he had worked as a [occupation] in Australia from 1997 until 2010 and that he had been [unemployed] after that. He said that he had been in gaol or in immigration detention since March 2011. [Information on criminal offences]. He said that he had applied unsuccessfully for a spouse visa in 1997 and he said that he had an Australian citizen son, born in [year], although he said in the statement accompanying his original application that they were not in contact.

14. [The applicant] said in the statement accompanying his original application that his mother and the elders had told him that if he refused the position of chief it would go to another [clan], which was not acceptable as it would then take his [clan] many centuries to regain the chieftaincy. He said that, because of his actions or because he had not been killed, the chieftaincy had been handed to the other clan. However he and his representatives have since said that this is not correct and that in fact a caretaker chief was installed from his clan. At the hearing before me he said that if a chief rejected the chieftaincy the clan had to find somebody else, not from the same family, to be the caretaker of the chieftaincy because they did not want the chieftaincy to go to the other clan.

15. [The applicant] said in the statement accompanying his original application that after he had left Ghana his mother (who he said had died in 2001) had told him that the village members were still after him and were extremely angry with him because he had disgraced them. He said that he was regarded as having betrayed the villagers by refusing to take up the position of chief. He said that if he returned to Ghana the elders, kingmakers and villagers would find out and he could be tracked down anywhere in the country. He said that he was certain that he would be killed if he returned to Ghana.

16. At the hearing before me [the applicant] said that he would still not be safe if he returned to Ghana now. He said that some of the people in his village had died, especially the kingmakers, but the story was still there so if he returned to Ghana they would still chase him up. He said that they would try to eliminate the caretaker chief and put him there because he was the rightful person to be in that position and he had refused it. He said that the caretaker chief was just watching the stools and the gods and sacrificing goats and sheep to keep them going. He said that if he came back it would be like opening an old wound. They would take

the caretaker away because he was not the real chief. He said that they would force him back again until he died because the stool was still vacant.

17. Along with his original application [the applicant] produced a letter dated [March] 2013 from Pastor [A] of [a certain church] saying that he had known [the applicant] for ten years through [the applicant]'s involvement in his church, that [the applicant] constantly sought to be a godly man and that it would be in the public interest for him to remain in Australia (folio 5 of the Department's file CLF2013/51352). [The applicant] subsequently produced two character references from [Mr B] and [Ms C] (folios 162 and 163 of the Department's file CLF2013/51352). At the hearing before me [the applicant] indicated that Pastor [A] and [Mr [B] were his [relatives] and he said that they had both been in Australia before he had come here in 1994. [The applicant] also confirmed that, although he was a Catholic, he had been attending Pastor [A]'s [church] in Australia.

18. In their submission to the Department dated 22 April 2013 [the applicant]'s representatives referred to research responses prepared for the Tribunal which they submitted supported [the applicant]'s claims. However the research responses do not support his claim that he would be killed if he returned to Ghana because he did not take up the chieftaincy. [The applicant]'s representatives submitted that he feared persecution for reasons of his religion or his membership of two particular social groups, 'members of the [D]/[E] clan' (although [the applicant]'s statement suggested that the [E] clan was in fact the other clan to which the chieftaincy would go if he did not take it up and his representatives referred subsequently to the animosity between the [E] and [D] clans) and 'those elected for appointment of village chieftaincy' (although it must be obvious that, if [the applicant]'s claims were to be accepted, he fears being persecuted not for reasons of his membership of this group but for reasons of his refusal to take up the chieftaincy). They said that [the applicant] was taking a large amount of medication on a daily basis and they submitted that his physical and mental health should be taken into account.

19. In their submission to the Tribunal dated 16 September 2013 [the applicant]'s representatives submitted that he feared being persecuted for reasons of his religion as a Christian or his membership of a particular social group which they defined as 'those refusing village chieftaincy from the [D] clan' They referred again to his health issues which they submitted included [details deleted]. They requested that the Tribunal take into account the medication he was taking, his age and his 'current circumstances' in assessing his claims for protection.

20. [The applicant]'s representatives submitted that 'tribal warfare is a major problem in Ghana' and that '[t]aking lives in order to resolve tribal matters is not a rarity' They submitted that chieftaincy was strongly entrenched in Ghanaian society and they referred to evidence that chieftaincy disputes - which frequently resulted from a lack of clear succession, competing claims over lands and other natural resources, and internal rivalries and feuds - continued to result in deaths, injuries and destruction of property. They quoted selectively from a research response prepared for the Canadian Immigration and Refugee Board relating to the consequences for a Nigerian national from the Yoruba tribe refusing a chieftaincy title. They quoted the advice of an 'Advocate and Development Planner' who said that an individual could be forced to accept a chieftaincy title if the individual's parents nominated him or her before they died, that there were consequences for refusing a chieftaincy title and that at times this might lead to loss of life. [The applicant]'s representatives did not quote the advice from a Chief who was a former Commissioner of Local Government and Chieftaincy Affairs and from an Emeritus Professor of Anthropology and Sociology at the School of Oriental and African Studies at the University of London with detailed knowledge of the Yoruba speaking

area, both of whom said that there were presently no consequences for refusing a chieftaincy title.[1]

Discussion of the claims

21. At the hearing before me I asked [the applicant] why he had not applied for protection sooner if he had had the concerns he claimed to have about returning to Ghana. [The applicant] said that this had been his mistake. He said that after his student visa had expired he had gone to see a migration agent who he said had told him that he could not help him to apply for asylum and that he should apply for a spouse visa. He confirmed that this application had been rejected. I asked him why he had not applied for a protection visa after this application had been rejected. [The applicant] said that (as he had mentioned at the Departmental interview and as referred to in his representatives' submission to the Tribunal dated 16 September 2013) he had been scared because two friends of his who had applied unsuccessfully for refugee status had been detained and removed from Australia.

22. I noted that this suggested that these two people's claims had not been believed but it did not explain why he had not applied. [The applicant] said that he had not had any advice and that the migration agent to whom he had referred had not advised him very well. I noted that his two [relatives] had been in Australia so he had had people who would have been able to provide him with help and advice. I put to him that it was a little difficult to understand why he would not have applied for a protection visa after his application for a spouse visa had been rejected if he had fled Ghana in the circumstances he had claimed. [The applicant] said that he had been really scared or afraid. I put to him that this would have been a reason to put in an application rather than staying here unlawfully until he had eventually been convicted of criminal offences. [The applicant] agreed. He said subsequently that he had made a mistake by not raising these claims after his application for a spouse visa had been rejected. He said that he was asking me to temper justice with mercy and save his life.

23. I put to [the applicant] that the advice which the Tribunal, the Immigration and Refugee Board in Canada and the US Bureau of Citizenship and Immigration Services had consistently received was that the most that would happen to a person refusing a position as a chief was that they would be socially ostracised. They might not be able to go back to their village for a period so they might stay away for a few years until the issue blew over. I put to him that there was nothing to suggest that a person in this situation would be killed or physically punished because they chose not to become the chief. I put to him that, where disputes had arisen over chieftaincy, they had been the result of competing claims.[2]

---

[1] Immigration and Refugee Board of Canada, 'Nigeria: Consequences for a Yoruba individual who refuses a chieftaincy title; protection available to those who refuse', 13 November 2012, NGA103996.E.

[2] Dr Phil Bartle, a former academic at the University of Cape Coast in Ghana and an expert on Akan culture, 'Reply to: Request for information on the stool of the Kontihene amongst the Brong/Bono people of Brong Ahafo region', 6 May 2010; Australian Department of Foreign Affairs and Trade, Country Information Report No. 06/1, dated 6 January 2006, CX164415; Mr Joe Ghartey, former Attorney-General and Chief Justice of Ghana, 'Facsimile to RRT Country Research: Re: Chieftaincies and traditional practices', 12 November 1997; Dr Tom McCaskie, Centre of West African Studies, University of Birmingham, 'Facsimile to RRT Country Research', 14 October 1995; Professor Ivor Wilks, School of History, Northwestern University, Illinois, 'Facsimile to RRT Country Research', 12 January 1995; Immigration and Refugee Board of Canada, 'Ghana: Consequences of refusing a fetish priest or chieftaincy position, and whether there is state protection available', 16 August 2012, GHA104154.E; Immigration and Refugee Board of Canada, 'Ghana: Consequences of refusing to assume an inherited position of tribal or clan chief; state protection available to the individual (2004-2006)', 11 October 2006, GHA101613.E; Immigration and Refugee Board of Canada, 'Ghana: Succession traditions for the position of Krontihene in Abetifi Kwahu, Eastern Region, and consequences for refusing the position; names

24. [The applicant] said that he was not aware if this had changed recently but before it had been quite different. I noted that the advice to which I had referred went back over a long period, the earliest advice having been obtained in 1995. I put to him again that the advice from experts had always been the same. I put to him that this made it a little difficult to accept that there was a real chance that he would be harmed because he had refused to accept the chieftaincy. [The applicant] said that if he went to Ghana now it would be the same as when he had left. He said that the [D] clan would want to put him back there again as the chief and this would bring problems for him.

25. [The applicant]'s representative at the hearing said that they relied on their written submission. He submitted that the country information referred to in that submission supported [the applicant]'s claims with regard to the situation of people refusing to take up the leadership of a village or a tribe. He submitted that the country information stated that, given the strict traditions in Ghana within the villages and the tribes, [the applicant] would be in danger of being chased by the local villagers as a result of his refusal to accept the leader's position if he returned to Ghana. He submitted that [the applicant]'s medical problems would make relocating a harder option for him and he also asked that [the applicant]'s age be taken into account.

Conclusions

26. In assessing [the applicant]'s credibility I have taken into account his age, his medical problems and the lapse of time since the relevant events occurred. I have not placed weight on inconsistencies in his evidence or his inability to recall events clearly or in detail. However, as I put to him, I consider it relevant that he did not apply for a protection visa until after he had been in Australia for many years and after he had been convicted of criminal offences. Even accepting that, as he claimed at the hearing before me, he was advised that he should apply for a spouse visa after his student visa expired, he could still have applied for a protection visa after his application for a spouse visa had been refused.

27. As referred to above, [the applicant] said that he had not had any advice and that the migration agent to whom he had referred had not advised him very well. However, as I noted, his two [relatives] were in Australia so he had people who would have been able to provide him with help and advice. He was better placed than many other applicants in that he was able to speak English and he was aware of the option of seeking Australia's protection, having already applied for asylum in [Country 1] before coming to this country. As I put to him, I find it difficult to accept that he would not have applied for a protection visa after his application for a spouse visa had been rejected if he had fled Ghana in the circumstances he has claimed. I consider that his delay in applying for a protection visa is relevant in assessing the genuineness, or at least the depth, of his claimed fear of being persecuted.[3]

28. More importantly, as I likewise put to [the applicant] in the course of the hearing before me, I do not consider that his claims are consistent with my understanding of the situation in his country of nationality. [The applicant]'s representative at the hearing referred to their written submission which he submitted supported [the applicant]'s claims with regard to the situation of people refusing to take up the chieftaincy of a village in Ghana. As mentioned above, [the

---

of current and past holders of the position', 1 November 2002, GHA39781.E; United States Bureau of Citizenship and Immigration Services, 'Ghana: Information on the "Queen Mother" Tradition among the Kwahu People of Ghana', 18 October 1999, GHA00001.ZAR; US State Department, *Country Reports on Human Rights Practices for 2012* in relation to Ghana, Section 6, Other Societal Violence of Discrimination.

[3] See *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) 34 ALD 347.

applicant]'s representatives referred in their submission to the Department dated 22 April 2013 to research responses prepared for the Tribunal which they submitted supported [the applicant]'s claims. However the research responses do not support his claim that he will be killed if he returns to Ghana because he did not take up the chieftaincy. The passages which they specifically quoted from the research responses refer to the difficulties which Christians face in reconciling traditional practices with their Christian beliefs but the research responses they quoted noted that the sources they referenced did not suggest there were negative consequences where Christians refused to undertake some traditional rituals.[4]

29. As [the applicant]'s representatives noted, one of the research responses quotes from a press report claiming that there had been an attempt to abduct a failed parliamentary candidate from his office in the Tema Port area of Accra in 2006 because they wanted him to be the chief of the Teshie Traditional area.[5] Without knowing more about the circumstances of the particular case it is difficult to put weight on this report as indicating anything about the likelihood of the use of force where someone is reluctant to take up the position of a chief in Ghana. As I put to [the applicant], the advice which the Tribunal, the Immigration and Refugee Board in Canada and the US Bureau of Citizenship and Immigration Services have consistently received is that the most that will happen to a person refusing a position as a chief is that they would be socially ostracised. They may not be able to go back to their village for a period so they may stay away for a few years until the issue blows over but there is nothing to suggest that a person in this situation will be killed or physically punished because they choose not to become the chief.[6]

30. In their submission to the Tribunal dated 16 September 2013 [the applicant]'s representatives quoted a passage from the UK Home Office *Operational Guidance Note* in relation to Ghana (January 2013) relating to chieftaincy disputes which refers to information drawn from the US State Department *Country Reports on Human Rights Practices for 2011* in relation to Ghana and they also quoted the similar passage which appeared in the US State Department *Country Reports on Human Rights Practices for 2012* in relation to Ghana. As I indicated to [the applicant], I accept that, as indicated in the US State Department report, chieftaincy disputes - which frequently result from a lack of clear succession, competing claims over lands and other natural resources, and internal rivalries and feuds - continue to result in deaths, injuries and destruction of property in Ghana. However [the applicant] has not claimed that he fears persecution in the context of a chieftaincy dispute involving competing claims: he has claimed that he fears persecution by people from his village as a result of his refusal to take up the chieftaincy of his village.

31. [The applicant]'s representatives also quoted from a research response prepared for the Canadian Immigration and Refugee Board relating to the consequences for a Nigerian national from the Yoruba tribe refusing a chieftaincy title. However, as referred to above, they only quoted the advice of an 'Advocate and Development Planner' who said that an individual could be forced to accept a chieftaincy title if the individual's parents nominated him or her before they died, that there were consequences for refusing a chieftaincy title and

---

[4] RRT Research Response GHA35054, dated 3 August 2009, referencing Naomi Wellings, 'Ghana: Between custom and Christianity', *BBC News*, 4 August 2006, CX158732, and Janine M Ubink, *In the Land of the Chiefs: Customary Law, Land Conflicts, and the Role of the State in Peri-Urban Ghana*, Leiden University website, 26 February 2008, pages 154-157; RRT Research Response GHA36430, dated 15 April 2010, referencing the same report by Naomi Wellings.

[5] RRT Research Response GHA35054, dated 3 August 2009, referencing Joseph Coomson, 'Ghana: Parliamentary Aspirant's Flight From Traditionalists End in Violence', *Ghanaian Chronicle*, 27 January 2006.

[6] See the sources cited in footnote 2 above.

that at times this might lead to loss of life. They did not quote the advice from a Chief who was a former Commissioner of Local Government and Chieftaincy Affairs and from an Emeritus Professor of Anthropology and Sociology at the School of Oriental and African Studies at the University of London with detailed knowledge of the Yoruba speaking area, both of whom said that there were presently no consequences for refusing a chieftaincy title.[7]

32. In the course of the hearing before me [the applicant] said that he was not aware if this had changed recently but before it had been quite different. However, as I noted, the advice to which I have referred goes back over a long period, the earliest advice having been obtained by the Tribunal in 1995. I accept that, as referred to by one of the experts consulted, in ancient, pre-colonial times, a person refusing to become a chief might have been murdered but even in those days this would have been an optional choice and not automatic.[8] However the experts consulted by this Tribunal, the Immigration and Refugee Board in Canada and the US Bureau of Citizenship and Immigration Services have consistently advised that in modern times people will not be forced to become chiefs against their will.

33. Professor Wilks advised the Tribunal in 1995 that a person was very unlikely to be made chief against their will, that the kingmakers always searched for someone who was willing and able to serve and that it was against their interests to choose a reluctant chief. He advised that to remove a chief by murder would be totally against custom.[9] Dr Tom McCaskie likewise advised the Tribunal in 1995 that there was no problem if an individual refused to assume a chieftainship.[10] Mr Joe Ghartey advised the Tribunal in 1997 that traditional leaders still exerted social pressure on people of royal descent to take up chieftaincy but they could not compel them by physical means. He referred to psychological pressure being applied since believers in traditional religion believed that to refuse to be a chief was against the will of god.[11]

34. The US Bureau of Citizenship and Immigration Services consulted four academic experts in 1999 and was told that they did not know of any instances of an individual being harmed for refusing to take up the position of queen mother or chief. The experts said that in the known rare cases where violence had flared it had been as a result of a dispute over the succession.[12] The Canadian Immigration and Refugee Board consulted three academic experts in 2002. One had not heard of 'forced enstoolment' while another said that it had been more common in the past but more recently it rarely happened and that one could always either unseat oneself or turn down the offer. The third expert said that nowadays the elders depended mainly upon loyalty and the sense of duty of the chosen one and that he would be surprised if

---

[7] Immigration and Refugee Board of Canada, 'Nigeria: Consequences for a Yoruba individual who refuses a chieftaincy title; protection available to those who refuse', 13 November 2012, NGA103996.E.

[8] Advice provided by a former senior lecturer at the University of Cape Coast, Ghana, quoted in Immigration and Refugee Board of Canada, 'Ghana: Succession traditions for the position of Krontihene in Abetifi Kwahu, Eastern Region, and consequences for refusing the position; names of current and past holders of the position', 1 November 2002, GHA39781.E.

[9] Professor Ivor Wilks, School of History, Northwestern University, Illinois, 'Facsimile to RRT Country Research', 12 January 1995.

[10] Dr Tom McCaskie, Centre of West African Studies, University of Birmingham, 'Facsimile to RRT Country Research', 14 October 1995.

[11] Mr Joe Ghartey, former Attorney-General and Chief Justice of Ghana, 'Facsimile to RRT Country Research: Re: Chieftaincies and traditional practices', 12 November 1997.

[12] United States Bureau of Citizenship and Immigration Services, 'Ghana: Information on the "Queen Mother" Tradition among the Kwahu People of Ghana', 18 October 1999, GHA00001.ZAR.

refusal to accept a proffered stool would be sufficient reason to say that a person's life was in danger.[13]

35. The Australian Department of Foreign Affairs and Trade advised in January 2006 that nothing would happen to a person refusing to become a queen mother. It said that her family might be disappointed but there would be no sanctions against her and that queen mothers could abdicate without punishment.[14] The Canadian Immigration and Refugee Board consulted two academic experts in 2006, one of whom advised that the usual method for a person who did not want to accept a proffered office was to travel so as to avoid the possibility of being offered the position and that there was no practice of punishing people for running away or refusing an office. The other expert said that a person refusing such a position without a good (that is community acceptable) reason might be socially ostracised (because they would be putting their kin group and community at a disadvantage) and that (even if they were Christian) they might fear that their decision would have spiritual implications.[15]

36. Dr Phil Bartle advised the Tribunal in 2010 that a person refusing a stool would do so by running away and staying away for a few years until the issue blew over. He said that such a person would get scorn but no physical punishment.[16] Finally, in 2012 the two academic experts consulted by the Canadian Immigration and Refugee Board in 2006 confirmed that the advice they had provided then was still accurate. A third expert said that he had talked with immigrant men who refused to visit their home towns or villages in Ghana because allegedly they would be kidnapped and installed as chiefs against their will but he said that in his experience it was rare for a person to refuse the position of chief and to be pressured by his community to accept it.[17]

37. While I consider it credible in light of all this advice that [the applicant] might have been kicked out of his village and that the elders or kingmakers might have threatened him that they would pray to their gods to kill him if he refused to accept the chieftaincy, as he said at the Departmental interview, I do not accept that, as he claims, he was kidnapped and beaten in an attempt to force him to take up the position nor that his life was ever at risk nor that his or his [brother]'s property was damaged or destroyed as a result of his refusal to take up the position of chief in his village. I do not accept that he is telling the truth when he claims that he heard that the guard who had been held to be responsible for his escape had subsequently been killed.

38. Having regard to the expert advice with regard to the issue of chieftaincy referred to above and [the applicant]'s delay in applying for protection in Australia I do not accept that he genuinely fears being killed or otherwise persecuted as a result of his refusal to take up the

---

[13] Immigration and Refugee Board of Canada, 'Ghana: Succession traditions for the position of Krontihene in Abetifi Kwahu, Eastern Region, and consequences for refusing the position; names of current and past holders of the position', 1 November 2002, GHA39781.E.

[14] Australian Department of Foreign Affairs and Trade, Country Information Report No. 06/1, dated 6 January 2006, CX164415.

[15] Immigration and Refugee Board of Canada, 'Ghana: Consequences of refusing to assume an inherited position of tribal or clan chief; state protection available to the individual (2004-2006)', 11 October 2006, GHA101613.E.

[16] Dr Phil Bartle, a former academic at the University of Cape Coast in Ghana and an expert on Akan culture, 'Reply to: Request for information on the stool of the Kontihene amongst the Brong/Bono people of Brong Ahafo region', 6 May 2010.

[17] Immigration and Refugee Board of Canada, 'Ghana: Consequences of refusing a fetish priest or chieftaincy position, and whether there is state protection available', 16 August 2012, GHA104154.E.

position of chief in his [village]. I do not accept that there is a real chance that, if he returns to Ghana now or in the reasonably foreseeable future, he will be forced to take up the position of chief against his will, nor that he will be killed, physically harmed or otherwise persecuted if he refuses to take up the position of chief. I do not accept, therefore, that he has a well-founded fear of being persecuted for reasons of his religion, his membership of any of the particular social groups put forward by his representatives - 'members of the [D]/[E] clan', 'those elected for appointment of village chieftaincy' or 'those refusing village chieftaincy from the [D] clan' - or for any other Convention reason if he returns to Ghana now or in the reasonably foreseeable future.

Are there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Ghana, there is a real risk that he will suffer significant harm?

39. In their submission to the Department dated 22 April 2013 [the applicant]'s representatives submitted that his claims also fell under the complementary protection criterion. They submitted that it was likely that he would be killed if he returned to Ghana because he had rejected the chieftaincy. They also referred to his evidence that he had been kidnapped, detained and beaten and they submitted that he was likely to be tortured or to suffer cruel or inhuman treatment or punishment or degrading treatment or punishment if he returned to Ghana.

40. In their submission to the Tribunal dated 16 September 2013 [the applicant]'s representatives reiterated their submission that his claims also fell under the complementary protection criterion. They submitted that it was likely that he could possibly be exposed to the risk of death should he return. They likewise submitted that it was likely that he would be forced to endure torture on his return as he had undermined the Kings of the Stool and the role of a chief. They submitted that he had been being forced to give up his Christian faith and that he had been forced to escape from his country which they submitted equated to cruel and inhuman treatment or punishment. They also submitted that he had been humiliated within the community by being pursued by elders who had detained him and beaten him which they submitted amounted to degrading treatment or punishment.

41. At the hearing before me [the applicant] said that he could not return to Ghana at the moment because he had medical problems. He referred to the fact that he had [the following health conditions]. He said that they did not have medication in Ghana so if he returned to Ghana it would kill him within a short time. I asked him what sort of medication they did not have and he said that he did not think that they had medication for [a certain illness] because a lot of people had been dying from [it]. I noted that people died from [that illness] in Australia as well and this did not mean that there was a lack of medication. [The applicant] said that here the doctors were helping him but over there he did not have a place to live and there was no assistance from the Government of Ghana like Australia's social security system.

42. [The applicant] said that some friends he had met had told him that they had set up some private health insurance companies in Ghana but you had to pay so if you did not have the money you could not join them. He said that there were no proper hospitals in Ghana. When I questioned this he said that there was only the Korle Bu Teaching Hospital in Accra and a

few private clinics. I noted that there was even a hospital in his [village].[18] [The applicant] said that there was a clinic there.

43. I put to the applicant that it was difficult to fit claims about the standard of medical care in a country within the complementary protection criterion. I indicated that I accepted that the standard of medical care in Ghana was less good than it was in Australia. I put to him that there was nothing in the information available to me to suggest that the government of Ghana was acting in an arbitrary way to deprive people of medical care or that there was an intention on the part of the Government of Ghana to inflict pain or suffering on people by depriving them of medical care. I indicated to him that this was the sort of thing which would be required to fit his situation with the complementary protection criterion. [The applicant] indicated that he understood.

Conclusions

44. For the reasons given above I do not accept that, as [the applicant] claims, he was kidnapped and beaten in an attempt to force him to take up the position of chief in his village nor that his life was ever at risk as a result of his refusal to take up the position. I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to Ghana, there is a real risk that he will be arbitrarily deprived of his life, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment (as defined) in an attempt to force him to take up the position of chief in his village or as a result of his refusal to take up the position of chief. I note for the sake of completeness that I do not accept that social ostracism of the sort referred to by the experts amounts to 'degrading treatment' as defined. I consider that the sort of conduct described falls short of acts or omissions that cause, and are intended to cause, extreme humiliation which is unreasonable, as required by the definition of 'degrading treatment'.

45. I accept that, as [the applicant] himself mentioned in the course of the hearing before me, and as referred to by his representatives, he is suffering from a number of health problems. I consider that [the applicant] was exaggerating when he said that they did not have medication in Ghana and that there were no proper hospitals in Ghana but, as I indicated, I accept that the standard of medical care in Ghana is less good than it is in Australia. There is nothing in the evidence before me to suggest that the Government of Ghana or anyone else in Ghana is acting in an arbitrary fashion to limit or deny treatment to people like [the applicant]. The definitions of 'torture' and 'cruel or inhuman treatment or punishment' require that pain or suffering be 'intentionally inflicted' on a person and the definition of 'degrading treatment or punishment' requires that the relevant act or omission be 'intended to cause' extreme humiliation. While I accept that the standard of medical care in Ghana is less good than it is in Australia, I do not accept on the evidence before me that there is the requisite intention to inflict pain or suffering or to cause extreme humiliation to people suffering from medical conditions like [the applicant].

46. I do not accept on the evidence before me that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Ghana, there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to

[18] [Source deleted].

degrading treatment or punishment as defined. Accordingly I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Ghana, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Migration Act.

CONCLUSIONS

47. For the reasons given above I am not satisfied that [the applicant] is a person in respect of whom Australia has protection obligations. Therefore [the applicant] does not satisfy the criterion set out in paragraph 36(2)(a) or (aa) of the Migration Act for a protection visa. There is no suggestion that he satisfies subsection 36(2) on the basis of being a member of the same family unit as a person who satisfies paragraph 36(2)(a) or (aa) and who holds a protection visa. Accordingly, [the applicant] does not satisfy the criterion in subsection 36(2) for a protection visa.

DECISION

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

Giles Short
Senior Member

ATTACHMENT A - RELEVANT LAW

49. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection (Class XA) visa are set out in section 36 of the Act and Part 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:

> '(2) A criterion for a protection visa is that the applicant for the visa is:
>
> (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
>
> (aa) a non citizen in Australia (other than a non citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non citizen being removed from Australia to a receiving country, there is a real risk that the non citizen will suffer significant harm; or
>
> (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
>
> (i) is mentioned in paragraph (a); and
>
> (ii) holds a protection visa; or
>
> (c) a non citizen in Australia who is a member of the same family unit as a non citizen who:
>
> (i) is mentioned in paragraph (aa); and
>
> (ii) holds a protection visa.'

Refugee criterion

50. Subsection 5(1) of the Act defines the 'Refugees Convention' for the purposes of the Act as 'the Convention relating to the Status of Refugees done at Geneva on 28 July 1951' and the 'Refugees Protocol' as 'the Protocol relating to the Status of Refugees done at New York on 31 January 1967' Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.

51. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a 'refugee' as a person who:

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

52. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.

53. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear 'persecution'. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve 'serious harm' to the person and 'systematic and discriminatory conduct'. Subsection 91R(2) states that 'serious harm' includes a reference to any of the following:

    (a) a threat to the person's life or liberty;

    (b) significant physical harassment of the person;

    (c) significant physical ill-treatment of the person;

    (d) significant economic hardship that threatens the person's capacity to subsist;

    (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;

    (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

54. In requiring that 'persecution' must involve 'systematic and discriminatory conduct' subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of 'persecution' that an individual be the victim of a series of acts:

> 'A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is "being persecuted" for the purposes of the Convention.'

55. 'Systematic conduct' is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute 'persecution' for the purposes of the Convention, the threat of harm to a person:

> 'need not be the product of any policy of the government of the person's country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution' (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)

56. Thirdly, the applicant must fear persecution 'for reasons of race, religion, nationality, membership of a particular social group or political opinion' Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless 'that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution' It should be remembered, however, that, as the Australian courts have observed, persons may be

persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

57. Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

> 'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'

58. A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

> 'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

Complementary protection criterion

59. An applicant for a protection visa who does not meet the refugee criterion in paragraph 36(2)(a) of the Act may nevertheless meet the complementary protection criterion in paragraph 36(2)(aa) of the Act, set out above. The Full Court of the Federal Court has held that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the context of the Refugees Convention as referred to above (see *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33 at [246] per Lander and Gordon JJ with whom Besanko and Jagot JJ (at [297]) and Flick J (at [342]) agreed). 'Significant harm' for the purposes of the complementary protection criterion is exhaustively defined in subsection 36(2A) of the Act: see subsection 5(1) of the Act. A person will suffer 'significant harm' if they will be arbitrarily deprived of their life, if the death penalty will be carried out on them or if they will be subjected to 'torture' or to 'cruel or inhuman treatment or punishment' or to 'degrading treatment or punishment'. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are further defined in subsection 5(1) of the Act.

Ministerial direction

60. In accordance with Ministerial Direction No. 56, made under section 499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration and Citizenship - 'PAM3: Refugee and humanitarian - Complementary Protection Guidelines' and 'PAM3: Refugee and humanitarian - Refugee Law Guidelines' - and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Credibility

61. As Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, 'in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for'. However this should not lead to 'an uncritical acceptance of any and all allegations made by suppliants'. As the Full Court of the Federal Court (von Doussa, Moore and Sackville JJ) observed in *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997):

> 'Where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another' (citing *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 281-282)

62. As the Full Court noted in that case, this statement of principle is subject to the qualification explained by the High Court in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 576 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ where they observed that:

> 'in determining whether there is a real chance that an event will occur, or will occur for a particular reason, the degree of probability that similar events have or have not occurred for particular reasons in the past is relevant in determining the chance that the event or the reason will occur in the future.'

63. If, however, the Tribunal has 'no real doubt' that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241. Furthermore, as the Full Court of the Federal Court (O'Connor, Branson and Marshall JJ) observed in *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9, there is no rule that a decision-maker concerned to evaluate the testimony of a person who claims to be a refugee in Australia may not reject an applicant's testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or for any evidentiary inconsistencies. Nor is there a rule that a decision-maker must hold a 'positive state of disbelief' before making an adverse credibility assessment in a refugee case. It is also relevant in the present case that, as McHugh J observed in *Chan*, referred to above, at 428:

> '[T]he State parties to the Convention and Protocol will frequently have detailed knowledge of conditions in the country of the applicant's nationality. It is unlikely, therefore, that a State party was expected to grant refugee status to someone whose account, although plausible and coherent, was inconsistent with the State's understanding of conditions in his or her country of nationality.'