

**1113449 [2012] RRTA 508 (19 June 2012)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1113449

**DIAC REFERENCE(S):** CLF2011/166143

**COUNTRY OF REFERENCE:** Ghana

**TRIBUNAL MEMBER:** Alison Murphy

**DATE:** 19 June 2012

**PLACE OF DECISION:** Melbourne

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

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Ghana, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] September 2011.
3. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom 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), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

#### Refugee criterion

5. Section 36(2)(a) 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 Refugees Convention.
6. 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.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. 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.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. 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.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. 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 being persecuted 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.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. 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.

### **Complementary protection criterion**

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to 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 applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **CLAIMS AND EVIDENCE**

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

#### **The primary application**

20. The applicant is a [age deleted: d.431(2)] year old male from [Village 1], Ghana who states he has been a citizen of that country since birth. He states that he arrived in Australia [in] 2011 on a subclass 456 (business short stay) visa issued [in] July 2011. He states that before travelling to Australia he lived in [Town 2] between July 2004 and [2011]. He states that he completed primary school in [year deleted: s.431(2)] and attended [institution deleted: s.431(2)] between May 2004 and May 2005.
21. The applicant states that he was employed as a [tradesman] by [company deleted: s.431(2)] between February 2001 and October 2001 and then by [Organisation A] between July 2004 and August 2004, also as a [tradesman]. He states that he left Ghana to do a course in [his trade], that he fears he will be killed if he returns to Ghana and that he believes that the authorities and law enforcement agencies in Ghana will harm him because he protested against unsafe working conditions. He states that the authorities in Ghana will not protect him because they are the very persons responsible for his problems.

22. The applicant states that his father is deceased, but that his mother and three married sisters remain in Ghana. The applicant's claims for protection are contained in a statutory declaration accompanying his visa application in which he states in part:

1. I am the applicant in this matter. I am a citizen of Ghana born on [date].
2. I am Akan by ethnicity and a Christian by religion.
3. I arrived in Australia on [date] 2011, to participate in a [trade] certificate course at Perth. The course was arranged by my employers, [Organisation A]. We completed the course on [date] 2011.
4. While in Ghana I worked as a [tradesman] for [Organisation A]. [Organisation A] is an Australian company.
5. I started work at the company on [date] 2004. I also joined the Workers Mining Union. First, I was posted at [Site 3]. In a space of one week two workers were killed when the mine collapsed. Each time no efforts were made to recover the body of the miner because the company claimed that it was not cost effective to attempt to recover the dead miner. We were instructed to seal off the particular part of the mine with the dead body.
6. Before the incident killed the second worker, I overheard the foreman explaining to the manager that a particular portion of the mine was about to collapse. After inspecting the site, the manager told the foreman that there was no cause for alarm. The following day the mine collapsed and killed the second worker. Thereafter, I approached the foreman and asked why he did not report the matter to the overall project manager. The foreman told me that he did not want to lose his life and job because he had seven children to feed. He told me that people die everyday from preventable causes. I reported the matter to our branch Union leader.
7. The next day I was transferred to [Site 4]. At [Site 4] things were a little better but, still workers were dying from preventable causes. In one particular incident, a worker noticed a crack in one of the pillars which was a sign that the mine would collapse if more pillars were not added. We reported the matter to the foreman. The foreman told us to continue work because the management was aware of the cracks and was making arrangements to have it fixed. After four days, the pillar collapsed and killed three workers who were working close to it. My friend [Mr B] and I decided to make a written petition to the Union. Soon after submitting the petition to the Union, we were transferred to [Site 5].
8. When we arrived at [Site 5], we realised that the workers there had already heard about the petition. Initially, we were isolated. This isolation continued for about six months. We were not informed about any accident or death. Also we were prevented from attending Union meetings. After we completed the work in the isolated area, we were sent to join another group. It was then we learnt that over six people had died since we were posted to work at [Site 5].
9. One evening we had completed work and was about to leave when we noticed that the site was getting flooded. The foreman was very worried because the exit rail was under repair. We started to panic. Before they could arrange for alternative belt, one elderly worker had collapsed and died.

10. After that incident most workers decided that we have to do something. We approached the head of the Union who told us that he was addressing the issue with the management. Later we discovered that, in fact, the company was paying large sum of money to the Union boss, the police, the government and other law enforcement agents. We further discovered that the company had bought over most media outlets because they refused to publish our stories and petitions.
11. As a result we decided to take matters into our own hands by organisation Union protests. The protest was organised by [Mr B] and I. We were surprised that over thirty workers joined in the protests. Even some miners who resigned because the same work condition attended. During the protest, more than twenty police officers arrived at the sight and arrested seven workers including myself. We were taken to the police station and chained against the wall for five days. My hands were swollen and infected. I still have the marks today. After that we were made to sign undertakings not to get involved with further protests. One worker refused to sign, the following morning he was found dead.
12. After we were released we were afraid to organise more protests. However we continued to meet secretly to work out the next step. In January 2011, we sent a petition directly to the president. After sending the petition, we were summoned to the office of the Union president. We thought the president had summoned us to address the issue of complaint; rather, he issued us with a serious warning not to directly engage in any communication under the Union without his approval. We were shocked. We told him that we will compile our story and forward them to overseas media. Thereafter, we started getting threatening messages that our will be dead if we make any attempt to make any contact with overseas media without the Union approval. We were scared because we knew the threats were real. That has always been the company's method of keeping the workers silent.
13. In [month] 2011, the manager called my friend [Mr B] and myself into his office and told us that we were going to Australia for training. We were excited but cautious. We were excited because we were travelling overseas but were cautious because we could not understand why we were selected instead of more experienced workers who have been with the company for many years before us. Moreover, it was only two of us who were deemed to be causing trouble for the company.
14. When we arrived in Australia and attended the first day of the course, we became suspicious because the course is a simple method of [work] which is ready available in most institutions in Ghana.
15. We completed the course on [date] 2011 and we were told to prepare for our return to Ghana. I contacted a friend at work who had asked me to buy good jeans for him to find out about his size. He could not talk. He told me to call him back in two hours which I did. He told me that the course was a set up. He told me that the plan was to kill [Mr B] and myself on arrival. I did not doubt him because this has happened several times in the past when workers who were perceived as trouble makers in the company were sent overseas for short term courses and their dead bodies were discovered by the road side near the airport. The last incident happened in June 2009, when three workers from the same company who returned from the United States on a short term training were found dead in a burnt out bus near the airport.
16. I am informed that [Mr B] is now in Canada because he disappeared immediately after the news without telling me his whereabouts. He told me that we could not

stay safely in Australia because we worked for an Australian company. But O told him that I do not have enough money to travel to any other country.

17. As a result of the above I fear that I will be putting my life in danger if I went back to Ghana because I know that the law enforcement agencies are very brutal against employees of the company when if they make attempts to expose how dangerous the company's working conditions are. And the fact that the pay huge sum of money to the government and its agencies.

23. The applicant lodged the following documents in support of his application:

- A certified copy of his passport stating that he was born in Accra, Ghana and containing an subclass 456 visa granted [in] July 2011 and permitting him to remain in Australia for three months after date of arrival;
- A photocopy of a workplace identification issued by [organisation deleted: s.431(2)] [Site 5] with the expiry date [of] December 2011;
- A photocopy of a workplace identification issued by [Organisation A], Ghana issued [in] September 2006;
- A copy of an employee payslip issued by [Organisation A] for the month of June 2011 showing that the applicant was employed full time as a leading hand in the maintenance department in [Site 5] division and that deductions were made to Ghana Mine Workers Union.

24. The applicant attended a departmental interview [in] November 2011 in Melbourne during which he responded to questions and elaborated on his written claims.

25. [On a further date in] November 2011 a delegate decided to refuse to grant the applicant a protection visa, not being satisfied that the applicant was a person to whom Australia owed protection obligations.

### **The review application**

26. The applicant sought a review of the delegate's decision dated [in] November 2011 from this Tribunal [in] December 2011. No further information was provided in the review application.

### **Country information before the Tribunal**

#### *Fatal road accidents in Ghana*

27. Fatal road accidents are one of the major causes of death in Ghana.<sup>1 2</sup> According to *IRIN News*, "[r]oad accidents are among the top causes of death in Ghana, with malaria, diarrhoeal and respiratory diseases, according to deputy director of the Ghana Health Service, George Amofa. Road accidents kill more Ghanaians annually than typhoid fever, pregnancy-related

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<sup>1</sup> Atta, S 2009, *Road accidents in Ghana; are they Juju motivated?*, GhanaWeb website <<http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=163654>>

<sup>2</sup> Smith-Asante, E 2011, 'New Road Safety Company to reduce road accidents' 2011, *Ghana Business News* <<http://www.ghanabusinessnews.com/2011/12/05/new-road-safety-company-to-reduce-road-accidents/>>

complications, malaria in pregnancy, diabetes or rheumatism”.<sup>3</sup> It is therefore plausible that many incidents go unreported.

*[Information in relation to Organisation A deleted: s.431(2)]*

#### *Ghana Mineworkers' Union (GMWU)*

28. Reports indicate that the GMWU is a registered organisation founded in 1944 near Tarkwa and is described on its website as a “democratic and independent trade union organization” claiming 14,877 members across 64 groups<sup>4</sup>. Two of those groups are reported to be associated with [Organisation A], including the GMWU [Organisation A] [Site 3] branch. The GMWU headquarters is located at the Hall of Trade Unions building in Accra, and an additional office is located in Tarkwa.<sup>5</sup> Aside from membership recruitment, the GMWU states that its main activities involve collective bargaining, advocacy, training and research functions.<sup>6</sup> The GMWU provides financial support to at least one Mineworkers Wives Association, in Obuasi.<sup>7</sup>
29. Nationally, the GMWU is reported to be affiliated with the Ghana Trades Union Congress (GTUC).<sup>8</sup> The GTUC comprises 17 affiliate unions<sup>9</sup> and around 400,000 members<sup>10</sup> Internationally the GMWU is affiliated with the International Federation of Chemical, Energy, Mines and General Workers' Unions (ICEM)<sup>11</sup> The GMWU General Secretary, Prince William Ankrah, was elected as the ICEM's regional chairman for Sub-Saharan Africa in 2011<sup>12</sup>
30. The GMWU has publicly criticised mining companies on safety standards<sup>13</sup> and pay disparities between African and expatriate workers.<sup>14</sup> The pay disparity issue was the catalyst for at least one strike involving 5,000 union members in 2009.<sup>15</sup> The GMWU has also called

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<sup>3</sup> ‘Road crash casualties hit maternal health efforts’ 2009, *IRIN News*, 12 June

<<http://www.irinnews.org/Report/84828/GHANA-Road-crash-casualties-hit-maternal-health-efforts>>

<sup>4</sup> Ghana Mine Workers Union n.d., *Ghana Mineworkers' Union Homepage* <<http://www.gmwu.org/>>

<sup>5</sup> Ghana Mine Workers Union n.d., *Contact Us*

<[http://www.gmwu.org/index.php?option=com\\_content&view=article&id=4&Itemid=5](http://www.gmwu.org/index.php?option=com_content&view=article&id=4&Itemid=5)>

<sup>6</sup> Ghana Mine Workers Union n.d., *Ghana Mineworkers' Union Homepage* <<http://www.gmwu.org/>>

<sup>7</sup> ‘Mineworkers Wives Association of AngloGold charged to build women capacity’ 2012, *Peace FM Online*, 7 April <<http://news.peacefmonline.com/news/201204/106588.php?storyid=100&>>

<sup>8</sup> Ghana Mine Workers Union n.d., *Ghana Mineworkers' Union Homepage* <<http://www.gmwu.org/>>

<sup>9</sup> Hodges, J & Baah, A 2011, *National Labour Law Profile: Ghana*, International Labour Organization, 17 June <[http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS\\_158898/lang--en/index.htm](http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158898/lang-en/index.htm)>

<sup>10</sup> Publish What You Pay website n.d., *Ghana Trade Union Congress (Ghana TUC)*

<<http://www.pwyp.no/ghana-trade-union-congress-ghana-tuc>>

<sup>11</sup> Ghana Mine Workers Union n.d., *Ghana Mineworkers' Union Homepage* <<http://www.gmwu.org/>>

<sup>12</sup> International Federation of Chemical, Energy, Mine and General Workers' Unions 2011, *ICEM's African Region Elects Prince William Ankrah as Chairman*, 25 April <<http://www.icem.org/en/78-ICEM-InBrief/4389-ICEM-s-African-Region-Elects-Prince-William-Ankrah-as-Chairman>>

<sup>13</sup> ‘Mine Workers Angry Over 0%’ 2011, *Modern Ghana* website, source: *Ghanaian Chronicle*

<<http://www.modernghana.com/news/347790/1/mine-workers-angry-over-0.html>>

<sup>14</sup> International Federation of Chemical, Energy, Mine and General Workers' Unions 2009, *2009 Gold Mining Talks Finally Conclude in Ghana*, 14 December <<http://www.icem.org/en/78-ICEM-InBrief/3560-2009-Gold-Mining-Talks-Finally-Conclude-in-Ghana>>

<sup>15</sup> International Federation of Chemical, Energy, Mine and General Workers' Unions 2009, *Last Week's Strike of AngloGold by Ghana Mineworkers' Gets Airing*, 10 August <<http://www.icem.org/en/78-ICEM-InBrief/3349-Last-Week-s-Strike-of-AngloGold-by-Ghana-Mineworkers-Gets-Airing>>



for the government to ratify ILO Convention 176 with regard to safety on mine sites.<sup>16 17</sup> As an example of its bargaining activities, in 2009 the GMWU negotiated collective agreements affecting approximately 10,000 workers with companies Newmont Mining, AngloGold and Goldfields. In the latter case, negotiations were mediated by Ghana's labour commission.<sup>18</sup> In 2007, the GMWU called on the government to allocate a proportion of minerals royalties to development projects for mining communities.<sup>19</sup>

### *Targeting of union members in Ghana*

31. There are some reports of union activists in Ghana being targeted for their activities.
32. The International Trade Union Confederation (ITUC) reported that over 600 employees were locked out of Western Steel and Forging Limited near Tema during the ITUC's 2009-2010 reporting period after apparently demanding that the company's human resources manager be dismissed for ignoring health and safety issues which later caused accidents. Four workers were allegedly arrested, and several others were assaulted and wounded by rubber bullets when police attended the lockout<sup>20</sup>.
33. According to the International Trade Union Confederation, a local branch chair from the Ghana Mineworkers Union (GMU) was dismissed "by the management of Newmont Ghana Limited for questioning his employer's decision to withdraw the 4am coffee break". That incident occurred during the 2008-09 reporting period.<sup>21</sup>
34. In 2008, Ghana's Commission on Human Rights and Administrative Justice (CHRAJ) reportedly found "a litany of abuses in the mining sector, including torture, illegal arrests and detentions and violent disruption of community protests".<sup>22</sup> The CHRAJ produced a report that stated that AngloGold Ashanti operated a private detention facility at its Obuasi mine<sup>23</sup> and also apparently cited examples of "private and government security forces abusing small-scale miners", including independent miners working in the informal sector.<sup>24 25</sup>

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<sup>16</sup> Ghana Mine Workers Union n.d., *Obuasi Resolution*

<[http://www.gmwu.org/index.php?option=com\\_content&view=article&id=19&Itemid=14](http://www.gmwu.org/index.php?option=com_content&view=article&id=19&Itemid=14)>

<sup>17</sup> Vibe Ghana 2011, *Mineworkers Union advocates broader consultation on mining sector development*, 24 November <<http://vibeghana.com/2011/11/24/mineworkers-union-advocates-broader-consultation-on-mining-sector-development/>>

<sup>18</sup> International Federation of Chemical, Energy, Mine and General Workers' Unions 2009, *2009 Gold Mining Talks Finally Conclude in Ghana*, 14 December <<http://www.icem.org/en/78-ICEM-InBrief/3560-2009-Gold-Mining-Talks-Finally-Conclude-in-Ghana>>

<sup>19</sup> Coomson, J 2007, 'Mine Workers Raise Concerns Over Deplorable State of Mining Communities', *Ghanaian Chronicle*, FACTIVA, 19 July

<sup>20</sup> International Trade Union Confederation 2010, *2010 Annual Survey of violations of trade union rights - Ghana*, 9 June, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/4c4fec793d4.html>>

<sup>21</sup> International Trade Union Confederation 2009, *2009 Annual Survey of violations of trade union rights - Ghana*, 11 June, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/4c52caeb18.html>>

<sup>22</sup> Carlucci, P 2012, 'In Ghana, a mining activist fights the gold goliaths', *The Toronto Star*, 7 April <<http://www.thestar.com/news/world/article/1157071--in-ghana-a-mining-activist-fights-the-gold-goliaths>>

<sup>23</sup> Martin, F 2010, *Mining leaves deep scars*, *Modern Ghana*, 11 May <<http://www.modernghana.com/news/275245/1/mining-leaves-deep-scars.html>>

<sup>24</sup> US Department of State 2011, *Country Reports on Human Rights Practices 2010 - Ghana*, 8 April, Section 7

<sup>25</sup> A copy of what appears to be the CHRAJ report was located at: No Dirty Gold website n.d., *The State of Human Rights in Mining Communities in Ghana* <<http://www.nodirtygold.org/HumanRightsInGhanaMiningCommunities.pdf>>

35. The US Department of State (USDOS) reports that some employers have continued to fire employees on the basis of their union activities despite anti-discrimination laws.<sup>26</sup> An article from the *Ghana News Agency*, citing ITUC information, alleges that “many employers refuse to recognise trade unions and unionised workers are often victims of abuse and harassment”.<sup>27</sup> The ITUC similarly states that some employers fire union activists:
- Many employers have a policy of zero tolerance for trade unions. Workers who attempt to form or join a trade union are intimidated and dismissed. Some employers include anti-union clauses in their employment contracts.<sup>28</sup>
36. The ITUC further notes that in 2008, the Accra High Court made a decision “to the effect that employers could hire and fire without giving any reasons for the termination of employment. The Ghana Trades Union Congress later alleged that some employers were taking advantage of this ruling, using it as justification to fire unionists.”<sup>29</sup>
37. The Ghana Mineworkers’ Union (GMWU) has publicly called for the government to ratify the International Labor Organization Convention 176, which addresses health and safety standards in mines. In December 2010, the GMWU National Executive Council passed a resolution which both acknowledged improvements in safety standards over the preceding 15 years, but urged the government to ratify Convention 176.<sup>30</sup> According to the USDOS, existing occupational health and safety standards are generally poorly enforced in Ghana.<sup>31</sup>
38. In terms of trade union influence generally, Freedom House reports that “unions are still important actors, but their power is tempered by statutory provisions that require labor disputes to be heard by the Labor Commission prior to the declaration of a strike”.<sup>32</sup>

### **The Tribunal hearing**

39. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Akan (Ghana) and English languages. The applicant was represented in relation to the review by his registered migration agent.
40. The applicant gave evidence that he was born in [year deleted: s.431(2)] in [Village 1] in the western region of Ghana and that he grew up there in a household comprising his parents and [sisters]. He told the Tribunal that his sisters had all married, although one was now divorced. He stated that his family’s religious background was Christian and that he spoke Sefwi and Akan. He stated that he finished school when he was about [age deleted: s.431(2)], after which his sister helped send him to technical school at a vocational training institute but that he didn’t complete that course, instead learning [a trade] in [town deleted: s.431(2)] which took about six years. The applicant stated that he was then self-employed for a period.

<sup>26</sup> US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ghana*, 8 April, Section 7

<sup>27</sup> ‘Survey: It is difficult to be a trade unionist in Africa’ 2010, *Modern Ghana* website, source: *Ghana News Agency* <<http://www.modernghana.com/news/333263/1/survey-it-is-difficult-to-be-a-trade-unionist-in-a.html>>

<sup>28</sup> International Trade Union Confederation 2011, *2011 Annual Survey of violations of trade union rights – Ghana*, 8 June, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/4ea6620c3.html>>

<sup>29</sup> International Trade Union Confederation 2011, *2011 Annual Survey of violations of trade union rights – Ghana*, 8 June, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/4ea6620c3.html>>

<sup>30</sup> Ghana Mine Workers Union n.d., *Obuasi Resolution* <[http://www.gmwu.org/index.php?option=com\\_content&view=article&id=19&Itemid=14](http://www.gmwu.org/index.php?option=com_content&view=article&id=19&Itemid=14)>

<sup>31</sup> US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ghana*, 8 April, Section 7

<sup>32</sup> Freedom House 2010, *Countries at the Crossroads 2010 – Ghana*, 7 April, pp.10-11

41. The applicant gave evidence that he started paid employment with [Organisation A] in 2004 at [Site 3] where he worked for less than a year. He stated that [Organisation A] had many branches and he was moved from [Site 3] to [Site 5]. He stated that he was the first worker to join the union at [Site 5], telling the Tribunal that workers only became eligible to join the union after they became permanent employees following six months of employment.
42. The Tribunal asked the applicant whether he had experienced any difficulties or witnessed any mining accidents while working at [Site 3]. The applicant stated that he had not and that he was not at [Site 3] for long. The Tribunal asked the applicant why the company moved him to [Site 5]. The applicant stated that he was not the only person transferred and that the company needed him at [Site 5] so they sent him there. The Tribunal asked the applicant whether he was sent to [Site 5] because the company considered him to be a trouble maker and the applicant stated that wasn't the reason, it was just that the company wanted him in [Site 5].
43. The Tribunal noted that the applicant claimed in his statutory declaration to have worked at [Site 4] before being transferred to [Site 5] and the applicant stated that there was a different branch of [Site 3] called [Site 4] and that he had been sent there briefly to get a feeling for that site but had not worked there.
44. The Tribunal asked the applicant what year he arrived at [Site 5] and the applicant stated that it was about 2005. He told the Tribunal that at [Site 5] there were many safety incidents and that the safety was not the best. He stated that sometimes mines collapsed and people were killed and that this was frequent and going on all the time.
45. The Tribunal asked the applicant when he met [Mr B]. The applicant stated that he was working at [Site 5] when the applicant arrived there. When asked if he had previously worked with [Mr B] at [Site 3], the applicant stated that he had not. The applicant told the Tribunal that at one point they were on day shift when they heard that the mine had collapsed on some people and that it was impossible to get the person out so they covered the hole with sand.
46. The Tribunal asked the applicant if working on [Site 5] was the first time he had concerns about the safety in the mines. The applicant stated that the incident he had described was not the only one. The Tribunal asked the applicant whether he had had any concerns about safety while at [Site 3] or [Site 4]. The applicant stated that once in a while there might be an incident at these sites but that the accident rate at [Site 5] was extraordinary and too frequent. The Tribunal asked the applicant if he had ever made complaints about the safety at [Site 3] or [Site 4] and the applicant stated that he had not.
47. When asked if he had made complaints about safety at [Site 5], the applicant stated that he mentioned it to his foreman, but that his foreman couldn't say anything about it. When asked what was said, the applicant stated that he mentioned to the foreman that he was a witness to what was going on and that it would be better if he informed the management so they could take safety measures. He stated that the foreman told him that he couldn't approach the managers to make such complaints because he had children and might be victimised or sacked by the country.
48. The Tribunal asked the applicant whether there were any other safety incidents at [Site 5] while he was there. The applicant stated that there were a lot of incidents and a lot of deaths. He stated that there was a Mines President who was like an inspector and who supposed to

inspect the sites but that when he came he was given money to leave. He stated that person was supposed to inspect but that all the workers heard was that today he would come and by the time they were aware of his visit the Mines Inspector had come and gone. When asked if the Mines President spoke the workers, the applicant stated that he never met him.

49. The Tribunal asked the applicant about his own involvement in reporting or acting on safety measures at [Site 5]. The applicant stated that he was heavily involved and that was what led to the situation. Asked how he came to be involved, the applicant stated that they mentioned the safety incidents to the union leader who couldn't do anything, possibly because of benefits he was receiving from the mines management. He stated that the workers decided to do something about it themselves.
50. The applicant told the Tribunal that he and [Mr B] led the workers in their demonstrations to alert management to what was going on and the fact they weren't happy. When asked when these demonstrations occurred, the applicant stated that he didn't remember but that it was an ongoing process. He stated that they kept working through the demonstrations, but decided to do things to let the management know that they weren't happy. When asked what things they did, the applicant stated that the workers didn't go on strike, but just arranged some minor demonstrations to let the managers know they weren't happy. He stated that on some occasions they would ask those coming onto nightshift to stay back and pick up cans to make noise. He stated that on one occasion, management called in 20 police who arrested 7 workers including the applicant and [Mr B]. He stated that they were beaten and jailed and that he still had marks from that beating. When asked when this occurred, the applicant stated that it was around 2009. He stated that before being released, they were asked to sign a good behaviour bond and that the one person who did not sign that bond was found dead the next day. The applicant stated that he couldn't say what the cause of death for that person was. The applicant told the Tribunal that they remained handcuffed in jail for five days.
51. The Tribunal asked the applicant why he thought the mining company didn't fire him at that time. The applicant stated that the mining company didn't sack anyone, that the company knew he was hardworking and also knew what the workers were saying was right. When asked what happened next, the applicant stated that they asked the union leader to do something about it, but that he did not. He stated that later on, one of the Project Managers of [Organisation A] called the applicant and [Mr B] in and told them that they were going to Australia to do a course, stating that at this time the deaths were still going on.
52. The Tribunal asked the applicant whether he took other action about safety other than the protests he had described. The applicant stated that it was just some protests. The Tribunal asked the applicant whether he had organised any petitions. The applicant stated that they had planned to send petition but that [Site 5] was very remote and they couldn't do it. The Tribunal asked the applicant whether they had planned to send the petition to the main offices of [Organisation A] and the applicant stated that it was never their intention to send the petition to management, rather they planned to send it to TV and radio stations and other media organisations. When asked why this wasn't possible, the applicant stated that they couldn't take that step because of the logistics of the situation and they couldn't move from [Site 5].
53. The Tribunal asked the applicant whether he had ever sent a petition to the union. The applicant stated that the union's main office was in Accra and that each branch had a representative. He stated that they were dealing with their union representative but that even if they petitioned the union, the union would not come and see what was happening. The

Tribunal put to the applicant that he had stated in his written claims that a petition had been sent directly to the union president. The applicant stated that what he meant was that there are union leaders in each branch, that they gave the petition to their branch representative who was to forward it to the main branch, but that the branch representative did not want to sacrifice the benefits he received from the mine's management for the worker's interest.

54. The Tribunal asked the applicant how many people signed the petition. The applicant stated that one person wrote it on their behalf and it wasn't like everyone signed it. When asked who wrote it, the applicant stated that it was one of the other workers, not himself or [Mr B]. He stated that even though he and [Mr B] were part of those leading the group, they did not write the petition and lots of other people were interested also.
55. The Tribunal asked the applicant why he thought he had been identified as a trouble maker by [Organisation A]. The applicant stated that the company sent him and [Mr B] to Australia, even though there were others who had worked there longer. The Tribunal asked the applicant what he was doing at the mining site that he thought set him apart from the other workers at that site. The applicant stated that he played a leading role in initiating and organising the protests and was very vocal.
56. The Tribunal asked the applicant whether he was ever harassed or threatened while in Ghana. The applicant stated that he was arrested and beaten in 2009. When asked if there were any other incidents, the applicant stated that the protests were ongoing and the deaths and incidents were ongoing. He stated that they did not destroy property.
57. The Tribunal asked the applicant whether he was ever threatened in Ghana, apart from the 2009 incident. The applicant stated that he was traumatised by what had happened, especially when the guy who refused to sign the bond died, even though he couldn't say what had happened. The Tribunal asked the applicant whether he was ever threatened in Ghana, apart from in 2009. The applicant stated that after the incident in 2009, soldiers frequently came to the mine with the aim of keeping the situation under control.
58. The Tribunal asked the applicant when he found out he was being sent to Australia. The applicant stated that he and [Mr B] found out in 2011 and wondered why they were sending the two of them when they had met workers who had been there much longer. He stated that he and [Mr B] thought there must be more to it. The Tribunal asked the applicant if he had questioned his managers about why he was being sent to Australia. The applicant stated that he had been told that it was part of his training.
59. The applicant told the Tribunal that he and [Mr B] flew into Perth and undertook six weeks training, staying at [accommodation deleted: s.431(2)]. He stated that they both finished the training course but that when he called a friend in Ghana who had asked him to buy jeans for him, the friend told him he couldn't talk and asked him to call later. He stated that when he spoke to that friend, he told the applicant that the management had a plan to bring him back and kill him which traumatised the applicant and he informed [Mr B]. The applicant stated that he was not surprised about what his friend in Ghana had said, because there had been an incident where some guys were sent away for training and their bodies were found around the airport area. When asked how those people had died, the applicant stated that he couldn't say but that it was something that had happened. When asked why he thought they were killed, the applicant stated that he could not say that his employers killed them and that he didn't know what caused their deaths. He stated that he had informed [Mr B] of what his friend in Ghana had said and [Mr B] had told him that he had money with him and would travel to

Canada. The applicant stated that he didn't have money to travel to another country and so decided to protect his life by staying in Australia.

60. The Tribunal put to the applicant that he had claimed in his written claims that he witnessed and reported mining incidents in [Site 3] and [Site 4] which was inconsistent with his evidence at hearing. The Tribunal put to the applicant that he also claimed to have submitted a petition while at [Site 4] which resulted in his transfer to [Site 5]. The applicant stated that those things actually happened in [Site 5] and that there must have been a miscommunication.
61. The Tribunal asked the applicant if he was an ordinary member of the union and the applicant stated that he was. The Tribunal asked him if he was elected to any union positions and the applicant stated that apart from the Chairman and Secretary, all other members were ordinary members including himself. The Tribunal asked the applicant if he attended union meetings. The applicant stated meetings were normally held on site and that it was not something they did outside of the workplace. The Tribunal asked the applicant whether he had ever been excluded from union meetings and the applicant stated that he didn't recollect anything like that. The Tribunal put to the applicant that in his written claims he had stated that he was prevented from attending union meetings for six months. The applicant stated that meetings were not held regularly. The Tribunal asked the applicant if he was ever prevented from attending union meetings because of his actions about safety. The applicant stated that he was not actually sacked from the meetings and that it was a miscommunication. He stated that what he actually meant was that when the workers had any issues, they communicated them to the union leader who was supposed to forward them to the next meeting. He stated that they didn't have regular meetings with the union leader but that he came in occasionally.
62. The Tribunal advised the applicant that having reflected on some of the evidence that he had given at the hearing and on earlier occasions, it wished to raise with him the issue of his credibility. The Tribunal advised the applicant that in particular it was having difficulty accepting that his employer, [Organisation A], would keep him in their employment for seven years even though he was considered to be a trouble maker and then send him to Australia for training, only to kill him upon his return to Ghana. The applicant stated that he knew he was doing the right thing and it is not an easy thing to do to sack a permanent worker. He stated that the company knew what was happening was not right.
63. The Tribunal asked the applicant why he thought the company wanted to kill him, given that it had never even terminated his employment. The applicant stated the death rates were no good, that it didn't happen to one or two people but happened to several. He stated that if he returned to Ghana and was found dead, nobody would question it whereas if the company tried to initiate sacking him, people might question it.
64. The Tribunal noted that it had been unable to locate any information from independent sources that would support his claim that in June 2009, three workers from the same company who returned from the US on short term training were found dead in a burnt out bus near the airport. The applicant stated that it was something that had actually happened and that if a body was found, nobody would question what happened or who killed them.
65. The Tribunal put to the applicant that country information indicated that fatal road accidents are one of the major causes of death in Ghana and asked what made him think the workers he described were murdered for being trouble makers rather than being involved in a road accident. The applicant stated that he could not stand here and tell the Tribunal that those persons were involved in a road accident.

66. The Tribunal put to the applicant that country information suggested that many employers in Ghana refuse to recognise trade unions, that unionised workers are often intimidated and dismissed and that the Accra High Court handed down a decision in 2008 to the effect that employers could fire employees without giving reasons. The Tribunal asked the applicant why he thought that in that kind of environment his employer wouldn't just fire him if they considered him a trouble maker. The applicant stated that his employer could not fire him just because he was asking for his rights or safety and that he could only be fired for illicit activities. He stated that victimisation by companies was mostly directed at officials of the union, not its ordinary members. He stated that the company might fire such persons.
67. The Tribunal asked the applicant why then as an ordinary member of the union he thought he would be killed or otherwise harmed by his employer if he returned to Ghana. The applicant stated his company had targeted him personally to come to Australia to do training which made him think that they had a hidden agenda.
68. The applicant's representative submitted that the applicant was not an educated man, that these matters hadn't been raised before and that the Tribunal couldn't now put that country information to him. The Tribunal indicated to the representative that it would hear submissions from him at the end of the hearing if he wished but that it was required to put adverse country information to the applicant.
69. The Tribunal put to the applicant that country information indicated that the Ghana Mining Workers Union had publicly criticised mining companies on safety standards and pay disparities between African and expatriate workers. The applicant stated that he could not say much, except that the leaders were not there for the worker's interests. He stated that when there was an incident, they don't come. When asked if there was any reason why he could not leave his job to avoid the harm he feared, the applicant stated that it is a challenge finding a job in Ghana and that he was trained as a [tradesman] and it would be difficult to do other things. The Tribunal asked if there was any reason he couldn't move to another part of Ghana and work as a [tradesman] for another employer. The applicant stated that it was difficult to get jobs in Ghana and that unemployment was very high. He stated that when you found a job you wanted to protect it, telling the Tribunal that anything could happen and that he could die at any time in an accident or using machines.
70. The Tribunal asked the applicant whether there were any other factors besides his employment which would make it difficult for him to relocate to another part of Ghana. The applicant stated that Ghana was not a big country and that his company will definitely know he is there. He stated that if tomorrow he was dead, his family would have nobody to ask about it.
71. The Tribunal asked the applicant when he last saw his friend [Mr B]. The applicant stated that he didn't know where [Mr B] was at the moment but that he last saw him in Perth where they were staying in separate rooms. He stated that he got up one morning and [Mr B] was gone. When asked why he thought [Mr B] had gone to Canada, the applicant stated that [Mr B] had told him that he had money and would go to Canada. When asked if he had any contact with [Mr B] since he left Australia, the applicant stated that he had not and that he didn't know where [Mr B] lived.
72. The Tribunal asked the applicant whether he had had contact with his own family while in Australia. The applicant stated that he had not until recently, telling the Tribunal that he went to the Ghana Association which helped him get in touch with his family. When asked who he

spoke to, the applicant stated that he spoke to his sister and asked her how their mother was doing. He stated that his family can't call him because it is very expensive so he calls them.

73. The Tribunal asked the applicant what he feared would happen if he returned to Ghana. The applicant stated that he fears that if he goes back, he will be killed and nobody will question anyone. He stated that even if he took a car from Accra to [Town 2], he could be killed at anytime.
74. The Tribunal asked the applicant if he feared harm from anyone other than [Organisation A]. The applicant stated that there was no particular group that he feared harm from, but that contract killers operated in Ghana and he remembered the police who were called in to arrest him. He stated that people can be hired to kill or target particular persons. He stated that he strongly believed that if he had to return to Ghana he will die and that his statements in his written claims about [Site 3] were correct but occurred at [Site 5]. He stated that Ghana is not a large country and he could easily be identified or killed.
75. At the conclusion of the hearing, the Tribunal indicated to the applicant that it would write to his representative regarding the country information discussed during the hearing and adjourn its decision on the review application for seven days to allow him a chance to respond further to that information in writing.
76. [In] June 2012 the Tribunal wrote to the applicant's representative setting out the country information discussed at hearing and inviting his comments by [a date in] June 2012. That information was summarised as follows:
  - Country information that indicates that fatal road accidents are one of the major causes of death in Ghana<sup>33, 34</sup>;
  - Country information that indicates that many employers in Ghana refuse to recognise trade unions, that unionised workers are often intimidated and dismissed and that the Accra High Court handed down a decision in 2008 to the effect that employers could fire employees without giving reasons<sup>35, 36, 37, 38</sup>;
  - Country information that indicates that the Ghana Mining Workers Union has publicly criticised mining companies on safety standards and pay disparities between African and expatriate workers<sup>39, 40</sup>;
  - The Tribunal also put to the applicant that it had been unable to locate any information from independent sources that would support his claim that in June 2009,

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<sup>33</sup> Atta, S 2009, *Road accidents in Ghana; are they Juju motivated?*, GhanaWeb website <<http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=163654>>

<sup>34</sup> Smith-Asante, E 2011, 'New Road Safety Company to reduce road accidents' 2011, *Ghana Business News* <<http://www.ghanabusinessnews.com/2011/12/05/new-road-safety-company-to-reduce-road-accidents/>>

<sup>35</sup> US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ghana*, 8 April, Section 7

<sup>36</sup> No Dirty Gold website n.d., *The State of Human Rights in Mining Communities in Ghana* <<http://www.nodirtygold.org/HumanRightsInGhanaMiningCommunities.pdf>>

<sup>37</sup> US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Ghana*, 8 April, Section 7

<sup>38</sup> International Trade Union Confederation 2011, *2011 Annual Survey of violations of trade union rights – Ghana*, 8 June, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/4ea6620c.html>>

<sup>39</sup> 'Mine Workers Angry Over 0%' 2011, *Modern Ghana* website, source: *Ghanaian Chronicle* <<http://www.modernghana.com/news/347790/1/mine-workers-angry-over-0.html>>

<sup>40</sup> International Federation of Chemical, Energy, Mine and General Workers' Unions 2009, *2009 Gold Mining Talks Finally Conclude in Ghana*, 14 December <<http://www.icem.org/en/78-ICEM-InBrief/3560-2009-Gold-Mining-Talks-Finally-Conclude-in-Ghana>>



three workers from the same company who returned from the US on short term training were found dead in a burnt out bus near the airport.

77. [In] June 2012, the applicant's representative lodged with the Tribunal written legal submissions and further comments on the country information. In respect of the country information, the applicant's representative stated in summary:
- There is abundant country information supporting the applicant's claim of high level corruption between mining companies and the government which ultimately results in the brutality of mining workers by the security forces;
  - The applicant has never disputed the fact that fatal road accidents are one of the major causes of death in Ghana but this has no bearing on the applicant's claims, rather the question is whether country information supports the applicant's claim that mining workers such as the applicant suffer direct or systematic persecution in that country and it is submitted that this is the case;
  - The country information cited by the Tribunal supports the applicant's claim that mining workers are intimidated by some employers because of their close relationship with the government which is why some members of the union are singled out and tortured or killed with impunity;
  - The applicant does not dispute that the Ghana Mining Workers Union has publicly criticised mining companies on safety standards and pay disparities between African and expatriate workers, but that the applicant's contention is that it is not safe to do so in that country and it was the lack of safety that prompted the applicant and his group to take matters into their own hands by petitioning the company because the Union officials were either afraid for their lives or were bribed by the companies;
  - It is not unusual that information about the death of the three workers may prove to be difficult to locate and the applicant gave evidence that several atrocities committed by the security forces on behalf of the mining companies are not reported.
78. By way of legal submission, it was stated that the applicant faces a real chance of persecution on the basis of his actual political opinion and his membership of a particular social group of mining trade unions, that the delegate had found him to be a credible witness but had erroneously concluded that the past treatment of the applicant did not amount to persecution, that there had been no substantial change to the situation in the mining industry in Ghana and that therefore his past treatment should be considered the most reliable indicator of his likely future treatment.

## **FINDINGS AND REASONS**

79. In order to satisfy the Convention definition of a refugee, the applicant must have a well-founded fear of persecution. He must have a subjective fear, and that fear must also be well-founded when considered objectively. There must be a real chance that the applicant will be persecuted for a Convention reason if he returns to Nigeria. The Tribunal accepts that the applicant does not want to return to his own country. The question for the Tribunal is whether the applicant's fear of persecution is objectively well-founded within the criteria of the Refugees Convention.

80. It is important to adopt a reasonable approach when making findings of credibility. In *Minister for Immigration and Ethnic Affairs and McIlhatton v Guo Wei Rong and Pan Run Juan* (1996) 40 ALD 445 the Full Federal Court, Foster J sounded a cautionary note at 482:
- . . . care must be taken than an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.
81. The High Court in *Minister for Immigration and Ethnic Affairs v Wu Shan Lian & Ors* (1996) 185 CLR 259 stated as follows (Kirby J at 39):
- First, it is no erroneous for a decision-maker, presented with a large amount of material, to reason conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is not desirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court conducting a trial than to the proper performance of the functions of the administrator, even if the delegate of the Minister and even if conducting a secondary determination. It is not an error of law for a decision-maker to test the material provided by the criterion of which is considered to be objectively shown, as long as, in the end, he or she performs the function of speculation about the “real chance” of persecution required by *Chan*.
82. With these matters in mind, the Tribunal now turns to the applicant’s claims.

### **Country of Nationality**

83. The applicant travelled to Australia on a passport issued by Ghana, a certified copy of which is contained on the departmental file. He states that he is a national of that country and the Tribunal accepts this to be the case. The Tribunal has assessed the applicant’s claims against Ghana as his country of nationality.

### **Well Founded Fear of Persecution**

84. In essence the applicant has claimed that he fears persecution in Ghana from his employer [Organisation A] and/ or the authorities and law enforcement agencies in Ghana, on the bases of his political opinion and/ or his membership of a particular social group expressed by his representative to be “Mining/ Workers Union” However, the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is “well-founded” or that it is for the reason claimed. A fear of persecution is not “well-founded” if it is merely assumed or if it is mere speculation.
85. At the outset the Tribunal records that during the hearing it found significant aspects of the applicant’s evidence to be unreliable and lacking credibility and as a consequence the Tribunal has formed the view that certain aspects of his evidence should not be accepted. For the reasons set out below, the Tribunal had serious concerns about the credibility of his claims regarding his level of involvement in reporting safety issues and of his claimed union activities.
86. The Tribunal accepts that the applicant is a qualified [tradesman] who commenced working for [Organisation A] at [Site 3] in about 2004. In making this assessment, the Tribunal notes that the applicant has produced a photocopy of a workplace identification issued by [Organisation A], Ghana issued [in] September 2006 and a copy of an employee payslip issued by [Organisation A] for the month of June 2011 showing that the applicant was

employed full time as a leading hand in the maintenance department in [Site 5]. The Tribunal further accepts that the applicant was a member of the Ghana Mine Workers Union, noting that the payslip produced by him shows that deductions were withheld from his pay and paid to Ghana Mine Workers Union.

87. However the Tribunal has significant difficulty accepting other claims made in the applicant's statutory declaration, given the inconsistencies that arise compared to the applicant's evidence at hearing.

*Incidents at [Site 3]*

88. In his statutory declaration, the applicant states that he was first posted to [Site 3] where two workers were killed in the space of a week when the mine collapsed and no efforts were made to recover the body of the miner, allegedly because of the cost. The applicant states that before the incident which killed the second worker, he overheard the foreman explaining to the manager that a particular portion of the mine was about to collapse at which he was told that there was no cause for alarm. The applicant states in that statutory declaration that the following day the mine collapsed and killed the second worker leading the applicant to approach the foreman and ask why he did not report the matter to the overall project manager. The foreman reportedly told the applicant that he did not want to lose his life or job leading the applicant to report the matter to the branch Union leader. In his statutory declaration, the applicant states that he was transferred the next day to [Site 4].
89. However at hearing, the applicant told the Tribunal that he was employed at [Site 3] for about a year or perhaps less and that he was transferred from [Site 3] to [Site 5] in about 2005 because of the operational needs of the company. When asked by the Tribunal as to whether he was sent to [Site 5] because the company considered him to be a trouble maker, the applicant stated that wasn't the reason rather it was just that the company needed him in [Site 5]. When asked whether he had experienced any difficulties or witnessed any mining accidents while working at [Site 3], the applicant stated that he had not and that he was not at [Site 3] for long.
90. When asked the applicant whether he had worked at [Site 4] before being transferred to [Site 5], the applicant stated that there was a different branch of [Site 3] called [Site 4] and that he had been sent there briefly to get a feeling for that site but had not worked there. The applicant also stated that he was not a member of the GMWU at the time he worked at [Site 3] as it was not possible to become a member of the union until a person had been employed for six months.
91. When the inconsistencies between the applicant's oral evidence and the claims made in his statutory declaration were put to the applicant at hearing, the applicant stated that there must have been a miscommunication and that the incidents that were recorded as happening at [Site 3] in his statutory declaration actually occurred at [Site 5] after he arrived there in 2005. Given the applicant's oral evidence at the hearing, the Tribunal does not accept that the applicant experienced any difficulties while working at [Site 3], nor that he reported safety breaches to any person within [Organisation A] or to the GMWU while working at [Site 3] as claimed in his statutory declaration.

*Incidents at [Site 4]*

92. In his statutory declaration, the applicant states that while he was at [Site 4], three people were killed when a pillar collapsed after which he and [Mr B] decided to make a written petition to the union. The applicant states that they were transferred to [Site 5] soon after submitting that petition. However at hearing, the applicant stated that while he was sent to [Site 4] to get a feel for it, he never worked at that site. He also stated that he didn't meet [Mr B] until he arrived at [Site 5] where [Mr B] was already working. The applicant told the Tribunal that he had never made complaints about safety at [Site 3] or [Site 4].
93. When the inconsistencies between the applicant's oral evidence and the claims made in his statutory declaration were put to the applicant at hearing, the applicant stated that there must have been a miscommunication and that the described in his statutory declaration actually occurred at [Site 5] after he arrived there in 2005. Given the applicant's oral evidence at the hearing, the Tribunal does not accept that the applicant experienced any difficulties while working at [Site 4], nor that he made a written petition to the Union while at [Site 4].

*Incidents at [Site 5]*

94. The applicant states in his written claims that when he first arrived at [Site 5], the workers there had already heard about his petition and he was isolated for six months and prevented from attending union meetings. He stated that after completing their work in that isolated area, he and [Mr B] were sent to join another group and learned 6 people had died since they were posted to [Site 5].
95. However the applicant told the Tribunal at hearing that he didn't meet [Mr B] until he arrived at [Site 5] and that he didn't make any complaints about safety while at [Site 3] and [Site 4] and that any incidents he had described as occurring at those sites in his statutory declaration actually occurred during the time he was working at [Site 5]. On the basis of the applicant's oral evidence, the Tribunal does not accept that the applicant was isolated upon his arrival at [Site 5] as a result of any previous complaint or petition. Further the applicant told the Tribunal at hearing that he did not recall being prevented from attending union meetings. The Tribunal does not accept the contents of the applicant's statutory declaration as it relates to these matters.
96. The applicant told the Tribunal that when he arrived at [Site 5], the accident rate was too frequent and that he mentioned this to his foreman who told him that he couldn't approach the managers to make such complaints because he had children and might be victimised or sacked by the company. The applicant stated there was a Mines President who was like an inspector and who was supposed to inspect the sites but that when he came he was given money to leave and that the applicant had never met him. The applicant stated that he was heavily involved in reporting safety incidents to the union leader who couldn't do anything and that as a result the workers decided to do something about it themselves.
97. The applicant told the Tribunal that he and [Mr B] led the workers on a number of minor demonstrations to alert management to what was going on and the fact they weren't happy. When asked when these demonstrations occurred, the applicant stated that he didn't remember but that it was an ongoing process. He stated that they kept working through the demonstrations, but decided to do things to let the management know that they weren't happy. When asked what things they did, the applicant stated that the workers didn't go on strike, but just arranged some minor demonstrations to let the managers know they weren't

happy. He stated that on some occasions they would ask those coming onto nightshift to stay back and pick up cans to make noise.

98. When asked at hearing about the petition he claimed in his written statement to have organised, the applicant stated that they had planned to send a petition to TV and radio stations and other media organisations but that they couldn't take that step because of the logistics of the situation and the remoteness of [Site 5]. When asked if he had ever sent a petition to the union, the applicant stated that they gave the petition to their branch representative who was to forward it to the main branch, but that the branch representative did not want to sacrifice the benefits he received from the mine's management for the worker's interest. When asked how many people signed the petition, the applicant stated that one of the other workers wrote it on behalf of the workers and it wasn't like everyone signed it. He stated that even though he and [Mr B] were part of those leading the group, they did not write the petition and lots of other people were interested also. Given the applicant's oral evidence at hearing, the Tribunal does not accept that the applicant at any stage wrote or signed a petition to the union, media outlets or any other person.

*Targeting of the applicant by [Organisation A] and/or government authorities*

99. The applicant gave evidence that on one occasion around 2009, [Organisation A] management called in 20 police who arrested 7 workers including the applicant and [Mr B], that they were jailed for five days and that before being released, they were asked to sign a good behaviour bond. Given the serious concerns the Tribunal has about the credibility of the applicant, the Tribunal does not accept the applicant's evidence in this regard. Rather while the Tribunal accepts that the applicant was involved in minor demonstrations during his employment at [Site 5], it does not accept that he has at any time been detained or otherwise targeted or harmed by [Organisation A] or the Ghanaian authorities as a consequence of his involvement.
100. In making this assessment the Tribunal notes that the applicant gave evidence that the extent of his activities was leading a series of protests he characterised as minor, telling the Tribunal that they continued to work during protests but sometimes banged on cans to make noise. Despite his written claims to have organised petitions to the union, it is apparent from his oral evidence at hearing that he neither wrote nor signed such a petition. Further, the applicant makes no claims to have been targeted for harm by [Organisation A] or any other person since 2009 despite his continuing employment with [Organisation A] and his claims to have continued to agitate on safety issues up until his departure from Ghana in [2011]. Country information before the Tribunal indicates that many employers have a policy of zero tolerance for trade unions and that workers who attempt to form or join a trade union are intimidated and dismissed<sup>41</sup>. In 2008 the Accra High Court is reported as having made a decision "to the effect that employers could hire and fire without giving any reasons for the termination of employment and the Ghana Trades Union Congress alleged that some employers were taking advantage of this ruling, using it as justification to fire unionists."<sup>42</sup> In contrast, the applicant stated that he wasn't sacked by [Organisation A] after the claimed events of 2009 because the mining company didn't sack anyone, that the company knew he was hardworking and also knew what the workers were saying was right. In light of the country information before it,

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<sup>41</sup> International Trade Union Confederation 2011, *2011 Annual Survey of violations of trade union rights – Ghana*, 8 June, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/4ea6620c3.html>>

<sup>42</sup> International Trade Union Confederation 2011, *2011 Annual Survey of violations of trade union rights – Ghana*, 8 June, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/4ea6620c3.html>>

the Tribunal does not accept this, considering that had [Organisation A] believed the applicant to be a trouble maker or wished to remove him from their worksites, they would simply have terminated his employment.

101. The applicant also gave evidence that he believed he was perceived as a trouble maker by [Organisation A] management because the company sent the applicant and [Mr B] to Australia even though there were others who had worked there longer. However the in the Tribunal's view, [Organisation A]'s selection of the applicant for a training course in Australia is inconsistent with his claims to have been identified as a trouble maker. Rather, the Tribunal considers such an action to be consistent with the ongoing development of an employee with skills of value to the company. Nor does the Tribunal accept as credible the applicant's explanation that he and [Mr B] were sent to Australia for training only so that they could be killed or otherwise harmed by their employer on their return to Ghana. For these reasons, the Tribunal does not accept that [Organisation A] or any other person wishes to harm the applicant on the basis of his political views.
102. Nor does the Tribunal does accept the applicant's claims that his employer or the Ghanaian authorities wish to harm him on the basis of his union membership. In making this assessment, the Tribunal notes that the applicant gave evidence during the hearing that he was an ordinary union member and that he was not elected to any position within the union. For the reasons set out above, the Tribunal has not accepted his claims to have written or signed a petition to the union or any other person or body.
103. The Tribunal has not accepted on the evidence before it that the applicant was arrested in 2009 as a result of his participation in protests about safety. It follows that the Tribunal does not accept that a man person arrested with the applicant was killed or otherwise harmed by [Organisation A] or the authorities as a result of refusing to sign the good behaviour bond presented to the applicant and others upon their release. Similarly the Tribunal does not accept the applicant's claims that three persons were killed by their employer after returning from an overseas trip. In making this assessment, the Tribunal has considered the submission to the effect that it is not unusual that information about such deaths may be difficult to locate, but the Tribunal also notes the applicant's own evidence that he didn't know what caused their deaths. Country information before the Tribunal indicates that fatal road accidents are one of the major causes of death in Ghana and may provide an alternative explanation of those deaths if they did in fact occur<sup>43</sup>, <sup>44</sup>.
104. When asked why he couldn't leave his job to avoid the harm he feared, the applicant stated that it is a challenge finding a job in Ghana and that he was trained as a [tradesman] and it would be difficult to do other things. When asked if there was any reason he couldn't move to another part of Ghana and work as a [tradesman] for another employer, the applicant stated that it was difficult to get jobs in Ghana and that unemployment was very high, stating that when you found a job you wanted to protect it. The Tribunal has considered the applicant's evidence on this point, but does not accept it. Rather the Tribunal considers that if the applicant genuinely feared serious harm from his employer as he claims, he would in the first instance resign from that employment and seek alternative employment.

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<sup>43</sup> Atta, S 2009, *Road accidents in Ghana; are they Juju motivated?*, GhanaWeb website  
<<http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=163654>>

<sup>44</sup> Smith-Asante, E 2011, 'New Road Safety Company to reduce road accidents' 2011, *Ghana Business News*  
<<http://www.ghanabusinessnews.com/2011/12/05/new-road-safety-company-to-reduce-road-accidents/>>

105. The Tribunal does not accept that there is a real chance that the applicant will face serious harm from his employer or the Ghanaian authorities if he returns to Ghana now or in the reasonably foreseeable future on the basis of his political views, his membership of a particular social group or for any other Convention reason. The Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason.
106. The Tribunal has gone on to consider whether the applicant meets the complementary protection criterion under s.36(2)(aa). The Tribunal has considered whether it has 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 the applicant will suffer significant harm. As the Tribunal has not accepted his claims that his employer wishes to harm him on the basis of his political views or his union membership and it is not suggested that there is any other basis on which his employer or any other person would seek to harm him, the Tribunal does 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 the applicant will suffer significant harm.

### **CONCLUSIONS**

107. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
108. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).
109. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

### **DECISION**

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