

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 75853**

**REFUGEE APPEAL NO 76278**

**REFUGEE APPEAL NO 76279**

**REFUGEE APPEAL NO 76280**

**AT CHRISTCHURCH**

**Before:** A N Molloy (Member)

**Representative for the Appellants:** J Taylor

**Appearing for the Department of Labour:** No Appearance

**Date of Hearing:** 19 August 2008

**Date of Decision:** 28 November 2008

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**DECISION**

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[1] The appellants, nationals of Nigeria, are a family comprising a mother (the mother) and three of her children, aged 10 and under. They appeal against decisions of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining each of them the grant of refugee status.

[2] This is the second time the appellants have appealed to this Authority. The Authority (differently constituted) dismissed their appeals in respect of their first refugee claims on 27 February 2004. Their second refugee applications were lodged with the RSB some 18 months later, on 25 August 2005. They were declined by the RSB in a further decision dated 15 December 2005.

[3] The appeals raise two preliminary points. First, the Authority is required to determine whether to grant the appellants leave to appeal out of time. For reasons set out below, it finds that leave should be granted. It is therefore necessary to consider a second preliminary issue, namely whether it has jurisdiction to determine the appellants' second claims for refugee status. For reasons which are also set out below, the Authority finds that it does have jurisdiction.

[4] The appeals are heard together as they raise similar issues which arise out of common facts. While the children attended the second appeal interview, only the oldest gave evidence. The others did not, because they are too young. The mother agreed to be the responsible adult for her three children for the purposes of s141B of the Immigration Act 1987 ("the Act").

[5] The mother gave birth to a fourth child after she arrived in New Zealand. That child is a New Zealand citizen and has not applied for refugee status.

### **LEAVE TO APPEAL OUT OF TIME**

[6] Under s129O(3)(b) of the Act, a notice of appeal must be received within 10 working days of the date of receipt of the RSB decision declining refugee status.

[7] These appeals were filed some three months outside the prescribed time. However, under s129O(4) of the Act the Authority is able to extend that time where it is satisfied that there are "special circumstances". The Authority is satisfied that there are special circumstances in this instance.

[8] When lodging their second applications for refugee status, the appellants gave the postal address of their representative as the address for service of any communications relating to their applications.

[9] Unfortunately the RSB mistakenly forwarded its decisions in respect of the second applications to the physical address which the representative occupied at the time that the claim was lodged. By that time, the representative had relocated to a different physical address (albeit that his postal address remained the same). As a result of that error, the RSB decisions were not brought to the attention of the appellants or their representative until some time later.

[10] The appellants assert, in a statutory declaration lodged by the mother, that if the RSB had forwarded the decision to the appellants' actual address for service

(as it should have done) then the appeals would have been lodged within the appropriate time.

[11] The Authority accepts the mother's evidence in that respect, and finds that special circumstances exist for the purposes of s129O(4) of the Act. Leave is accordingly granted to lodge the appeals out of time because the late lodging of the appeals involved no fault on the part of the appellants.

### **JURISDICTION TO DETERMINE SECOND CLAIMS FOR REFUGEE STATUS**

[12] There is a further preliminary issue to be addressed. Before considering the merits of any second appeal, the Authority must first determine whether it has jurisdiction to do so.

[13] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined. Section 129J(1) of the Act sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status:

“129J. Limitation on subsequent claims for refugee status—

(1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.”

[14] Where the refugee status officer declines the subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority under s129O(1) of the Act, which provides that:

“A person whose claim or subsequent claim has been declined by a Refugee Status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision.”

[15] The Authority will determine whether it has jurisdiction by comparing the previous claim for refugee status against the subsequent claim: *Refugee Appeal No 75139* (18 November 2004). Where jurisdiction is established, the Authority will consider the merits of the subsequent claim.

[16] It is therefore necessary to compare the appellant's first and second claims.

### The appellants' first claims for refugee status

[17] The appellants arrived in New Zealand in August 2002 and lodged their first claims for refugee status later that month. The basis of their first claims is set out in more detail in the decision of the first panel of the Authority (the first Authority panel) in *Refugee Appeal Nos 74615-8* (27 February 2004).

[18] In summary, the mother claimed that she was born in Lagos, Nigeria, where she was raised as a Muslim. During the mid-1990s she entered into a *de facto* relationship with a Christian man whom she later married. She had moved from her family home to live with her partner in 1997 and, from that time, had very little contact with her parents. The mother anticipated that her family would reject her partner if they knew that he was a Christian. She also endeavoured to hide from them her own conversion to Christianity.

[19] The mother and her husband attended church in Lagos each Sunday without difficulty until April 2001 when the mother's parents (the parents) discovered that she had converted to Christianity and learnt that she was pregnant. The parents became abusive towards the mother. They began to beat her, telling she must abort her child or leave her husband, whom they threatened to kill.

[20] It was no longer safe to remain in Nigeria so the family moved to Togo, where they lived for over a year. In July 2002, the parents discovered where she was living. They came to the family's house in Togo, accompanied by several men who started beating the mother (who was then pregnant again) and her husband. In the midst of the fracas, the mother managed to escape with her three children. She did not know what became of her husband.

[21] The appellants were befriended by a woman whom they met (for the first time) in the market square. The woman arranged travel documentation for the appellants and paid for them to travel with her to New Zealand in August 2002. The mother never reimbursed the woman for any of her expenses, and did not even learn her name. (The mother has since given birth to her fourth child.)

[22] The appellants claimed that if they were to return to Nigeria, they would be killed because of their Christianity. The mother's family would learn of their return, their lives would be endangered no matter where they went and the Nigerian police were unable or unwilling to protect them.

[23] After interviewing the mother in November 2002, a refugee status officer of the RSB issued decisions dated 28 March 2003, declining the appellants' first applications for refugee status.

#### The decision of the first Authority panel

[24] The appellants appealed to this Authority for the first time in August 2003. The first Authority panel heard the appeals concurrently and published a decision dismissing the appellants' appeals in *Refugee Appeal Nos 74615-8* (27 February 2004).

[25] The first Authority panel found that the appellants' claims were not credible. It found the mother to be an overwhelmingly vague witness who was unable to provide credible detail about her life in Nigeria or in Togo, about her journey to New Zealand or about the woman who helped her to come here.

[26] It found her to be an evasive witness whose evidence was inconsistent, contradictory and implausible in so many respects that her account could not be believed. The threats and violent incidents which allegedly gave rise to the appellants' flight from Nigeria and later from Togo were rejected along with all of the core elements of their claims. Because the Authority rejected the mother's evidence the claims of the three child appellants also failed.

#### Appeal to the Removal Review Authority (RRA)

[27] After the appeals were declined by the first Authority panel the DOL served a Notice of Revocation of Temporary Permit upon the appellants, dated 24 March 2004. The appellants appealed to the Removal Review Authority (RRA) to overturn the DOL decision in May 2004. The RRA declined the appellants' appeals in a decision delivered in July 2005.

#### The appellants' second claims for refugee status

[28] On 25 August 2005, the appellants lodged second claims for refugee status with the RSB. In September 2005, the mother was interviewed for the second time by the RSB which issued a further decision, dated 15 December 2005, again declining the appellants' refugee status. The appellants have appealed to this Authority for the second time.

[29] The grounds upon which the appellants base their second claims have never been systematically articulated, but include the following:

- a) they are Christians;
- b) they are vulnerable in various respects as a single woman returning to Nigeria alone without social support and as the children of such a mother;
- c) they would be detained and imprisoned upon their return to Nigeria, and they would be vulnerable to sexual abuse while in custody;
- d) the children would have no access to education in Nigeria, and their access to health care would be deficient;
- e) the children would find it difficult to integrate into Nigerian society, having been brought up in New Zealand; and
- f) the youngest child is a New Zealand citizen and for the remainder of the family to be returned to Nigeria would divide the family group.

## **THE JURISDICTIONAL THRESHOLD**

### Comparison of claims made

[30] In reality, much of the mother's second claim is indistinguishable from her first. She candidly admitted that she did not know if anything had changed in Nigeria since her first claim for refugee status was finally determined in 2004. However, the Authority is satisfied, by a narrow margin, that it has jurisdiction to consider the merits of all of these appeals.

[31] The appellants' first claims were based upon an assertion that as a family they were collectively at risk because of the mother's marriage to a Christian man. While their religion remains a part of their second claims, they also make different assertions with respect to the children. They now claim that having been brought up in New Zealand the children would find it difficult to integrate into Nigerian society; that the children would not have access to adequate education in Nigeria, and that the health needs of the son would not be met in Nigeria.

[32] Comparing the claims the Authority is satisfied that, given the ages of the children and given that the passage of four years since the previous decision of the

Authority amounts to a proportionately large part of their lives, these claims amount to a significant change of circumstances in respect of the children.

[33] As to the mother, the second claim now includes the assertion that she is at risk as a single woman returning to Nigeria alone without social support, with four 'westernised' children. While issues of religion clearly bear on that assertion, it is much wider in its scope than the more narrowly focussed first claim, which asserted only that she was at risk for having converted to Christianity from Islam. Bearing in mind that the comparison is as between the claims *as asserted*, the Authority is satisfied that the wider scope of the second claim does present significantly different grounds to the first claim. As to whether the grounds have arisen since the first claim was determined, the Authority is satisfied that an essential ingredient of it – the assertion that the children have now spent the greater part of their lives outside Nigeria and will be incapable of blending back in to Nigerian society – has emerged since the decision on the first appeal.

[34] On that basis, the Authority now sets out a summary of the appellants' evidence to the Authority in respect of their second appeals, before turning to assess the credibility of that evidence.

### **EVIDENCE GIVEN AT THE SECOND APPEAL INTERVIEW**

[35] The Authority heard oral testimony from three witnesses - Mrs AB, YZ (the oldest of the children), and the mother. Their evidence is summarised below.

#### **Evidence of AB**

[36] Mrs AB has known the appellants since shortly after they arrived in New Zealand in 2002. She and her husband have provided ongoing assistance to the appellants, and have accommodated the family as part of their household on two separate occasions. The first was in 2002. The second occasion was in mid-2006 when the mother experienced financial difficulties.

[37] AB spoke of the mother's vulnerability and gullibility. She gave as an example the mother's entry into a civil union with a Nigerian man in New Zealand. She believes that the mother was seeking someone who could be a father to the children. Unfortunately the relationship soon foundered once it became apparent that the man was not interested in the children.

[38] AB also spoke of the mother's Christianity and her strong religious commitment. She described the mother as a good mother who is determined to look after her children. She indicated that the mother is employed and is seeking specific qualifications with a view to improving her family's circumstances.

[39] AB described the family as a strong unit which has benefited from a strong support network in New Zealand. She believed that the children would be worse off if they had to live in Nigeria because they have grown up in New Zealand. However she conceded that she had never been there and admitted that much of her knowledge about Nigeria is gleaned from research that her husband has conducted on the internet.

[40] In AB's view the mother and her children are honest and trustworthy. She spoke about the children with obvious affection, outlining their individual traits and stating that the mother and her children would make good citizens of New Zealand.

#### Evidence of YZ

[41] YZ is 10 years old. Although she was born in Nigeria, YZ does not want to live there. She has grown up in New Zealand. All of her friends are here and her memory of Nigeria is now non-existent.

#### Evidence of the mother

[42] The mother had little new evidence to give. She does not believe that it is appropriate for her children to return to Nigeria. She believes that the education they would receive in Nigeria will be inferior to that which they receive in New Zealand and she said that she would have no support network if she were to return there.

[43] She believes that she and her children would be placed in jail if they were to return to Nigeria because they have no Nigerian passports. She bases her assessment on what she understands to have happened to a Nigerian man who was deported from New Zealand during the last two years. She is not sure about his personal circumstances but has heard that he was imprisoned upon his return to Nigeria (a statement about this was provided by one RR after the conclusion of the appeal interview, and is referred to below).

[44] The mother said that as a single woman she would not be safe in Nigeria, and nor would her children. She said that she would be vulnerable to sexual



exploitation, and that she feared for her children, and particularly her eldest daughter, for the same reason.

[45] She also said that her son has asthma, and claimed that he would not have access to medication appropriate to his condition in Nigeria.

#### Material received

[46] The Authority wrote to the appellants on 26 March 2007 in connection with their appeals. Mr Taylor responded on their behalf on 18 April 2007. His letter was accompanied by 33 pages of country information which has been taken into account for the purposes of these appeals.

[47] Mr Taylor forwarded additional documents to the Authority prior to the hearing of the second appeals, under cover of a letter dated 13 August 2008. These included statements signed by the mother and by AB. They also included several letters of support for the appellants provided by a number of people who had come into contact with the family during their time in New Zealand. They include family friends, a budget adviser, a school teacher and an employer.

[48] Additional material was provided after the appeal interviews under cover of a letter from Mr Taylor dated 9 September 2008. This comprised an affidavit sworn on 5 September 2008 by GG; a statement signed by RR on 5 September 2008, and copies of various emails from Mr AB (husband of the witness AB) and the "SIM Nigeria Administrative Secretary". The content of each is summarised below.

#### Affidavit of GG

[49] GG is also a national of Nigeria who now lives in New Zealand. He was born in Lagos and returned there frequently after he moved to Benin in the south of Nigeria as a child.

[50] GG states that during childhood "It was common to learn about people who had left Nigeria but were subsequently forced to return as deportees". He also asserts that deportees are usually imprisoned, and that some women in custody are vulnerable to sexual abuse "especially if they have children because of the need to protect their children".

Statement signed by RR

[51] According to his statement, RR was deported to Nigeria from New Zealand in 2005, and was arrested by the Nigerian police at the airport upon his return. He was detained for six months while his family raised funds and paid a bribe equivalent to NZ\$5,000.00.

[52] RR asserts that the appellants would also be imprisoned upon their return to Nigeria. He asserts that they would remain there for a long time as the mother would have no-one who could pay the fine (or bribe) to secure their release from prison. He said that conditions in Nigerian prisons are very poor and that all inmates are treated badly, including women and children.

[53] He also stated that he had been unemployed for a long time, and claimed that even if she avoided jail or was somehow able to secure her release, the mother would be unable to obtain any employment. She would be forced into prostitution.

Emails from Mr AB

[54] The bundle of material also contained email correspondence from Mr AB. One attached an email from RR, and formed the basis of the statement which was subsequently redrafted, apparently by Mr AB, and then signed by RR. Another email from Mr AB to Mr Taylor explains the context in which RR's statement was prepared. It also refers to the email from "SIM" (see below).

Email from "SIM Nigeria Administrative Secretary"

[55] Mr Taylor submits an email he received from Mr AB which attaches a reply sent by "SIM Nigeria Administrative Secretary" to a general request for information sent by Mr AB. Mr AB's email, the date of which is unclear, states:

"We have a friend in our church in Christchurch New Zealand who together with her four infant children is at risk of being deported back to Nigeria. She fears the authorities or others in Nigeria will inform her Moslem family in Northern Nigeria, on her arrival and put the life of her family in jeopardy.

She believes that deportees are incarcerated till officials contact their family to pay for their release.

We urgently need to verify this information (within 14 days) to put a submission to the authorities in NZ as they consider the plight of her family being forced to return to Nigeria.

Is it possible and if so could you please advise if you have a reliable source in Nigeria who can verify this information."

[56] The response from SIM is as follows:

"This is in response to your urgent request for information concerning a person who has been deported to Nigeria.

We talked to a reliable source here and he said that there will usually be a thorough investigation of the case and depending on the degree of the offence, a court proceeding could follow.

Most times the person concerned will be detained and fined. The family or individuals directly involved (or referees) will have to pay this fine before any release is made. Travel documents could be seized and there could be some publicity, most times in the papers.

This is what we know so far. The actions taken could vary depending on the state the person is from."

## **THE ISSUES**

[57] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[58] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANTS' CASE**

### **Assessment of the evidence given at the second appeal interview**

[59] Before addressing the principal issues identified, it is necessary to determine the credibility of the appellants and their witnesses.

[60] The evidence given by the mother for the purpose of the second appeal was limited in its extent. Because she has been living in New Zealand since her first appeal was determined, she has limited insight into the events taking place in Nigeria today. She admitted as much herself. Her credibility is addressed below.

[61] YZ was an engaging and straightforward witness and the Authority accepts her evidence. The nature of her testimony was understandably limited, given her age and the fact that she left Nigeria when she was very young. The Authority does not doubt her professed desire to stay in New Zealand. It is unsurprising that she does not wish to return to the country of her birth, of which she now has little memory, given that she has been brought up in New Zealand and given that all of her networks and friends are in this country.

[62] Likewise, there is no reason to doubt AB's appraisal of the mother as a decent and fundamentally honest person in her day-to-day life. That is accepted, as is her assertion that the appellant is a good mother and that she and her children form a strong family unit.

[63] The Authority does not disregard the findings of the first Authority panel in respect of the appellants' first appeals. Section 129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim, and the Authority has a discretion as to whether to rely on any such finding.

[64] In that context, the Authority takes into account the fact that after hearing from and observing the mother the first Authority panel entirely rejected the core aspects of her first claim. It found her to be vague, inconsistent and evasive and found that she "presented as a witness who was concealing details rather than as a witness who genuinely did not know them"; *Refugee Appeal No 74615* (27 February 2004) [45].

[65] The first Authority panel found further that the mother was unable to provide credible detail about large parts of her life in Nigeria or Togo. She was also unable to provide credible detail about her remarkable claim that a woman whom she had never previously met had made all the arrangements for, and met the entire cost of, bringing her to New Zealand with her children. Even though the woman had supposedly accompanied her to New Zealand, the mother was unable to name her.

[66] While the Authority is prepared to accept that the mother is a devoted mother and an honest person in her day-to-day life, it is also satisfied that the credibility findings of the first Authority panel are robust and persuasive.

[67] Accordingly, the Authority relies on the credibility findings of the first Authority panel for the purpose of assessing the appellants' subsequent claims. It

does not accept that the appellants fled from Nigeria via Togo for the reasons that the mother had previously claimed, and does not accept that they were in danger at the time they came to New Zealand because the mother had been raised a Muslim and had married and become a Christian.

[68] The Authority finds that the appellants are nationals of Nigeria. It adopts the finding of the first Authority panel, which did not believe the mother's account of her time spent in Togo. Accordingly, it follows that the Authority does not accept that the twins were born in Togo. It is noted for completeness that even if they were, they would be citizens of Nigeria in any event, by virtue of the Constitution of the Republic of Nigeria. The Constitution provides that "every person born outside Nigeria either of whose parents is a citizen of Nigeria" is a citizen by birth. The RSB decision declining the appellants' second applications for refugee status made this point.

[69] While Mr Taylor indicated that he did not necessarily accept the RSB finding, he has provided no basis upon which it is to be regarded as incorrect. The Authority did not understand Mr Taylor to be arguing that the twins were citizens of Togo but not citizens of Nigeria, and he has not provided any submissions or country information to suggest that they have a well-founded fear of being persecuted in that country for a Convention reason.

[70] The Authority finds that the appellants are Nigerian nationals; if returned to Nigeria, they will most probably return to the city of Lagos where the mother lived for most of her life; they are Christian; one of the children is a New Zealand citizen; the other three children (the appellant children) are all of primary school age; one of the appellant children is asthmatic; and that all of the children have spent the formative years of their lives in New Zealand.

[71] It is upon that basis that the Authority turns to address the principal issues identified above.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

[72] For the purposes of refugee determination, "being persecuted" has been described as the sustained or systemic violation of basic or core human rights, such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125]. Put another way, it has been expressed as

comprising serious harm, plus the failure of state protection; *Refugee Appeal No 71427* (16 August 2000).

[73] The Authority has consistently adopted the decision in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), which held that a fear of being persecuted will be well-founded when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. The standard is entirely objective.

#### The appellants' submissions

[74] The appellants advanced claims under various headings.

[75] They repeat the claim which they advanced in respect of their first appeals, that they are at risk of serious harm in Nigeria because they are Christian, and the mother a convert from Islam.

[76] The Secretariat of the Authority wrote to the appellants' representative on 26 March 2007. With respect to the issue of Christianity the letter made the following observations, and invited the appellants to respond:

“The Authority reviewed country information available in connection with Nigeria in order to consider the question of religious violence in its decision in *Refugee Appeal No 75709* (28 June 2006).

In that decision the Authority observed that the population of Nigeria is estimated to be in excess of 130 million, of whom approximately equal numbers are Christian and Muslim.

The Authority observed that while there was a wealth of information available including State reports, NGO investigations, literature provided by religious organisations and ongoing news bulletins from various western sources in connection with Nigeria, both in general and specifically in connection with the problem of religious tension, the Authority had not located or been provided with any country information which suggests that Christians living in the south of Nigeria (including Lagos, where [the mother] was born and where she lived before coming to New Zealand) are at risk of being persecuted by Muslims.”

[77] While Mr Taylor's response dated 18 April 2007 states that the second appeals do not rely primarily upon “the religious question”, he provided miscellaneous items of country information with respect to the situation for Christians in that country. Extracts from Human Rights Watch *Monthly update* (as at 17 April 2007) and Amnesty International *Report for the events of 2006* (month and year unstated) refer to the impact of Shari'a law upon parts of northern Nigeria. These aver to some instances in which Shari'a law has contributed to discrimination against women in northern Nigeria.

[78] The Authority bears in mind the fact that the purpose of the letter dated 26 March 2007 was to address whether there had been a significant change of circumstances in Nigeria since 2004. The issue which confronts this Authority is a different one, namely, whether the appellants have a well-founded fear of being persecuted in Nigeria for a Convention reason.

[79] However, the appellants have provided no country information, and the Authority is unaware of any, which substantiates the appellants' claims that they will be seriously harmed in Nigeria for reason of their Christianity. Lagos, where the mother was born and raised, is part of the predominantly Christian southern part of Nigeria where Shari'a law has no application. Even if the appellants chose to settle elsewhere in Nigeria, there is no reason why they would settle in an area which is subject to Shari'a law. Nor is there any evidence that the appellants would be at risk of serious harm from Muslims for reason of their Christianity.

[80] Mr Taylor also submitted in his letter dated 18 April 2007 that for their second appeals the appellants' rely "on the issue of [the mother] being a woman alone with four small children being returned to Nigeria as the head of a familial fragment with no male support in a militant patriarchal community, no family support or social connection and she would be a woman of limited skills who would not be competitive in the Nigerian job market with no means of supporting herself or her children." To that must be added the fact that the children have spent the bulk of their lives in New Zealand and have no knowledge of Nigerian customs or mores.

[81] That submission contains a number of separate but interlocking themes which the appellants presented throughout the hearing of their appeals. The Authority will deal with each of these below before considering their collective impact. For reasons set out below, the Authority finds that even as a family comprising a single woman and four children, the appellants do not have a well-founded fear of being persecuted in Nigeria.

[82] In support of his submission, Mr Taylor referred the Authority to an earlier decision in respect of which he had also appeared as the representative; *Refugee Appeal No 75903* (19 December 2006) in which the Authority granted refugee status to an Iraqi Kurdish woman and her two dependant children, who had no male kinsman from whom they could obtain protection in Iraq.

[83] That decision turns upon its own facts, like any other appeal before this Authority, and is of no assistance in the context of these appeals. There is no

parallel between the predicament of an ethnic Kurdish woman from Iraq and the circumstances facing this woman and her children if they were to return to Nigeria.

[84] The mother also claims that she and her children are at risk of being detained in custody upon their return to Nigeria. They claim that they will be mistreated and possibly sexually abused while in detention.

[85] Mr Taylor provided an article from Amnesty International in Canada headed "Nigeria: rape – the silent weapon" (12 February 2007), which states that:

"In Nigeria, rape of women and girls by police and security forces is widespread. Women and girls are frequently raped while in detention or when visiting a male relative who is being detained."

[86] However, there is no evidence that any relative of the appellants is detained in an environment which might bring the appellants into contact with the Nigerian police and security forces. Further, the entire article comprises three paragraphs; provides no analysis of the incidence of rape in Nigeria and does not elaborate upon the meaning of "widespread".

[87] Further, no reliable evidence or country information has been provided which suggests that any of the appellants, or returnees to Nigeria in general, would, without some specific reason, be detained and taken into custody upon their return.

[88] The mother claimed that she and her children would be jailed because they have no passports. However, they will not be able to be returned unless appropriate travel documents are obtained for them. Further, she confirmed that the only reason she does not have a passport is that she has never applied for one and conceded that if she did apply for herself and her children, she anticipated that they would all receive passports.

[89] Even if they did not obtain passports and were compelled to travel on temporary travel documents of some type, there is simply no evidence or country information of which the Authority is aware, that indicates that either the mother or the children would be taken into custody upon their return to Nigeria simply because they are entering Nigeria on temporary travel documents obtained offshore.

[90] The Authority has not overlooked the content of the affidavit of GG, the statement signed by RR, and the exchange of emails between MrAB and the SIM Nigeria Administrative Secretary.



[91] However, the affidavit of GG contained hearsay amounting to vague and general recollections about unspecified people who had problems for unspecified reasons. The Authority has been provided with no information about why RR was taken into custody and detained or whether he had committed an offence in NZ or Nigeria. Because neither witness gave evidence in person, their credibility could not be tested nor could the particulars of their assertions be explored in any greater detail.

[92] The Authority has received no explanation as to what type of organisation SIM Nigeria is, or about the nature of the position of “Administrative Secretary” occupied by the author of the email provided. The suggestion in the brief four paragraph email from SIM that a person deported to Nigeria will be “detained and fined” “most times” appears to be predicated upon the premise that the person deported has committed some type of offence. Yet there is no evidence that any of the appellants have committed any type of offence, or that they would be suspected of having done so. For all of the reasons stated, the Authority affords this material no weight.

[93] The mother also claims that she and her children would be vulnerable to sexual exploitation within the community at large. In that context, the Authority notes that Mr Taylor has provided another document entitled “Women asylum-seekers and refugees. An introduction to the issues” *Northern Refugee Centre, Sheffield England* (updated 15 March 2007).

[94] However, while that document refers to work focusing on women refugees and asylum-seekers in the United Kingdom, it provides no information about the predicament of women in Nigeria.

[95] A further document headed “Women’s Rights Nigeria” comprises a single page apparently downloaded from the website of an organisation “Roots and Fruits Women’s Farmers Society of Nigeria”. It asserts that women in Nigeria experience domestic violence, rape, female genital mutilation (FGM) and discrimination. Again, without minimising the seriousness of any of those problems, the article provides no support for the submission that the appellants have a well-founded fear of falling victim to such crimes in Nigeria.

[96] Mr Taylor broached the subject of FGM when questioning the mother during the second appeal interview. He later submitted to the Authority that the mother and her daughters may be at risk of being forced to undergo such procedures.

[97] The existence of the practice does not in itself mean that the mother or either of her two daughters is at risk of being forcibly subjected to FGM. The mother had not disclosed any concern in this regard until questioned by Mr Taylor during re-examination. When questioned by the Authority, the mother stated that the decision to subject children to such procedures in Nigeria would normally be made by their parents. The mother confirmed that neither she nor any of her family or close acquaintances had been subjected to such a practice. Her nearest experience of FGM concerned a recollection from her own childhood involving the two year-old child of a neighbour. She did not disclose any such intention in connection with her own daughters.

[98] Mr Taylor also provided the Authority with items of country information outlining the general political and economic climate in Nigeria. One article by Alex Last, "Millions lacking basics in Lagos" *BBC website* (18 April 2007), outlines the problems of poverty faced by large numbers of Nigerians. Another article, from Human Rights Watch, "Nigeria: Polls marred by violence, fraud" (15 April 2007) referred to alleged electoral fraud in particular in the Rivers and Anambra states in the general election which had then recently taken place. A further Human Rights Watch article "Nigeria: Corruption and misuse rob Nigerians of rights" (30 January 2007) refers to the propensity of Nigerian politicians to squander oil based revenue. The historical context outlined in this article indicates that such difficulties have existed in Nigeria since the 1950s.

[99] Some of this background information indicates that the appellants are likely to experience financial difficulties in Nigeria. However, it does not indicate that the appellants would face such problems for reason of their race, religion, nationality, political opinion or membership of a particular social group.

[100] With respect to the mother's employment prospects, the Authority notes that Mrs AB described the mother's great determination to look after her children, and referred to her efforts to obtain qualifications in order to improve her financial situation. It is nevertheless accepted that despite the mother's personal qualities she could have difficulty obtaining employment in Nigeria. However, there is no evidence that her difficulties would be for a Convention reason. On the contrary, the title of the BBC article already referred to in [98] above, "Millions lacking basics in Lagos" *BBC website* (18 April 2007) gives rise to the inference that employment prospects may be poor for the general populace.

[101] Likewise, it may be that the education to which the children would have access is not equivalent to that which they receive in New Zealand. However, the

appellants have provided no evidence to support their claims that the children would be denied access to education in Nigeria, or that the standard of education offered them would be lower, for a Convention reason.

[102] The Authority also notes in this context that the mother received 12 years of primary and secondary education provided by the state, and completed two-thirds of a tertiary course which she left only because she had become pregnant. It is also noted that neither of the Nigerian nationals, who provided an affidavit and a statement respectively following the conclusion of the second appeal interviews, claimed that they had been denied access to schooling in Nigeria, whether for a Convention reason or at all.

[103] With respect to healthcare, while there is no corroborative evidence that the son suffers from asthma, the Authority is prepared to accept that he does. However, there is no evidence that he would be deprived of access to treatment for asthma in Nigeria, and no evidence to suggest that if he was deprived, it would be for a Convention reason.

### Summary

[104] As the Secretariat of the Authority reminded the appellants in its letter dated 26 March 2007, the appellants bear the responsibility of establishing their refugee claims pursuant to ss129P(1) and 129P(2) of the Act (as referred to in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA)).

[105] The mother does not wish to live in Nigeria. She came to New Zealand in the hope of bringing up her children here. Having sought to pursue her legal remedies, as she is entitled to do, the mother has prolonged her family's stay in New Zealand. During that time, her children have been raised in New Zealand and have no doubt absorbed and adopted the local culture. It is likely that they would now find the transition to life in the unfamiliar surrounds of Nigeria difficult. Even leaving aside those issues, it is likely that everyday life will be more difficult for the appellants in Nigeria than in New Zealand given the comparative economic circumstances in those two countries.

[106] However, the focus on the Refugee Convention is narrowly confined. While the general purpose and intent of the Convention is broadly humanitarian it does not exist to protect individuals from every type of harm. The Authority's jurisdiction is confined to determining whether the appellants are refugees within the meaning

of Article 1 of the Refugee Convention. It is statutorily barred from considering general humanitarian issues “that arise outside the context of a decision relating to the recognition of refugee status in New Zealand” (s129W(e) of the Act).

[107] While the appellants’ claims are advanced under various categories, the Authority has borne in mind the decision of the High Court, *A v Chief Executive of the Department of Labour* (CIV 2004-404-6314, 19 October 2005). Winkelmann J found that when conducting its forward looking assessment of whether an appellant faces a real chance of being persecuted, the Authority must consider “whether ... individual[s] having all of [the appellants’] characteristics” would face a real chance of serious harm for a Convention reason (para 38).

[108] The Authority has carefully considered the claims of the mother and each of the appellant children. It has taken into account all of their characteristics, not only in connection with their own discrete claims for refugee status, but in the context of their interconnecting appeals. Having done so, the Authority finds that objectively, on the facts found, there is no real chance of any of the appellants being persecuted for a Convention reason if they were to return to Nigeria. Any risk to the appellants is essentially random and speculative. It is not well-founded.

[109] The Authority is aware that the mother’s youngest child is a New Zealand citizen who is entitled to remain in New Zealand. No decision made by this Authority can detract from that right. It may be that this circumstance gives rise to other issues of a humanitarian nature calling into consideration other Conventions. However, those issues are outside the jurisdiction of this Authority.

## **CONCLUSION**

[110] Turning to the first principal issue, the Authority finds that objectively, on the facts as found, there is not a real chance of any of the appellants being persecuted if returned to Nigeria. That being the case, the second principal issue does not need to be considered in respect of any of them.

[111] For the above reasons, the Authority finds that the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined them and their appeals are dismissed.

“A N Molloy”  
A N Molloy  
Member