

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 74697

AT AUCKLAND

Before: J Baddeley (Chairperson)
B Burson (Member)

Counsel for Appellant: L Foley

Appearing for NZIS: No Appearance

Date of Hearing: 28 August 2003

Date of Decision: 28 October 2003

DECISION

[1] This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB) declining the grant of refugee status to the appellant, a national of the Republic of Nigeria.

THE APPELLANT'S CASE

[2] The appellant was born in Lagos in 1979. His parents were Christian Ibo. The appellant knows little of his family history because his parents avoided telling him about their backgrounds. As a child he noticed that unlike his friends he did not return to a home village during the school holidays. When he asked his parents about their villages of origin they avoided his queries. Eventually he discovered that this was because his parents had married against their families' wishes. They both came from different villages in Imo state and traditionally people from these villages did not intermarry. He advised the Authority that his parents were known as Osu. This term he described as referring to outcasts.

[3] As a child his mother was most protective of him and often warned him against associating with people. His parents had little to do with their own families although at one point he lived with his mother and his mother's sister. He gave the impression that he and his parents lived a socially isolated life although his mother was politically very active and both his parents were keen churchgoers.

[4] He recalled that on one occasion the mother of one of his school friends prevented his friend from playing with the appellant. When he told his mother this she led him to believe that this was because he was Osu.

[5] The appellant himself is not the natural child of his parents but was told that his mother had found him abandoned one day when she was going to work and had brought him home. He was still a baby at that time.

[6] The appellant began his schooling in Lagos and then in 1989 he moved to Kawo a town in Kaduna state. His father had a job in Kaduna and wanted the appellant to attend secondary school there. His mother remained behind in Lagos.

[7] In 1990 the appellant began leading the Christian fellowship at his high school. In 1992 he was attacked while riding his bicycle outside the school gates. His attackers were a group of knife wielding youths who he believes were attacking him because he was known to be a Christian. He generally wore a cap emblazoned with the words "Jesus Loves U" and he had various Christian stickers on his bicycle. The appellant was seriously hurt and had to have hospital treatment for wounds to his thigh and buttocks.

[8] After this incident his mother took him back to Lagos where he re-enrolled in school and lived with his mother and his mother's sister.

[9] His mother was an active supporter of the Social Democratic Party. In 1993 she travelled to Ibadan for a political demonstration. She did not return and the appellant later heard that the group of women she was with were killed. He remained living with his aunt for a short time but she herself left after she had a suspicious visit from security officials.

[10] The appellant then returned to his father in Kaduna in 1995. He began a welding apprenticeship and eventually finished this in 2000 and became self

employed as a welder, panel beater and spray painter. He did well and was able to provide himself with a car and had his own apartment about twenty minutes drive from his father's home. He used to visit his father occasionally. The appellant attended a Catholic church and his father attended the Church of Christ. His father had retired and lived in a house adjoining his church where he was a security guard.

[11] In November 2002 the appellant decided to spend his birthday with his father. He went to his father's house and stayed overnight there. He was awoken in the morning by loud shouts. He looked outside and saw a fire burning. He ran out of the house and saw that his father had been tied to a tree by a group of armed assailants. His father was badly wounded and he saw them cut him down and take him off to a van. They then set upon the appellant calling out that he was the Pastor's son and demanding to know where the Pastor was. They also captured the appellant, put him in a van and drove off.

[12] In the van with the appellant were some other captives and after one day's journey they were taken at night time to a bush camp. On arrival at the bush camp all the captives were put into individual cages.

[13] The appellant remained there for two more nights. His captors had coverings over their heads and faces so they could not be recognised. However, the appellant did notice one of them wearing boots which were of the type that policemen wore. On the second night two boys were taken from their cages by their captors and castrated and beheaded in front of the other captives. The appellant feared the same fate would befall him.

[14] On the third night, one of his captors approached his cage and referred to the appellant by his school nickname. He told the appellant that because he had known him at school he was going to free him. He gave the appellant some clothes and showed him the route to take out of the camp. He also warned the appellant not to tell the police about his ordeal because his group would search for the appellant everywhere and their leader was a senior police officer.

[15] The appellant set off running through the jungle under cover of darkness. Eventually he came to a road and there he saw a petrol station. He waited in the vicinity until a car drove up which he saw contained a bible on the passenger's

seat. The appellant surmised that the driver would be a Christian and asked for his help.

[16] The driver agreed reluctantly and during their ride the appellant told him about his ordeal. As it turned out the owner of the car was on his way to join his ship at Warri Port. He suggested that the appellant should stowaway on the ship. He concealed the appellant on board the ship and brought him food during the voyage.

[17] Eventually, they reached the first port of call which was Indonesia. His rescuer helped him leave the ship, gave him clothing and documentation to enable him to negotiate the border.

[18] When the appellant got to Jakarta City he looked around for help and came upon a Christian assembly. Eventually he obtained assistance from a fellow Christian there who organised an agent to provide him with air tickets and some false travel documentation. The appellant then flew from Indonesia to New Zealand and arrived here on 25 December 2002.

[19] Since arriving in New Zealand the appellant has had e-mail contact with one friend A in Nigeria. A knew the appellant during their days together as apprentices. A told the appellant that he had heard that the appellant's father's church had been burnt and that his father had been murdered. Beyond this the appellant had no relevant news from Nigeria.

[20] The appellant fears returning to Nigeria because he believes that the militant group who captured him will pursue him to ensure that he does not disclose their activities. Furthermore, he believes that he would not get protection from the security forces because of the advice given to him that a senior police officer was involved in the group who captured him. He further fears serious harm because he is Osu and has no family members to whom he could go for help.

[21] The Authority also heard evidence from O who had been a member of the State Assembly of Enegu State. He addressed the Authority principally on the issue of state protection in Nigeria. The appellant's counsel provided both oral and written submissions which have been taken into account in this decision as have

the various country information reports referred to in counsel's submissions and provided at the hearing.

THE ISSUES

[22] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:

"... owing to a 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."

[23] 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 APPELLANT'S CASE

[24] Before a determination can be made concerning the abovementioned issues an assessment must be made of the appellant's credibility. The Authority accepts the core of the appellant's account namely that he was once attacked as a child in 1992 and was subsequently subjected to a violent attack in November 2002 prior to his departure. It is also accepted that the appellant is Osu. In making these findings the Authority has extended to the appellant the benefit of the doubt despite reservations concerning parts of his story, in particular, the account of his escape and departure from Nigeria and subsequent travel to New Zealand.

[25] In any event even accepting the appellant's account of his experiences in Nigeria, the Authority concludes that outside Kaduna state he has no well founded fear of persecution. The reasons for our findings follow:

[26] The appellant claims to fear persecution for the following reasons:

(i) He is Osu and fears serious harm because of his family background.

(ii) He will become the victim of ethnic and communal violence.

(iii) He is pursued by the "militant's who captured him. These he described as an armed Islamic group, who want him to prevent disclosing the ritualistic murders he witnessed. He will not receive state protection from the security forces who have been infiltrated by Islamic militants.

(i) The appellant claims that he faces a real chance of being persecuted on return because he is Osu. His evidence was that he felt that he and his parents were socially isolated when he was a child. However, when re-examined by counsel he could point only to one incident of a school friend's mother refusing to allow the appellant to play with her son. He also mentioned that the family did not socialise with any of their relatives (other than his mother's sister) and did not have any home village to return to. The appellant told the Authority that his father had suffered from "ritual attacks" which apparently are attacks by spirits initiated by malevolent individuals. These caused him to have frightening hallucinations and accidents. The appellant himself had suffered some ritual attacks usually when sleeping but sometimes while awake. He said that since coming to New Zealand he had not suffered from these attacks. The Authority finds that activities of such non-corporeal agents do not fall within the ambit of the Refugee Convention which does not contemplate protection from supernatural elements.

[27] Counsel for the appellant, however, also submitted that Osu are subjected to societal discrimination which amounts to persecution. Counsel referred to the following:

"...Within the Igbo communities of South Eastern Nigeria, the marginalisation of those that had been categorised as Osu reportedly remains largely unchecked. The term Osu historically applies to individuals who are held to be owned by deity's...though Osu share the same legal status as other Nigerians – the Osu system was outlawed with the passage of the Osu system law and the Laws of

Eastern Nigeria in 1956 and 1963 – members of the Osu community are still shunned as pariahs and denied social equality. Whilst the landless, Osu can traditionally only marry within their caste, and are buried in separate cemeteries. Legislation abolishing the Osu system has been enforced since the 1950's, and constitutional provisions prohibit discriminatory practices and promote equal implementation of legal protections. (Human Rights Watch Caste Discrimination: A Global Concern (presented that United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa 2001)".

[28] In addition, the Authority was provided with the following reports:

[29] "The Keesa – Osu Cast System in Anambra State and to the Treatment of Untouchables" (Research Directorate Immigration and Refugee Board: NGA41455.E (23 April 2003)) "The Caste System in Nigeria, Democratisation and Culture; Socio Political and Civil Rights Implications" African Economic Analysis 13 June 1999, V Dykes.

[30] In contrast to the Human Rights World Report, the situation for Osu in Nigeria is described in far more favourable terms by the Research Directorate, Immigration Refugee Board report (supra):

"Osu really took to mission (Christianity) and thus became some of the earliest and best (western) educated members of Igbo society; many Osu lineages have produced judges and important businessmen. Today there is little to mark the Osu out from Indiani (sons of the soil as Igbo often translates this term) – except for oral narratives and popular histories, and maybe relative wealth, since that early mission education paid off for a lot of Osu lineages".

[31] The appellant's own experience as Osu shows that he faced minor social discrimination. His parents apparently participated actively in religious and political organisations and his father successfully remained employed and supported his family. The appellant himself gained an apprenticeship and employment and enjoyed an adequate standard of living without apparently being discriminated against as Osu. The appellant gave no evidence of having experienced harm, harassment or even discrimination as an adult. The Authority finds that the appellant did not experience serious harm in the past because he is Osu and there is no evidence to suggest he will on return to any part of Nigeria.

(ii) Counsel also submitted that the appellant would be susceptible to harassment, threats and intimidation because of the ethnic and communal rivalries which have characterised the situation in Nigeria for several years. He referred the Authority to the United States Department of State Country Report on Human Rights Practices: *Nigeria* (31 March 2003) which describes how police and security

forces committed extra judicial killings and used force to extort bribes. Counsel referred the Authority to the United Kingdom Home Office Country Information Policy Unit Nigeria Assessment (April 2003) which referred to the existence of vigilante groups, mostly linked to tribal or ethnic groups.

[32] At the hearing counsel provided the Authority with the following reports concerning communal ethnic and religious violence in Nigeria: *Wave of Violence Grips Nigeria Just Weeks Before Polling Day* United Nations High Commission for Refugees (13 March 2003); *Ethnic Clashes Flare in Nigeria*: United Nations High Commission for Refugees (3 February 2002); *Nigeria: September 2000 Riots between Hausa-Fulani and Yoruba*; *Current Relations between the two ethnic groups in Lagos* (17 April 2003) – Research Directorate Immigration and Refugee Board, Ottawa, Canada.

[33] These reports concern the intermittent violence caused by ethnic, religious and political tension. This has been ongoing for many years. For review of this situation refer *Refugee Appeal No 74020/02* (16 January 2003).

[34] The Authority acknowledges that a volatile atmosphere still prevails in Nigeria and the appellant has a remote chance of begin a victim of such ethnic or political violence. However, he has never been the victim of ethnic violence because of being Ibo (or Osu). There is no evidence to suggest that on return to Nigeria he will face the real chance of being persecuted as a result of these ongoing ethnic and communal clashes.

(iii) The appellant knows little about the armed Islamic group who captured him. He could not recognise them because their faces were always concealed. He does not know the identity even of his schoolmate who freed him, but thinks he may recognise his voice if he heard it again. He does not know the location of the camp to which he was taken. When asked how his captors would identify him, the appellant said that his schoolmate had told him they had taken his photograph, and, on further recollection he recalled lights flashing when he disembarked from the van on arriving at the camp and assumes that these were camera flashes. His captors do not know his name and indeed mistook him for the son of the Pastor whose church they burned down.

[35] The Authority does not accept that a militant Islamic group engaging in ritual sacrifice would take photographs of their potential victims using a flash camera for night time photography.

(iv) The appellant was the unfortunate and unintended victim of the violent attack on his father and the destruction of the church. He experienced one further incident 10 years earlier when he was a schoolboy. Other than these two incidents, he has been able to continue to practise his Christianity.

[36] The appellant's counsel argued that he would not be granted state protection because he is Christian and the influence of Islamists pervades the police force.

[37] The evidence of the appellant's witness, O, was that Nigeria is concerned to give protection to all its citizens but that protection is limited. To illustrate the limits to state protection, O cited the examples of prominent political figures who were assassinated or narrowly escaped assassination attempts. This does not assist the appellant's argument that a person with no political profile such as himself would be unable to access state protection.

[38] Counsel argued that in states such as Kaduna where Shari'a law has been implemented, state protection would not be available to the appellant because he is Christian and security forces are dominated by Muslims. In support of this proposition counsel referred to country information contained in the United States Department of State Country Reports on Human Rights Practices for 2002: *Nigeria* 31 March 2003:

"The constitution provides that states may elect to use Islamic (Shari'a) customary law in courts. The constitution states that Shari'a court of appeal may exercise "such other jurisdictions as may be conferred upon it by the law of the state. States interpret this language as granting them the right to expand the jurisdiction of their existing Shari'a courts to include criminal matters"...

The constitution provides for an independent judiciary. Although the judicial branch remains susceptible to executive and legislative branch pressure, decisions at the federal level were indicative of greater independence. The judiciary was influenced by political leaders particularly at the state and local levels

[39] This material does not clearly infer that the appellant would be unable to access state protection in Kaduna because he is Christian.

[40] In addition, counsel provided a report which specifically referred to the Miss World riots between Muslims and Christians in Kaduna in November 2002, the

time of the appellant's abduction by the Islamist group (refer *Nigeria: No justice for Kaduna killings*, Human Rights Watch

<http://www.hrw.org/press/2003/nigeria072203.htm>

[41] The Authority acknowledges that in a Muslim-dominated state such as Kaduna, there is a chance of a Christian becoming a victim of religious violence. The appellant's own history confirms this, although he was only once caught up in religiously-motivated violence and then as the unintended victim of the attack on the church (other than the occasion 11 years earlier when he was a child). Otherwise, he has practised his religion and conducted his daily affairs without interference from Muslims.

[42] We are prepared to extend to the appellant the generous benefit of the doubt to find that the potential for persecution exists in Kaduna for him, as a Christian victim of recent violence from a group of Islamic terrorists. However, we have no doubt that, were he to relocate to Lagos, he would face no real chance of persecution there. We now turn to discuss the availability of the internal protection alternative (IPA) in Lagos.

(a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?

[43] The appellant has no family in Kaduna. He lived in Lagos as a practising Christian and the child of Christian parents for 13 years without incident. Were he to return there he would be living in a Christian-dominated state. There is no evidence to suggest that as a Christian he would face any real chance of persecution. The Authority has already found that he faces no real chance of persecution for reason of his ethnicity [Ibo] or from communal/ethnic violence. It follows that a positive answer must be given to the first limb of the Internal Protection Alternative.

(b) Is the proposed site of internal protection free of other particular serious harm?

[44] We have already found that the appellant faces no chance of serious harm in Nigeria from ethnic or communal violence. In Lagos he would face no chance of harm for reasons of his ethnicity or from communal violence or for reason of his

religion. He will not encounter factors which have the potential of forcing him back to the original site of persecution. Therefore, an affirmative answer is given to the second limb of the Internal Protection Alternative test.

(c) Do conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

[45] As a Nigerian national and member of the majority Christian religious group in Lagos, the appellant will have access to the same basic political, religious and legal rights and socioeconomic benefits accorded to other Nigerian nationals in Lagos. In Lagos there is nothing to suggest that he will be disadvantaged in respect of any of these basic rights. He will be accorded at least the minimum standard of effective protection set by the Refugee Convention itself.

[46] Again it follows that an affirmative answer must be given in the third and final limb of the Internal Protection Alternative test.

CONCLUSION

[47] While we are prepared to extend to the appellant the benefit of the doubt and conclude there is a real chance of persecution for a Convention reason should he return to Kaduna, there is an alternative protection alternative available to the appellant in Lagos. It follows that he is unable to satisfy the Convention requirement that he not only have a well-founded fear of persecution but also that he be unable, or owing to such fear, unwilling to avail himself of the protection of his home country.

[48] For the above reasons the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. This appeal is dismissed.

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J Baddeley
Member