

0802853 [2008] RRTA 361 (23 June 2008)

DECISION RECORD

RRT CASE NUMBER: 0802853

COUNTRY OF REFERENCE: Nigeria

TRIBUNAL MEMBER: Rosa Gagliardi

DATE DECISION SIGNED: 23 June 2008

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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 and Citizenship 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 Nigeria, arrived in Australia in the early 2000s and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal in the early 2000s for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2) of the Act, as in force before 1 October 2001, provided that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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. These provisions were inserted on 1 October 2001 and apply to all protection visa applications not finalised before that date.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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 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.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. 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.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The applicant appeared before the Tribunal in the early 2000s to give evidence and present arguments. The Tribunal also received oral evidence from Person A
20. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
21. In making a decision in this matter, the Tribunal has had reference to a range of sources, including material located on the files of the Department as well as that of the Tribunal (as summarised below:

- File notation showing that the applicant had a medical test showing an internal physical abnormality [information deleted: s431];
- Federal Republic of Nigeria passport details for the visa applicant demonstrating that he was a Nigerian national;
- False identity card for the applicant;

Departmental file note recording concerns regarding possible violence inflicted upon the applicant in his country of origin, dated 5 March 2008, stating [information from the applicant's departmental file amended in accordance with s.431 as it may identify the applicant].

“Pls note, there may be possible torture and trauma concerns... The applicant did not advise who had committed these acts, however readdressed his concerns with respect to safety and protection.... The applicant further noted that he had run away from a conflict in Nigeria”;

[Information from the applicant's departmental file deleted in accordance with s.431 as it may identify the applicant].

- Statutory Declaration made by the applicant under the Statutory Declarations Act 1959 (Cth), undated, declaring:

[Information about the applicant's sworn evidence amended in accordance with s.431 as it may identify the applicant].

I was born in City Q, Nigeria and am a Nigerian citizen of Tribe A

Parent 1 was born in the early 1900s. Parent 2 was born in the mid-1900s in Town P. Parent 1 and Parent 2 held different religious beliefs. Parent 1 was abusive and left my family in the late 1900s. Parent 2 raised me according to his/her religious beliefs which caused serious problems with Parent 1 and his/her family, who ascribed to a different religion.

After Parent 1 left my family and I moved with Parent 2 (who was searching for work) to State M, as Parent 1 was searching for work and had a relative there (Relative W) who could help us.. The following year I was sent to City S to live with Relative X and I went to secondary school there. In the late 1900s Relative X left Nigeria and I returned to State M to live with Parent 2.

There was a lot of civil unrest due to differences between the religious majority and minority in State M. In the early 2000s, there was a violent incident stemming from religious conflict. Several people were assaulted, including a family member (Relative Z). I was injured. Parent 2 was assaulted. My sibling and I went to protect him/her and I was assaulted and seriously injured. I was saved by some neighbours after the violent group departed.

Parent 2 subsequently passed away and I have not seen my sibling since then. I was nursed for a short time by the neighbours and then returned to Town P, where Parent 2 was born, to live with Relative Y. Relative Y helped me to enrol in a tertiary education course in City R which I attended from time to time but I continued to reside in Town P.

There were many violent groups and individuals in Town P seeking to profit from Western industry there. Some of these groups tried to recruit me to attack Westerners working for foreign multinationals. I refused to be recruited and was accused of supporting Westerners who exploited Nigerians. Subsequently, I was abducted, assaulted and threatened. In the early 2000s there was an outbreak of violence and Relative Y was mortally wounded in a violent attack on his residence. After this I had to move constantly for some time to avoid being attacked. At this time when the religious conflict was boiling I wanted to leave Nigeria and seek asylum in a neighbouring country. But Nigeria is surrounded by countries with very hostile people including Liberia, Ghana, Benin, Cameroon and Togo and I didn't have money to play the illegal human merchant that help oppressed Nigerian.

During that time I suspended my studies but eventually I returned to City R where I had been living previously to seek help from friends and to resume my study. In the early 2000s I was returning from my place of work when I was accosted by a group ascribing to a different religion, who threatened my life but I was able to escape. Soon after this inter-ethnic violence broke out and, fearing for my life, I started making arrangements to escape Nigeria.

I had been able to borrow money and purchase a ticket to Country A, believing I could make further arrangements for protection while I was there. However, it was totally alien to me, so I returned to Nigeria and stayed with my friends while they helped arrange my escape to Australia. I regret that the application for that visa was based on a misrepresentation of my circumstances, but I was very desperate.

- I have no relatives in City R and lived there only for relatively brief periods. I have spent most of my life in Town P and State M. I have been seriously assaulted and threatened and had a parent fatally wounded because of our religion, and I have been abducted and threatened for opposing the politics of the violent groups in Town P. Over recent months, the situation in Nigeria has been deteriorating and I fear that, if I return, I will be assaulted and perhaps even fatally wounded because of my religion, because I belong to Tribe A and because I have a history of opposing the politics of the violent groups in Town P.
- Submission by the applicant's prior representative stating, among other things:

[Information about the applicant's representative's sworn evidence amended in accordance with s.431 as it may identify the applicant].

The applicant is a national of Nigeria who arrived in Australia as a holder of a valid visa He fears he will be persecuted should he return to Nigeria for reasons of religion, his real and imputed political opinion and his race...

They went to State M where the Relative W lived, and then the applicant was sent to live with Relative X in City S while he attended school. He subsequently returned to State M and became a victim of the campaign by the predominant religious group in State M to expel those of his religion.. In the early 2000s, he states that Parent 2 was fatally wounded, Relative Z was seriously injured and he and a sibling were assaulted when they went to assist their parent during a violent incident during an attack on the Church where his parent worked. His claim is consistent with a contemporaneous report by the US Department of State in its annual publication *Nigeria: Country Reports on Human Rights Practices – 2004* (Released by the Bureau of Democracy, Human Rights, and Labor February 28, 2005):

It is not unusual for two different ethnic groups with a long history of conflict to have adopted different religions with the effect of exacerbating existing tensions. For example, retaliatory political violence in Plateau State escalated during the year. The violence reached its peak in May when a mainly Christian Tarok militia from a nearby town in Plateau State massacred more than 500 mainly Muslim Hausa/Fulani residents in Yelwa village. The massacre occurred after a February incident in Yelwa in which more than 40 Christian Taroks were burned to death in a church.

A week later in Kano State, Muslims staged a peaceful rally protesting the violence against Muslims in Plateau State The rally took on a religious dimension when unemployed youth began vandalizing businesses belonging to Christians and erupted into mob violence in which more than 300 Muslims and Christians were killed [section 2c “Freedom of Religion”].

The applicant’s sibling has been missing since that time. The applicant was nursed until he recovered his health and then he returned to Town P to live with Relative Y. However, while he was there he was implicated in the violence that is driven by protests against corruption of officials and Western industries. The applicant and Relative Y were opposed to the criminality of the violent groups who attacked western interests and the applicant refused invitations to join such groups, so they were imputed to be supporters of the interests targeted by these groups. In the early 2000s, Relative Y was fatally wounded in an attack on his/her residence The applicant was not there at the time. That incident occurred in the context of elections, reported by Michael Peel in Chatham House Briefing Paper “Crisis in the Niger Delta: How Failures of Transparency and Accountability are Destroying the Region.” [[http://www.reliefweb.int/rw/RWFiles2005.nsf/FilesByRWDocUnidFilename/VBOL-6FRC2D-chtham-nga-jul05.pdf/\\$File/Chatham-nga-jul05.pdf](http://www.reliefweb.int/rw/RWFiles2005.nsf/FilesByRWDocUnidFilename/VBOL-6FRC2D-chtham-nga-jul05.pdf/$File/Chatham-nga-jul05.pdf)]. Peel describes the general internecine operations of various interest groups as follows:

...the problem in the Delta is partly poverty but partly the marginal richness that comes with the arrival of oil and attracts people to the places where crude is found. The complexity of the problem, the interrelationships between the various parties involved and the cynicism this has inspired were summed up by one Western diplomat in a statement that tells something of the Delta, and also of foreign attitudes to a conflict that it sometimes suits outsiders to present as intractable. ‘Nobody is clean’, this person said. ‘Everybody is on the make and on the take’ [section entitled “Poverty amid plenty”]

The author goes on to report on the conditions where the applicant was living: [s.431 information deleted]

The nature of the violence between government supporters and protestors indicates what is at stake and is evident in government responses, as demonstrated in the US Department of State in its annual publication *Nigeria: Country Reports on Human Rights Practices – 2005* (Released by the Bureau of Democracy, Human Rights, and Labor, 8 March 2006) in a report of further violence in Bayelsa state:

As in previous years, some kidnappings, particularly in the Delta, appear to have been part of longstanding ethnic disputes over resources. Due to limited manpower and resources, police and armed forces rarely were able to confront the perpetrators of these acts, especially in the volatile Delta region [section 1b “Disappearance”].

The Chatham House article (above) reflects the intensity of violence and notes that it is little-reported:

Awful things happen, they might make the news briefly and then life goes on. Justice is rarely achieved, disputes fester and the destructive web of relationships between government, the oil multinationals, the security forces, militias and communities continues to tighten and suffocate. Most of this goes unreported, events happening to unnoticed people in remote places.

It is readily apparent that the attack on the applicant and Relative Y was a result of political opinions that were attributed to them by the perpetrators and, in fact, were genuinely held by the applicant, who was opposed to violence. He wanted to escape the country at that stage but did not have the means to do so, and therefore he spent a few years hiding with friends and keeping a low profile to avoid further attack. When he eventually returned to City R to resume his studies, he was attacked because of his religious beliefs and then he was caught up in inter-ethnic violence involving his tribe (Tribe A) and a tribe of differing religious beliefs in City R

[s431 information deleted]

Letter sent to the applicant pursuant to section 424A of the *Migration Act 1958*, inviting comment on information the Tribunal considered could be the reason, or a part of the reason for affirming the decision that is under review:

[Information from the Tribunal’s correspondence deleted in accordance with s.431 as it may identify the applicant].

This information is relevant to the review because the Tribunal may find that given you have been prepared to give false information to the Department in the past, that your protection visa claims are also not credible and that consequently you do not have a fear of serious harm or persecution in Nigeria.

Notes on your file suggest that you had told “lies re the reasons for requesting excursions to a café” and that officers suggested that you were continually “testing site security” and that you made comments that you were desperate to get out. Furthermore, medical staff had concerns that your physical complaints were not genuine and that you may have been looking for a chance to escape immigration detention.

This information is relevant to the review because the Tribunal may find that your attempts to deceive the immigration authorities may confirm the Tribunal’s concerns about your lack of credibility and that you do not fear serious harm or persecution on return to Nigeria.

A letter was sent to you by Person B your previous representative, stating, among other things:

[Information from the representative’s correspondence amended in accordance with s.431 as it may identify the applicant].

As advised in our letter and email your right to apply for review to the Refugee Review Tribunal expires shortly I contacted you yesterday regarding your instructions and you advised you would call back. However, I have not yet received your call and am anxious that you do not lose your review right.

I repeat previous advise that, if you require this firm to lodge a review application on your behalf we must receive your instructions very soon. Could you please call me so that we can discuss your next step.

This information is relevant to the review because the Tribunal may find that you hesitated somewhat in lodging your protection visa application and indeed did not appear to be proactive in stating your intentions. As such, the Tribunal may find that your fear lacks depth and is limited or you would have made arrangements to ensure that you communicated with your representative to lodge a protection visa application as soon as possible.

You claim that your relative has been killed and that you yourself were imputed to be supportive of certain groups because you did not join the criminal groups that opposed them. The Tribunal has found country information concerning the Niger Delta region and the operation of criminal gangs in the area (see **Amnesty International 2007, Nigeria: Are human rights on the political agenda?**, AI website, 29 May 2007 <http://web.amnesty.org/library/print/ENGAFR440132007>):

6. The protection against abuses by armed groups, criminal gangs and vigilantes.

Especially in the Niger Delta there are many armed groups and criminal gangs; during past elections, some politicians reportedly sought the support of these groups to attack their opponents. (12) The oil of the Niger Delta area is a major source of government revenue and foreign exchange. However, this region is home to some of Nigeria's poorest people. People living in the Niger Delta benefit little from Nigeria's oil revenues. For example, they lack potable water and have few functioning schools or health care centres. The only visible government presence in many parts is a heavily-armed security apparatus deployed with the primary task of ensuring unhindered oil operations.

The theft of oil by illegal bunkering, under the control of powerful cartels, well-connected officials and armed gangs, is widespread. Pipelines are tapped with sophisticated equipment, often in broad daylight, and the oil is transported by barge or road tanker to the ports for sale on the international market. The massive profits from oil thefts have allowed a virtually uncontrolled inflow of weapons into the Niger Delta – from abroad and other parts of Nigeria.

Armed groups and gangs also attack production facilities and kidnap expatriate workers for ransom.

This information is relevant to the review because the Tribunal may find that neither you nor your relative were harmed for reasons of religion or political opinion and that instead you may have been the subject of attacks by criminal elements for purposes of revenge and in their efforts to protect their oil pilfering activities.

- Report by Person P medical practitioner:

BACKGROUND

The applicant required I examine him for signs of injuries, which he alleged were the result of trauma in his home country in the early 2000's.

EXAMINATION FINDINGS

[Information about the applicant's examination amended in accordance with s.431 as it may identify the applicant].

- 1) There was scar. The injury was well healed. The irregular linear pattern of the scar suggests that the wound had, in all probability, healed without being sutured (ie the wound most likely had been allowed to close over on its own and was probably not sutured). The applicant alleged that the injury had been sustained during an alleged assault. The original wound is

likely to have been caused by blunt trauma force and is in keeping with the alleged assault.

- 2) There was an irregular healed scar. The scar was well healed, with signs of pigmentation. The visa applicant alleged the injury was caused by a weapon. The injury (although non specific in nature) could have been caused as alleged by the applicant.
- 3) There was a linear scar. The edges of the scar were smooth and well healed. The appearance was most likely of a well healed incised wound. The visa applicant alleged the injury was caused by a weapon. The injury (although non specific in nature) could have been caused as alleged.
- 4) There were a few scars.
A couple of the scars looked similar in nature, were in close proximity to each other, and were orientated in a linear fashion to one another, suggesting that they were caused by the same or very similar objects. All scars were well healed and had the appearance of healed incised wounds. The applicant alleged the injuries were caused by weapons. The injuries (although non-specific in nature) could have been caused as alleged.
- 5) The applicant complained of pain and discomfort in a joint. He appeared to have mild swelling and discomfort to examination of the joint. The applicant alleged that he had been injured in the assault in the early 2000s and had suffered discomfort ever since. Although it is difficult to be definitive, the critical findings are in keeping with a prior injury, and it is possible that it could have been caused as alleged.
- 6) There was a scar with the appearance of a healed incised wound. The applicant alleged the injury was caused by a weapon. The injury (although non-specific in nature) could have been caused as alleged.

7) Bony Prominences

The areas with bony prominences were tender to touch, but there was no fresh injury evident on the skin.

The applicant alleged that he was struck during the assault, in an attempt to immobilise him. Although it is difficult to be definitive, the clinical findings could have resulted from blunt trauma, and it is possible that the appearance and the pain experienced in the area are the manifestation of the alleged assault.

There was an additional scar. The scar was well healed. It had the appearance of a healed laceration, (which is more likely a manifestation of blunt trauma to the area than an incised wound, although it is difficult to be definitive about this). The applicant alleged that the wound was sustained during the alleged assault. The injury (although non-specific in nature) could have been caused as alleged.

- Media article, submitted by the applicant detailing violent activities of criminal groups alleged to have attempted to recruit him;
- Media article detailing violent incidents in the applicant's place of residence;
- Media article outlining religious tensions and violence in the applicant's area of residence.

- Media article discussing revenge and retaliation in State M and religious violence, among other things;
- Submission by the current representative of the visa applicant stating, among other things, that the applicant had a well-founded fear of persecution by reason of the following Convention grounds: Religion; Ethnicity; and Particular Social Group (Family);
- Letter from “witness”, dated and signed and counter-signed by Person C:

[Information from witness amended in accordance with s.431 as it may identify the applicant].

My name is Person D. I reside in City R. I was assaulted in my residence in the early 2000s by people belonging to a criminal group.

I recognised them because they had attacked my friend [the visa applicant] on a prior occasion. The visa applicant lived with me in the early 2000s.

When the group came to my residence they were yelling out for the visa applicant. They threatened me and assaulted me because I refused to tell them where he was. I sustained injuries to several parts of my body I was treated at local hospital in City R. My life and the visa applicants’ lives are in danger. Please find attached copy of my photo during my injury sustained period.

- Photos of Person D with bandages appearing to be in a hospital setting;
- Letter from Person E, stating:

[Information from Person E amended in accordance with s.431 as it may identify the applicant].

I hereby write to acknowledge that I am a victim of the religious conflict in State M during the early 2000.

During this time, religious structures were intentionally damaged and several people were fatally wounded and injured, including the visa applicant’s parent [Parent 2]), my children, the visa applicant was severely injured by the violent groups. .

Ever since this time, everyone has fled their homes in State M and went hiding.

I am aware that myself and others are still wanted by the groups We have kept our whereabouts unknown and we only communicate through phone.

I am aware that the visa applicant is wanted dead by the group.

I am aware that the visa applicant could not trace his family, has suffered from mental illness and needs to be taken care of.

I am aware that Nigeria is vulnerable to violence outbreak and it is not safe for living.

- Submission by the visa applicant’s representative, in response to the Tribunal’s section 424A letter, stating, *inter alia*:

1. Fax dated early 2000s :

[information from visa applicant's representative amended in accordance with s.431 as it may identify the applicant].

(a) Providing false information to obtain a visa:

We confirm that the circumstances of why it was needed to provide false information to obtain a visa that would enable the visa applicant to enter Australia was put to him at the hearing. We further confirm the evidence given by the visa applicant at the hearing and summarise it as follows:

- Due to persecution suffered, the visa applicant had to leave Nigeria
- He did not have the funds to enable him to do this
- His friend, Person F, assisted the visa applicant financially
- The travel agents indecent request for sexual relationship with the visa applicant
- The travel agents initiation in obtaining visa to Country A and then to Australia

We believe that the circumstances explained by the visa applicant at the hearing the issue of not been (sic) truthful in obtaining a visa to enter Australia shouldn't be viewed in the negative. The visa applicant has co-operated with the Immigration authorities at all times and has disclosed the information on questioned facts. At no time arriving in Australia has the visa applicant maintained the untruths used to gain entry into Australia.

The visa applicant has provided evidence of the persecution he suffered for conventional reasons supported by third parties as well as medical evidence.

We submit that the information provided to the Tribunal by the visa applicant is information that has been clarified and therefore credible.

(b) Notes from departmental file:

The visa applicant vigorously denies any truthfulness to facts stated in the file notes on his compliance file.

The visa applicant claims at no time he had been untruthful with any requests he has made or faked medical conditions. He draws the Tribunal's attention to medical evidence of Person P.

(c) Medical Issues:

Tribunal in its fax stated '...medical staff had concerns that your medical conditions were not genuine...' We refer to file notes on the visa applicant's file:

[Information from Person G amended in accordance with s.431 as it may identify the applicant].

- i. From Person G
'has the client had a medical assessment? He presented during the interview as tearful, particularly when speaking about his family in Nigeria and while he stated that he was 'unburdened' now that he was safe in Australia I have some concern that he may be at risk of deteriorating once his 'honeymoon period' is over'
- ii From Person G
'...further to my previous email, it is recorded by DIAC staff that at a hospital in the early 2000s the client was administered with several tests...

The visa applicant claims that his health needs were not taken seriously to stop him from being eligible for a valid visa...

The views presented by Person H [a nurse] are personal in nature with no support of medical evidence. We submit that his/her 'personal' view of a nurse with no substance should be ignored by the Tribunal.

We submit the concerns of "medical staff" as to the health condition of the visa applicant to be not genuine and should not be used to view the visa applicant's credibility. Further Person P and the psychologist reports to be provided should be viewed in contrary...

(d) Hesitation to lodge Protection Visa:

The writer was contacted by a community group in the early 2000s for advice on review rights and assistance to the visa applicant. We confirm that there were no hesitation by the visa applicant in lodgement of Application for Review and was all time advised and assisted since the decision by DIAC.

(e) Country information:

We submit that the visa applicant was persecuted for the reasons that he belonged to a "particular social group", namely family, is a person ascribing to a particular religion, and is of particular ethnicity. There is no evidence to suggest that the visa applicant has been a member of a criminal group. In the contrary to any specific evidence linking the visa applicant to a criminal group, we submit that he should not be considered in the negative.

We further submit that other country information provided to the Tribunal suggests persecution due to religion and ethnicity. We refer to the Tribunal hearing and confirm the visa applicant's evidence that he was subjected to further persecution because he refused to be part of criminal groups.

2. HEARING:

(a) Country A visa

We enclose a copy of the Country A visa that we have obtained from the visa applicant's file under the records received through Freedom Of Information. We note the Tribunal requested to see the visa at the hearing.

(c) Relocation:

We confirm evidence was provided to the Tribunal to the fact that the visa applicant was unable to return to Nigeria due to the fact that the persecutors were still looking for him. We further confirm that the visa applicant's friend was assaulted because he/she was unable to provide information on the visa applicant to the persecutors who came looking for him.

The visa applicant is unwilling to avail himself of the protection of Nigeria by relocating to another part of the country.

He claims relocating to another part of Nigeria, a country just as big as one state in Australia, will not provide him protection. The memories of the persecution suffered and proximity to the area of previous residence makes it unreasonable to relocate. We provide further information as follows:

[Information from the visa applicant's representative deleted in accordance with s.431 as it may identify the applicant].

• Unreasonable in the Circumstances

The persecution suffered by the visa applicant makes it unreasonable for him to return to another part of Nigeria. His medical condition and why this is unreasonable is highlighted in his psychologist report.

We submit that it will be unreasonable in the given situation to expect the visa applicant to safely relocate to another part of Nigeria.

In essence, the applicant claims a well-founded fear of persecution should he be required to return to any part of Nigeria. He claims he has suffered violence at the hands of particular religious, ethnic and commercial groups and also because he was a member of a particular social group – family for the above said reasons. He claims that his suffering amounts to Persecution at the hands of non-State agents which was condoned by the State institutions who failed to offer him any protection.

The visa applicant fears that if he returns, most probably he will be found by violent, religious-based groups and fatally wounded or seriously injured for been (sic) linked with Parent 2...

- Evidence of visa to travel to Country A for the visa applicant;
- Country information regarding human sacrifices in parts of Nigeria, including an article in Christianity Today, dated December 2004, entitled *Human Sacrifice Redux*, stating, among other things:

Country Information sourced by the Tribunal:

The UK Home Office summarises a number of significant incidents of religious violence in the early 2000s:

Demonstrations between Christian and Muslim opponents, often crossing ethnic loyalties, resulted in the fatal injuring of a number of people in incidents during the early 2000s

However, in the early 2000s, the US State Department reported that, in comparison with previous reporting periods, “there were no high-profile cases of community violence directed at religious groups. Events occurring in other regions or other parts of the world, particularly those of a religious tenor, heightened tensions between religious groups... There were unconfirmed reports of several incidents of violence directed towards Christian groups.”

In April 2008 Compass Direct reported an attack on Christians in the northern city of Kano, following what was said to have been a Christian’s inscription on a wall insulting the Prophet Muhammad;

Muslims in large numbers soon trooped to the police station, threatening to set it ablaze unless officers released the Christian to be stoned to death in accordance with sharia (Islamic law), sources said. Police were able to disperse the mob...

In the past year, four cases of false claims of blasphemy against Christians have been reported in Kano state, three in high schools, three in high schools and this latest one in the market area. (“Nigeria: Muslim rioters attack Christians in Kano 2008, *Compass Direct*, 23 April).

Another Compass Direct report, by Obed Minchakpu, dated 19 May 2008, states that churches were gutted after recovery of Christians teenagers from Muslim kidnappers as set out below:

Islamists under the auspices of a paramilitary force last week destroyed six churches to protest a police rescue of two teenage Christian girls kidnapped by Muslims in this Bauchi state town.

Police recovered the two Christian girls, Mary Chikwodi Okoye, 15, and Uche Edward, 14, on May 12 after Muslims in Ningi kidnapped them three weeks ago in an attempt to expand Islam by marrying them to Muslim men. Police took the two girls, who had been under foster care, to safety in southeastern Nigeria where their biological parents live.

The kidnappers had taken the girls to Wudil town in Kano state. Following the rescue of the girls, Muslims under the auspices of the Hisbah Command, a paramilitary arm of Kano state’s Sharia Commission, responsible for enforcing Islamic law, went on a rampage on Tuesday (May 13), attacking Christians and setting fire to the churches.

The destroyed churches were the Deeper Life Bible Church, St. Mary's Catholic Church, All Souls Anglican Church, Church of Christ in Nigeria, Redeemed Christian Church of God, and the Redeemed Peoples Mission.

Joseph Abdu, pastor of Deeper Life Bible Church, told Compass that damages to his church property in the Muslim rampage of May 13 amounted to about 13 million naira (US\$112,857) – and that his congregation had shrunk to 40 people from the 130 who attended before the attack.

Abdu said the Christian foster parents of the two rescued girls, Kanayo Chukwu Osakwe and Robinson Ajolokwu Ozuagbunna, noticed the teenagers were missing three weeks ago and reported it to police and to Ningi's Emirate Council.

"The Christian community in Ningi, having reported the matter to the police, organized a search team to search for the missing girls," Abdu said. "Word eventually got to the search team that the girls were being held in the town of Wudil in Kano state by a Muslim leader in that town..."

Kidnapping of teenage Christian girls by Muslims, the pastor said, has become a recurring practice in Ningi. Muslims have kidnapped at least 13 Christian girls in the town, Christian sources said.

"These girls are usually kidnapped, forcefully converted to Islam, and then married out to other Muslim men against the will of both the girls and their parents," Abdu said.

Two months ago Muslims in Ningi kidnapped another Christian teenage girl, Maryann Chinenye, converted her to Islam and then married her to a Muslim man, he said.

"As I talk to you now, the girl is yet to be found by her parents," Abdu added.

The pastor said a member of his church, Comfort Joseph, had her daughter kidnapped four years ago.

"The teenage daughter of Mrs. Joseph was converted to Islam and married to a Muslim man," he said. "Up to this moment I am speaking to you, we have not been able to rescue this girl from these Muslims."

"I reported her abduction to the police and the Emirate Council here in Ningi, but eventually the Sharia Commission here in Bauchi State M

An article by Human Rights Watch (www.hrw.org) entitled *Politics as War, The Human Rights Impact and Causes of Post-Election Violence in Rivers State, Nigeria* provides an incisive assessment of the religious-political connection concerning violence in Nigeria:

In July and August 2007, armed gangs fought the streets of Kaduna Pitched battles fought with automatic weapons, explosives, and machetes killed dozens of people and wounded scores more. Most victims were ordinary Nigerians.

The logic behind this carnage was depressingly familiar: the gangs were competing with one another for access to illegal patronage doled out by high-level State government officials. Since many politicians in Rivers State have made routine use of armed criminal gangs to rig elections and intimidate their opponents. The gangs then went on to become involved in lucrative criminal activity.

Political connections have helped these gangs to commit criminal offences with near-total impunity. While Nigeria's military intervened in August to halt the escalating inter-gang bloodletting, Nigeria's federal government and the police have completely failed to address the root causes of the violence—not one Rivers State politician has been investigated or held to account for directly fomenting the state's epidemic of violence.

The Tribunal has also had reference to *Nigeria - Country Reports on Human Rights Practices - 2007*, Released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008 which states the following:

Nigeria is a federal republic composed of 36 states and a capital territory, with a population of approximately 140 million. In April Umaru Musa Yar'Adua of the ruling People's Democratic Party (PDP) was elected to a four-year term as president; the PDP won 70 percent of the seats in the national legislature and 75 percent of the state governorships. The election was marred by what international and domestic observers characterized as massive fraud and serious irregularities, including vote rigging and political violence. Election tribunals, which continued at year's end, contested the results at all levels, resulting in the nullification of nine local-level elections, six senatorial elections, and five gubernatorial elections. While civilian authorities generally maintained effective control of the security forces, there were some instances in which elements of the security forces acted outside the law.

The government's human rights record remained poor, and government officials at all levels continued to commit serious abuses. The most significant human rights problems included the abridgement of citizens' right to change their government; politically motivated and extrajudicial killings by security forces; the use of excessive force, including torture, by security forces; vigilante killings; impunity for abuses by security forces; beatings of prisoners, detainees, and suspected criminals; harsh and life-threatening prison conditions; arbitrary arrest and prolonged pretrial detention; executive influence on the judiciary and judicial corruption; infringement on privacy rights; restrictions on freedom of speech, press, assembly, religion, and movement; domestic violence and discrimination against women; female genital mutilation (FGM); child abuse and child sexual exploitation; societal violence; ethnic, regional, and religious discrimination; and trafficking in persons for the purpose of prostitution and forced labor...

There were several killings by unknown assailants that may have been politically motivated.

Lethal societal violence (including interethnic, intraethnic, and interreligious violence) continued...

- Psychological report provided Person I, stating:

[Information from Person I amended in accordance with s.431 as it may identify the applicant].

In response to your request for information that may be relevant to the visa applicant's application for refugee status, I have prepared the following, with the visa applicant's consent.

Person H, medical practitioner referred the visa applicant to a community support group. Person H requested a specialist assessment and treatment of the visa applicant psychological trauma.

The visa applicant was seen in the early 2000s for an initial assessment by myself and my colleague. We saw him for a certain amount of time and the interview was conducted in English. No obvious difficulties were encountered in using English for this assessment. The referral and assessment process had been well explained to the visa applicant so that he had a good understanding of the nature of a psychological assessment and was happy to give his consent to the process. He engaged thoroughly and provided detailed responses.

The visa applicant reported a traumatic childhood due to serious domestic violence in his family. One parent eventually deserted the family leaving them destitute.

The visa applicant also talked at length about a violent event in the early 2000s, in which an armed Muslim gang attacked his church. Many people were fatally wounded or injured. In this

incident, the visa applicant witnessed the assault and fatal injuring of a parent. He was also assaulted with various weapons. In our interview he showed a scar left from these assaults.

The visa applicant also reported several other traumatic events including the fatal wounding of a friend who was helping him.

In relating this exceptionally traumatic history, the visa applicant became understandably very distressed and tearful. He reported significant ongoing psychological symptoms that were consistent with Post Traumatic Stress and unresolved grief including several conditions..

Furthermore, his current living circumstances provide frequent experiences that exacerbate and trigger his trauma related symptoms.

Based on this initial assessment I find the visa applicant to be suffering from Post Traumatic stress and grief related symptoms that are being exacerbated by his current living circumstances. At present he appears to be psychologically very fragile and struggling to cope with his past trauma and loss. I believe he requires ongoing psychological support to help address his severe and unresolved trauma and grief. The visa applicant has expressed a strong interest in accepting our offer of ongoing counselling.

Evidence at hearing

The applicant stated that in the early 2000s, Parent 1 deserted the family, that is, himself and his sibling and Parent 2. He stated that his parents ascribed to different religious beliefs. He stated that he and his sibling were raised to ascribe to one parent's religious beliefs and that this caused friction with the other parent's extended family. The applicant stated that Parent 2 was never accepted by Parent 1's family due to religion. The applicant stated that there was significant incidence of domestic violence before Parent 1 left and that as a consequence he was always very protective and responsible for Parent 2.

After Parent 1 deserted the visa applicant's family, they relocated to State M to be with his Relative W as they were having financial difficulties and did not have family support. The applicant stated that he then left State M to live with Relative X in City S where he attended school. The applicant stated that he had to return to State M as Relative X fled Nigeria and he was required to rely on Parent 2's resources again.

The applicant stated that he continued to reside with Parent 2 and his sibling in State M and continued to practice his religion.

The applicant stated that a group carrying weapons and disguised targeted his community in the early 2000s. Several people were fatally injured. There were many casualties.

The applicant stated that he tried to protect Parent 2 but that he himself was severely injured. At this stage the applicant became emotional as he described that the group humiliated Parent 1. The group then continued to assault the applicant and as a consequence he sustained serious injuries. He was then dragged away from his deceased parent and was assaulted further. The applicant stated that he was so scared and although he was unconscious he lay there until the group departed the community. The applicant stated that his sibling has been missing since and he has had no communication with him/her.

He stated that Parent 1 and he and his sibling were well known in the community for their religion and that the incident had occurred with the intent of clearing the area of his religious group.

The applicant then recounted how in the early 2000s, he and a friend he was living with were invited to join a group operating in the region against Western industries and seeking to obtain greater resources. The applicant stated that it was in fact the friend who he shared with that had encouraged him to join, but he had refused as he did not believe in violence and did not support the ideology of the group. After a confrontation with members of the group he fled his residence and when he returned found blood on the floor and his friend missing.

The applicant stated that he was then totally isolated and was forced to live in hiding where people could accommodate him. He stated that he hid in a friend's house for a period of time and that he was told that members of the group were still looking for him to forcibly recruit him to their cause.

He continued that in the early 2000s he was hiding in a friend's house in City R. He stated that he continued to observe his religious customs there and that when he was returning home several men approached him and told him to enter the rear of their vehicle. The applicant stated that they were armed. The applicant refused to do as asked and, as there were many people at the scene he was able to escape. The Tribunal questioned the applicant as to how it was that he could have escaped such a tense situation, particularly as the persons who accosted him held weapons. The applicant stated that he managed to escape only because there were many people standing by. The applicant stated that he thought that the men were members of the specific group.

The applicant stated that he then needed to leave Nigeria as he could no longer cope living there due to his fear for his life. He borrowed money and organised flights and a visa to Country A, spending several days there. The applicant stated that he would be able to produce a copy of his visa. The applicant stated that he returned home after this time because he felt unable to survive there – he suffered cultural shock and it dawned on him he would have no future in the country.

The applicant stated that his friend Person F assisted him financially to enable the visa applicant to leave Nigeria. The visa applicant stated that the travel agent attempted to take advantage of him by requesting sexual favours in return for the visa. The visa applicant stated that he did, however, persuade the travel agent out of such a bargain and that the agent then agreed to assist the applicant obtain a visa to Australia, under false premises.

The Tribunal, as invited by the applicant, took evidence over the phone from Dr A, who had also provided detailed forensic notes about the applicant's wounds and possible causes. Dr A stated that the Tribunal had to understand that he could not be definitive about his findings regarding the causes of the wounds that had now healed over, however, in his view they were all consistent with the claims made by the applicant.

Dr A stated that in his view the applicant was a credible witness and that he had no doubt that should the applicant return to Nigeria, there would be a "high chance" that he would be either assaulted or fatally wounded because of his religious and political beliefs as well as his ethnicity.

The Tribunal then asked Dr A about the possible causes the visa applicant's internal injuries. Dr A stated that the stated cause was possible.

FINDINGS AND REASONS

22. In essence, the applicant claims to fear harm if he returns to Nigeria as a result of his religion, his ethnicity and his real and imputed public opinion in support of Western industries in the region. The Tribunal finds that the grounds of religion and ethnicity as well as imputed and actual political opinion are the essential and significant reasons for the harm feared as outlined in subdivision AL of the *Migration Act 1958*.
23. The Tribunal also finds that the applicant is who he claims to be – that is, a national of Nigeria as evidenced by his passport documentation and other third party testimony, such as that in writing by Person E
24. Prior to hearing, the Tribunal wrote to the applicant pursuant to section 424A of the *Migration Act 1958*, with concerns about his credibility in terms of possibly misleading the Department and Tribunal about his medical conditions. At the time of writing this letter, however, the Tribunal had not had the benefit of significant evidence provided by the applicant at hearing which demonstrated that he was having difficulty as a result of some internal.
25. The Tribunal no longer holds these credibility concerns as the applicant appeared as a reliable witness as he recounted significant events of serious harm he and his family had encountered in Nigeria. The Tribunal has made allowances for lapses in memory which could adversely affect the applicant's ability to present claims in a coherent and plausible manner. The Tribunal has also made allowances in that the hearing can be a stressful process which may further interfere with the applicant's ability to recall his or her background accurately and to express his or her claims consistently. Accordingly, the Tribunal has adopted a liberal approach generally when considering his refugee claims. The Tribunal found, however, that the applicant's claims at hearing proved coherent and largely consistent with his claims in writing. It was clear as the applicant was narrating his account that he was distressed at reliving some of the abuses of the past but he was clear about detail and his narrative was, even though complicated, logical and plausible. As such, the Tribunal's less than significant concerns about his credibility have fall away.
26. The Tribunal notes that the Department in making its decision accepted several threshold matters as listed below:
 - that the applicant's relative [Relative Y] was killed by a gang in Town P and that the applicant was threatened;
 - that the applicant was attacked because of his religion in State M and that his parent [Parent 2] was killed by an armed religious group and he could not return to State M because he could be attacked because of his religion; and
 - that he was threatened with death in City R.
28. The Department found, however, that the events relating to the death of Relative Y was criminally motivated and was not for reasons of one of the five in the Refugees Convention. While the Department accepted that the applicant could not return to State M, it concluded that the applicant could, however, return safely to a different part of Nigeria where people sharing his religion and tribe are in the majority. The Department also found that the applicant did not have a sufficiently high profile as a religious leader to attract adverse attention and considered that the attack on the applicant in City R was an indiscriminate, criminal attack, without any Convention nexus.

29. In considering the applicant's account, the Tribunal has taken into account the applicant's claims about his parent's death at the hands of the armed religious group, as well as the significant assaults he was subjected to in the late 1900s. To this end, the Tribunal has placed significant weight on the letter by Person E. Person E appears to have been an eye-witness to the events that unfolded and states that "... several people were killed and injured amongst the dead was [Parent 2] ...my children, [the visa applicant] was brutally injured... sustaining [several injuries]". The Tribunal considers Person E's statement to be powerful corroborative evidence that the events as described by the applicant involving his parent being fatally injured and himself sustaining injuries from, actually occurred.
30. Furthermore, Person E's evidence, together with that of the applicant, is further corroborated by the report of Person P who not only confirmed that the applicant had the injuries he claimed he had, but also held open the possibility that the injuries, and now healed wounds, were sustained in the manner that the applicant claims.
31. In respect of the events on the day the applicant's parent was fatally injured, the Tribunal notes that a contemporaneous report indicates that mob violence occurred between Muslims in Christians State M at that time.
32. The Tribunal finds that the violence sustained by the applicant and Parent 2, and the disappearance of the applicant's sibling, were motivated by religious enmity and that for that reason, religion was the essential and significant reason for the attacks consistent with Section 91R(1) of the *Migration Act 1958*. The Tribunal does not accept that the attack on the applicant's community, parent, applicant and other persons were indiscriminate criminal acts of violence. The country information makes it clear that the violence that occurred in State M at that time was religiously motivated. The Tribunal accepts that the applicant's parent was targeted, as was the applicant, because his family had a high profile as devout persons in their community.
33. The applicant's testimony at hearing regarding how members of a particular group wanted to recruit him to fight against western industries in the area was also plausible, in the detail and in the internal coherency of his narrative. Country information regarding the group in question demonstrates that such a group does operate and illustrates that the group's modus operandi and aims are consistent with those as set out by the applicant. It is also clear that the movement is willing to use violence as a means of achieving its ends:
34. The applicant's account as to how his friend had been in contact with the group in an attempt to find them both work was also plausible, as was the account of the applicant's friend's disappearance from the home they shared. The Tribunal accepts the applicant's testimony that he refused to join because of his strong faith which did not permit him to engage in violence or criminal actions.
35. As the country information shows, the criminal actions of gangs in Nigeria are also politically and religiously motivated. It is not possible to say that their actions are solely criminal as they are often sponsored by religious and political agendas. Indeed, the underlying motivation of the gangs goes well beyond criminal activity and is intrinsically linked with the political and economic purposes of the people who organize and co-ordinate gang activities.

See UK Home Office's *Country of Origin Information Report: Nigeria* (25 May 2007) which states "Underlying the conflict are several key issues that fuel the violence, including: the manipulation of frustrated youth by political leaders, traditional elites, and organized crime

syndicates involved in oil theft; the impact of oil money on community politics; crushing poverty and youth unemployment”. The Tribunal accepts, therefore, that the applicant’s resistance to join the movement group placed him in danger of serious harm because of his actual and imputed support of western oil interests.

36. In terms of the applicant’s claims that he faces serious harm in Nigeria due to being identified as a particular religion and a member of Tribe A, the Tribunal has had regard to the country information which indicates that there has been conflict between Tribe A and a tribe of differing religious beliefs, particularly in City R, where there has been a long history of ethnic, political and religious enmity between the two tribes. An article entitled Ethnic Militias Guard Tribal Divides, dated 1 March 2002, published by Columbia University-hosted website Wordpress.org (<http://www.worldpress.org/Africa/492.cfm>) deals at length with these issues. A brief excerpt is reproduced below to demonstrate the veracity of the applicant’s claims:

The crowded Lagos suburb of Idi Araba is still a ghost of its old self-weeks after ethnic violence erupted on its bustling streets. The Feb.2 [2002] clash between two ethnic groups, the Hausa and Yoruba, left 100 people dead and destroyed scores of homes, shops, schools and markets in Nigeria’s commercial capital. The violence marked the latest of 40 recorded ethnic and religious clashes in Nigeria since democracy returned in May 1999...

37. The Tribunal also accepts the applicant’s claims that he could not relocate to a different part of Nigeria to avoid harm on the basis of his religious and actual and imputed political beliefs and ethnicity because, as demonstrated by the country information submitted by the applicant, the proposed areas are not without their difficulties. The country information submitted by the applicant demonstrates that the applicant could be seen as an “outsider” and as a result was vulnerable to having his life taken as part of religious ceremony
38. The Tribunal has also accepted the psychologist’s, Person I’s testimony that the applicant has suffered profound trauma as a result of the events that happened in State M and elsewhere. The Tribunal considers that to return the applicant to a country where he has sustained severe trauma would mean he would continue to suffer further serious harm by way of psychological impairment.
39. The applicant’s ethnicity also affects his capacity to relocate, as evidenced by the following information published by the 2008 US Department of State report which states:

In April 2006 HRM published a report describing discrimination against non-indigenes. While all citizens have the right to live in any part of the country, state and local governments frequently discriminated against those not judged to be indigenous to the area, occasionally compelling individuals to return to a part of the country from which their ethnic group originated but to which they have no personal ties. On different occasions, individual non-indigenes were compelled to move by government use of bulldozers, threats with clubs and torches, and discrimination in hiring and employment...[National/Racial/Ethnic Minorities].

40. In this respect, the Tribunal has placed significant weight on the applicant’s evidence that he attempted to flee Nigeria to Country A to find refuge but that on arriving there he found he was not in a position to seek refuge and became overwhelmed due to his isolation. The Tribunal considers that this is further evidence that it would be unreasonable to expect the applicant to live in what will be a foreign place to him, such as the proposed alternative region of Nigeria, without any family or friends to support him, given the serious psychological harm he has experienced in Nigeria. The Tribunal notes that as evident from

the hearing the applicant has a wide network of support in Australia and that he has been offered trauma counselling.

41. The Tribunal has also placed significant weight on the letter and photos submitted by witness, Person D, stating that he was assaulted at his residence in City R by members of a violent group because they were still looking for the applicant. Person D states, “When the mobs came to attack me they were yelling out for [the applicant]. They threatened me and attacked me because I refused to tell them where he was ...”. Clearly, the applicant is still wanted by the group and despite his attempts to relocate on several occasions, appears to have been located by them. In these circumstances, the Tribunal considers that it is not reasonable for the applicant to attempt to relocate to another part of Nigeria..
42. The Tribunal finds that given the cumulative serious harm experienced by the applicant, that there is a real chance that he would suffer serious, systematic and targeted harm for the purposes of the Convention were he to return now or in the reasonably foreseeable future for the significant and essential reasons of his religion, actual and imputed political opinion and ethnicity. In this regard, the country information shows that the applicant has an objective (as well as subjective) fear of harm that is well-founded.
43. The Tribunal notes that the applicant argues that he is also a member of a particular social group, that is, family, however the Tribunal considers that it is for the reasons of his family’s religion that he and his family was targeted and that therefore, the essential and significant reason is his religion, as opposed to a particular social group, which means that there is a real chance that the applicant will be harmed if he were to return to Nigeria. The Tribunal does recognise that in this case, however, this argument is purely an academic one.
44. The Tribunal also submits that the country information demonstrates that the Nigerian authorities are unable to protect the visa applicant in the climate of corruption and ethnic tensions that pervades the country, particularly as it appears that the law enforcement authorities are either indifferent or/and, at worst, involved in backing various groups involved in the violence.

CONCLUSIONS

46. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

47. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer’s I.D. Iward

