

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75573

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for INZ:</u>	No Appearance
<u>Dates of Hearing:</u>	19 & 20 July, 19 October 2005
<u>Date of Decision:</u>	12 April 2007

DECISION

INTRODUCTION

[1] The appellant, a national of the Democratic Republic of Congo (the DRC), appeals against a decision of a refugee status officer of Immigration New Zealand (INZ), declining his application for refugee status. He fears that if he were to return to the DRC, he would be persecuted by the incumbent government or by opponents of the regime of former president, Mobutu Sese Seko (Mobutu), because of his familial relationship with ZZ, a valued advisor to Mobutu.

[2] The following is a summary of the appellant's claim as he presented it to the Authority at the hearing. This decision turns upon his credibility, which is assessed later.

THE APPELLANT'S ACCOUNT

[3] While the appellant did not experience any difficulties relevant to his appeal prior to 1997, the context of his refugee claim derives from his connection with the government of the DRC during the early 1990s, when it was ruled by the dictator

Mobutu under the guise of the Mouvement Populaire Renouveau (MPR). The appellant decided to join the MPR in Kinshasa during the mid-1990s out of an instinct for self-preservation. He felt that it would be prudent to be a member of the party, as anyone who disagreed with the government at that time was treated harshly. Many people were jailed and mistreated. The appellant took part in practical initiatives for the MPR such as organising for well-wishers to be present at the airport to welcome the President when he returned from overseas trips.

[4] At around the same time, the appellant began to attend an evangelical church which had been founded by ZZ a few years earlier. The appellant met one of ZZ's daughters, AA, through the church. They married during the mid-1990s.

[5] The appellant first experienced problems in 1997 after Laurent Kabila deposed Mobutu by military means. ZZ, his wife and most of AA's siblings were able to leave the DRC before Kabila's troops reached Kinshasa, where the appellant also lived. They took refuge in neighbouring African states before moving to a western European country where, as far as the appellant knows, they still live.

[6] The appellant and his wife were unable to leave with the rest of AA's family. Instead they made their way to a village in the south of the country, where they lived incognito for about a year. Because their standard of living was very low, the appellant's wife and their first child went to Angola in 1998, before making their way to South Africa. By that time AA was pregnant with the couple's second child.

[7] In early 1999, the appellant returned to Kinshasa. He needed to sell his possessions to raise money so that he could join his wife. He was unable to do so and was forced to live in hiding with his brother. Late one evening about four months later, he and several other worshippers were apprehended by government soldiers while attending an underground prayer meeting. They were taken to a prison. The soldiers learned the appellant's identity and accused all of his companions of being supporters of the deposed President. They were beaten continually, interrogated about Mobutu and forced to do hard labour. Many of the women were raped.

[8] Eventually the appellant learned that his brother had been killed and that his house had been occupied by soldiers. He arranged a "temporary" release by paying a bribe and then made his way to his father's farm in Orientale province. Within about three months, the appellant's father had also been killed, although his

death was not connected to the appellant's difficulties. The appellant was eventually helped by a local priest, who gave him enough money to make his way overland to South Africa, where he joined his wife and children in mid-1999.

[9] They experienced some difficulties while living in Johannesburg. Apart from having to cope with the high incidence of crime, the appellant and his wife also found that they were recognised as relatives of ZZ within the large population of expatriates from the DRC. On one occasion in the early 2000s, people came looking for the appellant at his flat. He was not home but the mob took money from his wife. They moved house as a result of the robbery. Then, in 2003, the appellant's wife was beaten and humiliated by another group of Congolese who recognised her as the daughter of ZZ.

[10] The appellant decided that he needed to leave South Africa to find a way to get the rest of his family out. They were living there unlawfully and could have been apprehended and returned to the DRC at any time. He obtained a false South African passport in Johannesburg in 2003 and made his way to New Zealand in early 2004. Around the same time, AA and the children moved to a remote village in South Africa in the hope that they would be more secure there. As far as the appellant is aware, his wife has not had the same sorts of problems since she moved. However, communication with her is difficult and time-consuming because the village is remote and she has no access to a land-line telephone.

[11] The appellant fears that if he were to return to the DRC, his identity would come to light. He believes that he would be seriously mistreated because of his family connection to ZZ. The appellant believes that his father-in-law is still involved in political activities relating to the DRC. His wife is still occasionally in contact with her father, but communication is difficult because she lives in a remote area.

[12] After interviewing the appellant on 12 and 24 August 2004, a refugee status officer of INZ issued a decision, dated 14 April 2005, declining the appellant's application for refugee status. He appeals against that decision.

WITNESS LL

[13] LL gave evidence on behalf of the appellant. LL is a former resident of the DRC. He has been in New Zealand since the late 1990s, when he came here as a

refugee under the UNHCR refugee quota system. The Authority was provided with copies of correspondence from INZ which verified his status, together with a copy of LL's New Zealand passport.

[14] He is the minister to a Christian community in Auckland which has many Congolese within its congregation, the appellant among them. They did not know each other before they came to New Zealand. LL gave evidence that, in his opinion, the appellant is from the DRC. He also said that the appellant's wife, AA, telephoned him from South Africa in mid-2005 to ask about her husband. LL said that he has heard of ZZ and believes that he would have smuggled a lot of money out of the DRC before he went into exile.

MATERIAL RECEIVED

[15] Immediately prior to the hearing before the Authority, counsel for the appellant filed submissions under cover of a letter dated 15 July 2006. On the first day of the hearing, counsel handed up a statement in the name of the witness LL and various additional items of country information.

[16] Following the first two days of the hearing, the Authority issued a Minute dated 8 September 2005. The Minute gave directions with regard to steps to be taken by the appellant in order to try to obtain further evidence in respect of the appeal.

[17] When the hearing reconvened on 19 October 2005, the appellant provided a further written statement bearing the same date, together with a brief typewritten statement purporting to have been signed by his wife. It was dated 5 October 2005 and had been forwarded to him by facsimile. The facsimile was accompanied by a copy of a photograph showing AA with two other women and one man, said to be ZZ. The statement also contained general information which broadly corroborated the appellant's testimony. Counsel also handed up copies of two articles in English which outlined interviews with ZZ in Europe. The interviews were published on a website in 2004.

[18] Additional written submissions were forwarded by counsel on 26 October 2005, together with further country information relating to ZZ and his presence at a conference in Europe about the political future of the DRC.

[19] Given the length of time which had elapsed, the Authority wrote to counsel

again on 16 October 2006 to offer the opportunity to provide further submissions, evidence or country material by 20 October 2006. Counsel sought and obtained an extension until 15 November 2006 before responding on 17 November 2006. At that time he forwarded an email from the appellant's wife to the appellant, together with an English translation. He also provided a copy of an article headed "Open letter to President G W Bush" by ZZ, downloaded from the internet in respect of the general election in the DRC; www.mlc-france.org/article (20 September 2006).

THE ISSUES

[20] 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."

[21] 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

CREDIBILITY

[22] Before addressing the principal issues, it is necessary to determine whether the appellant is a credible witness. The Authority notes that the appellant speaks French and Lingala, two of the languages spoken in the DRC. He was also able to adduce evidence from a member of the DRC community in New Zealand, who

expressed his opinion that the appellant is a national of the DRC. The witness's opinion was based upon his interaction with the appellant and would have been based upon the appellant's language, knowledge of the DRC and his accent. The Authority therefore accepts that the appellant is a national of the DRC. With that limited exception, the Authority finds that the appellant is not a credible witness. The remainder of his substantive account is rejected.

[23] The appellant's predicament turns upon his claim to be the son-in-law of ZZ, a prominent politician who held a position of significant importance in the deposed government of Mobutu. It is that familial tie which, the appellant says, creates the risk for him if he were to return to the DRC even today, nearly a decade after the fall of the Mobutu regime. The Authority does not believe the appellant is related to ZZ and finds that he has fabricated this claim for the purposes of bolstering an unmeritorious application for refugee status. Our reasons follow.

IMPLAUSIBLE AND CONTRADICTIONARY EVIDENCE

[24] The appellant's evidence was that in the aftermath of the overthrow of the Mobutu regime, ZZ was able to obtain exile with his wife and children in France. There is country information which confirms that ZZ is currently living there and that he has maintained involvement in the political affairs of the DRC. Since leaving the DRC in the late 1990s, he has written books, attended and addressed conferences and has been the subject of articles and interviews in the media as a political commentator. See, for example, "Press conditions no better under new Kabila" Africa News Service (10 April 2001), Reporters without Borders *DR Congo – Annual Report 2001*, p5, Julia Crawford "Fragile Freedom" www.cpj.org (14 September 2004); "Journalist summoned by security services; JED condemns authorities' interference in media" *Africa News* (21 July 2004) and "Azarias Ruberwa mistreated on Thursday in Brussels by Congolese ..." Digital.Congo.net (4 December 2004). ZZ was also listed as one of several speakers to address a conference convened in Paris in 2005 to discuss the general election in the DRC for 2006, and published a polemic in anticipation of the election "Is war in the Congo imminent?" www.global.ca (27 March 2006).

[25] The Authority has no doubt that if the appellant's wife was truly the daughter of ZZ, ZZ would have made some attempt to assist the appellant and his family to escape their difficulties in the DRC, Angola and South Africa during the late 1990s and the early part of this decade. It is equally inevitable that if such help had been

offered, the appellant and his wife would have accepted it.

[26] The appellant's evidence in respect of both of these matters was implausible and contradictory.

[27] In answer to queries from the Authority, the appellant claimed that he and his wife had received an offer from ZZ to help them to go to France from South Africa during the early 2000s. The appellant claimed that he declined the offer because he preferred instead to take his chances by coming to New Zealand and claiming refugee status.

[28] The appellant said initially that the thought of coming to New Zealand had occurred to him for the first time in 2002. However, he had by then also said that his parents-in-law had suggested to his wife that they go to France in 2001. That contradicted his earlier testimony that one of the reasons he declined ZZ's offer of assistance was because he had already decided to come to New Zealand. The appellant then altered his evidence and said that he had first thought of coming to New Zealand in 2000.

[29] The appellant had also suggested at first that there was nothing that attracted him to the possibility of going to France. He said that his wife was behind his decision and she accepted it because he is her husband. When pressed on this matter, the appellant contradicted himself again and said that it was his wife who did not want to go to France and that he always listened to his wife. The appellant also contradicted himself in another respect, by asserting at different times that ZZ had offered to help them to come to France, and also that ZZ had not offered to help because once his daughter married, she was no longer his concern but the concern of her husband, the appellant.

[30] At the time that he claims that ZZ offered to help them to go to France, the appellant and his family were living in penury in South Africa, a country in which they had no family support, in which they had no right to remain, and where he and his wife had each been bullied and assaulted by other DRC refugees. They were supposedly constantly worried about being forcibly repatriated to the DRC, and under continuing threat of being assaulted by fellow nationals of the DRC who knew of their connection to ZZ.

[31] Faced with such a precarious and dangerous existence it is implausible that the couple should have rejected an offer to help them to obtain sanctuary in

France. They would have been able to live there together safely, as a family, in comparative comfort. They would have been in a western country whose language they spoke and with the advantage of being able to live with other members of their extended family.

[32] In effect, the appellant claimed that he preferred instead to obtain a false passport and enter New Zealand unlawfully, without his wife and children, in order to live in a country about which he knew virtually nothing, where he had no social support, and whose language was unfamiliar to him. He did so because he had seen an article while in the DRC, which suggested that New Zealand was looking for teachers.

[33] When considered in the context of the appellant's evidence as a whole, the appellant's mobile and self-serving explanations are inadequate and implausible.

IMPLAUSIBLE LACK OF CORROBORATION

[34] It is also inevitable that if the appellant were truly related to ZZ, he would have been in a position to provide the Authority with adequate corroboration of that relationship. ZZ's profile in France indicates that he would be capable of being located and contacted, if necessary through the expatriate DRC population, and that some confirmation of the appellant's claim could have been obtained from him, particularly with regard to his marriage to ZZ's daughter.

[35] However, despite being given every opportunity to obtain corroboration of that nature, the appellant has not done so. Apart from providing copies of a photograph and a marriage certificate, to which further reference will be made below, the appellant has failed to provide any additional corroboration at all, let alone from ZZ.

[36] The appellant told the Authority that his wife had managed to maintain contact with ZZ after leaving the DRC in 1997. This continued while she was living in South Africa and even beyond the time the appellant left South Africa to come to New Zealand. He said that telephone communications with ZZ were difficult, but not impossible, and that his wife had managed to talk to her father every couple of months. However, he did not really know what they discussed, nor did he know where his father-in-law was living in Paris. The telephone contact is said to have ceased some years ago and therefore the appellant is no longer able to ask his wife to pass a message to ZZ.

[37] The Authority does not believe that explanation and finds that it is simply a convenient means by which the appellant seeks to explain his inability to corroborate his claim to be related to ZZ. The Authority finds that the true reason is that the appellant is not related to ZZ at all. The appellant has provided no country information which corroborates his claim that his wife is a child of ZZ, and nor has the Authority uncovered any such information through its own research.

[38] The Authority was provided with photographs which supposedly show the appellant's wife with ZZ. The appellant provided photographs of himself and his wife and other photographs of his wife with three other people. Two of the other people in that photograph are said to be her siblings and the third is said to be her father, ZZ. While the woman in the appellant's wedding photograph also seems to be in the other photograph, the man said to be ZZ could in fact be anyone.

[39] It is the responsibility of an appellant to establish his or her claim for refugee status; ss129P(1) and 129P(2) Immigration Act 1987; *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647. While the nature of the predicament of a genuine refugee may not be commensurate with providing independent evidence to corroborate every aspect of a claim, the Authority is entitled to draw an adverse inference in this case because, if the appellant's claim were true, there has been ample opportunity for him to obtain corroboration. The photographs alone do not establish that ZZ is the appellant's father-in-law.

[40] In all of the circumstances of this appeal, the Authority finds that the appellant's failure to produce any information corroborating his claim to be related to ZZ is due to the fact that he is not, in fact, related to ZZ at all.

[41] The Authority has not overlooked the marriage certificate provided by the appellant. The Authority has previously noted in a number of decisions that, because of the ease with which certain types of documentary evidence can be obtained in order to support refugee claims, findings as to the reliability of documents will usually follow findings with regard to the credibility of witnesses: *Refugee Appeal No 72570* (11 November 2002) and *Refugee Appeal No 75794* (23 May 2006) at [56]. Having rejected the credibility of the appellant, it follows that the Authority places no weight on the content of the marriage certificate as evidence that the appellant's wife is the daughter of ZZ.

[42] For all of these reasons, the Authority does not accept that the appellant

has a well-founded fear of being persecuted in the DRC because of his claimed relationship with ZZ.

[43] In his further submissions dated 17 November 2006, counsel submitted that in the aftermath of the general election held in 2006, domestic conditions in the DRC had deteriorated to such an extent that the appellant was likely to be vigorously interrogated upon arrival in the DRC. He referred to the content of the United Kingdom Home Office *Country Report: Democratic Republic of Congo* (October 2006) (the Home Office report) and the United States Department of State *Country Reports on Human Rights Practices for 2005* (8 March 2006) (the DOS Report).

[44] The DOS Report refers to an article published by the BBC in December 2005 (the BBC article) which had suggested that the DRC authorities interrogated all failed asylum seekers returned to the DRC from Europe. The suggestion was that they focussed on political opponents of the government (section 2.d).

[45] In that context, however, it is relevant that the Home Office Report refers to a UNHCR statement published in response to the BBC article. After canvassing several organisations and institutions including human rights NGOs, the UNHCR position was that there was no evidence of systematic mistreatment or abuse of returnees through Kinshasa Airport (para 36).

[46] It is also worth noting that the DOS Report refers to the return of more than 20,000 DRC refugees to the country during the year in question (section 2.d).

[47] We have rejected the appellant's claim to be related to ZZ. He has made no other claim to be politically active or significant and there is no evidence that the authorities in the DRC will identify the appellant as a political opponent. He is not a returnee from Europe, nor would he automatically be identifiable as a "failed asylum seeker". For all of these reasons, the Authority finds that there is no evidence that the appellant would have a well-founded fear of being persecuted in the DRC for any Convention reason.

CONCLUSION

[48] The first principal issue for consideration is therefore answered in the negative. On that basis, the second issue does not require consideration.

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

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A N Molloy
Member