



Australian Government

Department of Home Affairs

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Legal Framework for Protection Processing (Refugee Law and Complementary Protection)- February 2024

Activity Handout

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s. 22(1)(a)(ii)

Activity – Credibility

Aim:	The aim of this activity is to consider credibility assessments and how a decision maker can apply a logical and reasonable approach to the evidence and issues presented by a protection visa applicant.
Method:	Read the Tribunal hearing excerpts and discuss the questions with your table group. Record your answers in the space provided. Consider the following questions when reading the excerpts: 1. Do you think the following exhibits a logical and reasonable approach to the raised evidence and issues? 2. What other issues do you think arise?

Relevant excerpts from the Tribunal hearing - Applicant from China claiming persecution on the ground of religion, being a Christian

'M' is Tribunal member
'A' is applicant
'T' is translator (where translator directly responds)
'L' is Migration Agent

Paragraphs From the Hearing

M: *"Which religious faith did Jesus originally belong to?"*

A: [Catholicism]

M: *No, [male appellant]. The original religious belief of Jesus Christ was Judaism. Could you please explain to me why you have stated that it was Catholicism when in fact it is Judaism?*

A: *It's a long story. After Jesus was born, before people knew they thought, used the sheep as a sacrifice. I think he was born, he use his own body to sacrifice for the people.*

M: *Excuse me, [male appellant]. I don't want a long exposition about the history of Jesus Christ. I asked you a very simple question and that is which religious faith did Jesus originally belong to and you said Catholicism. In reality it's Judaism. I would like you to explain why it is a contradiction. That is all I would like you to do.*

A: *Okay. Jesus is our Lord and we believe in Catholicism. So he is a symbol of our religion. So first of all Jesus and thenhis follower, then it comes down from generation to generation.*

M: [Why was Jesus executed?]

A: *Because he was spreading the principle of Catholicism. And he was betrayed by Judas, his follower. Judas, his follower. Okay, by kissing him. Then the people in charge arrested Jesus because they insult the humility of Jesus, saying he is the king of the Jews.*

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M: [What was the chief mission of Jesus?]

A: *From ancient time to even today Catholicism is love, that one word "love". Under the central theory is that we must save our souls to go to heaven. Love God, love people. Mainly saving the soul. Save the soul say we can go to heaven.*

M: [Who was John the Baptist?]

A: *He was before Jesus Christ. He baptised Jesus.*

M: *Do you know when Jesus Christ was born?*

A: *Jesus said those people who did not see me but believe in me are blessed. So I didn't get into those details. So I believe in Jesus that is my Lord but I didn't get into details like when he was born, things like that.*

M: *Mr [male appellant], Christians around the world believe that Jesus Christ was born on 25 December, Can you please tell me why you don't know that?*

A: *[I thought you meant the year]*

T: *You are asking me which year, not the date?*

M: *No, I asked you when Jesus Christ was born, Mr [male appellant]. That means the date?*

L: *Can I interject. With respect, Tribunal, I also understood you meaning the year.*

M: *You can make your submissions at the end, Mr [agent].*

L: *Yes, I am just noting that for the record.*

M: *I would ask you to wait to make your submissions at the end and that if you wish to interject that you obtain the leave of the Tribunal, thank you.*

T: *Everybody knows that but I thought you were asking me which year. I really didn't know.*

M: *Mr [male appellant], at the beginning of the hearing I asked you that if there was something that you didn't understand that you should bring that to my attention. If there is a question that is ambiguous or you don't understand, ask me. Do you understand that?*

A: *Okay.*

M: *Where was Jesus born?*

A: *In a town called Bylong*

M: *Can you tell me why you don't know that Jesus Christ was born in Bethlehem according to the Bible?*

T: *When you translate into Chinese it is like Bylong. It is like that, just a similar pronunciation.*

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M: *When was Jesus crucified?*

T: *When?*

M: *When was Jesus Christ crucified?*

A: *When ... charged him.....*

M: *What does Easter Friday represent to Christians?*

A: *Easter*

M: *Easter Friday?*

A: *He did, Jesus died, he was crucified on Friday and he resurrected after three days. I think that anything to do with Easter. Easter is about Jesus conquering death, conquering evil. He conquered the evil which means that because Jesus Christ sacrificed we will be saved because Jesus took over all the sin that were committed by us. God sees Jesus suffering so he redeemed the, all the sin from all the people.*

M: *Tell me what Easter Sunday represents for Christians?*

A: *Sunday?*

M: *Easter Sunday?*

A: *I am not sure about your question.*

M: *What don't you understand?*

A: *So for us Sunday is a day for hearing the mass and worship God.*

M: *But Easter Sunday is a very special day for Christians. What does Easter Sunday represent.*

Mr [male appellant], *Please answer my question?*

A: *Easter Sunday. I am not sure about your question. What has Sunday got to do with Easter because Sunday for us is the day, Sunday is the day that we worship God. So I do know that on Sundays we don't work, we should commit ourselves to worshipping God. But Easter Sunday I don't think I have heard about Easter Sunday.*

M: *Tell me some of the names of the books of the New Testament in the Bible?*

A: *New Testament mainly talks about after Jesus was born that he suffered until his death in order to save the human being.*

M: *Mr [male appellant], I didn't ask that question. I asked you name some of the books of the New Testament please?*

A: *Okay, so the old Testament there are books like Exodus and so on but the New Testament mainly talks about Jesus' life. The New Testament talks about after Jesus was born and all the miracles he performed and how he taught people. It talks about how he How devil pestered*

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him. Then in the end is the book. Revelations. It talks about how things will be at the end of the world.

M: [Please recite the ten commandments]

A: [gave fair substance]

M: [What is Immaculate Conception in Christian belief?]

A: That the Holy Mother's conception. That the angel pass a message to Holy Mother that you will be pregnant. She said, I'm not married, how can I be. The angel said what the God wants to happen it will be done. Then she said I will follow God's idea. Then she is pregnant with Jesus. So after Jesus was born she was still a virgin. So everyone else had the original sin but Holy Mother does not have the original sin.

M: *Why are there no women priests in the Roman Catholic church?*

A: Only nun. But priests are all men but priest, you can't get married because God said you can't serve money and God. God has said you server money or God. So we now serve God. You can't get married. So the Roman Catholic priests are not married.

M: *Mr [male appellant], that doesn't answer my questions. I know that all the priests are in the Catholic church are men but I want to know why?*

A: I don't understand the question. It has always been like this.

M: *All the priests in the Roman Catholic Church are men. There are no women priests. My question is a simple question. Why are the no women priests in the Roman Catholic church? Could you please answer my question?*

A: As far as I know there are women in Catholic church who are virgin, like nuns. Like Theresa. She loves ... she is a holy woman, she is a female. There are nuns in Catholic Church, they are virgins for the rest of their life. They become saints.

M: [What is the Catholic Church's position on homosexuality?]

A: [They are against it]

M: [Why?]

A: Because it is against the ethics of Catholicism. It against the number 6 commandment, that is the carry out evil deeds. The Catholic Church love my priest tells me some was burned out because of such things. The sixth commandment, even between husband and wife, that they have restriction. It can not go out of control. So homosexuality is in breach of the sixth commandment.

M: *What is the Roman Catholic Church's position on birth control?*

A: You can't do it. Because each child is the gift from God and is God's intention. So it's sacred.

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M: *So even the rhythm procedure is improper according to the Roman Catholics, is that right?*

A: *But in our church that, we do, this from these safety periods. But if there is a child then we must keep it because that's God's intention. That is a blessing from God.*

...

Outline of Statements Given During Application:

All my family members are considered as underground church believer by Chinese government, Chinese government manages Catholic Sanzhi Aiguo Association, but our Church is controlled by Roman Pontiff, so our church activity is considered illegal by Chinese Government. Chinese Government persecutes the believer who are loyal to the Roman Catholic Church, doesn't allow them hold public activities. All my family members had been persecuted for a long time due to our religion worship.

... a history of the family's Catholicism was provided referring to 1916, 1928, 1937 and 1945 identifying a monastery, a Catholic Church association and missionary work. The consequences of the Communist party taking power in 1949 were described. Details were provided of the appellant wife's adoptive grandfather's attitude to, and position under, the new regime, including his "underground" missionary work and spending 15 years in prison in the north-west of the country. There was a brief description of the grandfather's activity after release in 1980, the antagonistic attitude of the (named) local government to him and of the implication of the wife's parents with him (they being sent to prison). The statement also described the underground missionary work of each appellant.

Further Questioning by the Tribunal:

The Tribunal put to the applicant that this information was lacking in detail and therefore implausible.

Tribunal outlined the role of the hearing after asking *It would seem to me implausible that you would have waited until July 1999 before finally leaving the PRC if you had a fear of persecution for such a long time?:*

M: *Mr [appellant's name], I made it very clear at the beginning of the hearing that I had read all the documents in the Tribunal's files and the department's files. The purpose of the hearing is not for you to repeat what you have said previously. The purpose of the hearing is for you to answer my questions and for me to clarify matters which need to be clarified. I have asked you a simple question now two times and giving you a third opportunity and the last opportunity. Can you please tell me why you waited so long after the persecution began in the PRC before you finally left because to me it is implausible that you would wait that long?*

A: *[I did not want to flee alone and awaiting opportunity to leave with my family.]*

M: *Mr [male appellant], in the first statement accompanying your protection visa application it says your adopted grandfather, Mr Fu, was released in 1980. He went back to his home town, he was arrested again for six months. In which year was he arrested on the second occasion?*

A: *Also in 1980. After – because after he got home he started mass again. He has got the convictions that he wants to serve God again.*

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M: *Excuse me. When I ask you a question, that is a simple question, I prefer that you answer that question. If I need other information I will you ask about other additional information. You also claim in your first statement that the parents of your wife were imprisoned for two months. In which year were they imprisoned?*

A: *The parents of my wife?*

M: *Yes?*

A: *Sorry, what was that question?*

M: *In which year were they imprisoned?*

A: *Same year.*

...

The solicitors for the applicant wrote to the Tribunal asking the Member disqualify himself – the request was refused.

The Decision:

Applicant stated he had escaped China by arranging for a passport via a bribe. The Tribunal stated that it was 'implausible that he would have been issued with a valid PRC Passport... if the authorities were interested in him.'

The answers in relation to questions on Christianity were described in various places as 'contradictory', 'evasive' and 'implausible from a Christian'. Focus seemed to be on the 'original faith of Jesus', 'Easter Sunday', mentioning only the Book of Revelations, and the answer concerning no women priests. The Tribunal concluded:

The Tribunal finds that the fact that the applicant husband was unable to answer basic questions concerning Christian and Catholic beliefs, or provided wrong answers, is inconsistent with an individual who claims to have been a practising Christian and Catholic in these circumstances. Moreover, the Tribunal is not satisfied that an individual such as the applicant who claims to have been such a committed Catholic for so many years would have such a poor knowledge of the Christian religion, especially if he has been attending Catholic services every since July 1999 in the Sydney area. For these reasons the Tribunal finds that the applicant husband and wife are not Catholics and Christians, as claimed, which lies at the very heart of their claims, and their fear of persecution.

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1. **Do you think the above exhibits a logical and reasonable approach to the evidence and issues?**

Please give a summary of your reasoning.

2. **What other issues do you think arise?**

Please give a summary of your reasoning.

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Training Workbook

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Name:	
Team/Section:	
Mentor:	
Workbook commencement date	
Quiz Completion	
Quiz review attendance	
Workbook completion date	

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Reference Materials and Resources

- *Migration Act 1958* (the Act) and Migration Regulations 1994 (the Regulations)
- Refugee Law Guidelines (LS-1814) - LEGEND
- Complementary Protection Guidelines (LS-1815) - LEGEND
- The Protection Visa Processing Guidelines (VM-4825) - LEGEND
- Gender and Sexual Orientation Guidelines (VM-5345) - LEGEND
- Use of Country of Origin Information (VM-3245) - LEGEND
- Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (re-edited January 1992, UNHCR 1979)
- Rome Statute of the International Criminal Court
 - <https://www.icc-cpi-int/sites/default/files/RS-Eng.pdf>
- Interpreting the Rome Statute - Elements of Crimes
 - <https://www.icc-cpi.int/sites/default/files/ElementsOfCrimesEng.pdf>
- Protection visa Help Desk **S. 22(1)(a)(ii)** [@homeaffairs.gov.au](mailto: @homeaffairs.gov.au)

s. 22(1)(a)(ii)

Credibility

Credibility

Assess credibility of applicant and evidence by testing knowledge and claims against independent information.

Process:

- Establish facts
- Consider facts
- Test claims
- Make and record credibility findings



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Notes: _____

An assessment of credibility is not undertaken at any one time in the protection assessment process. Rather, it is considered at every stage.

For example, in terms of assessing the reasons for the persecution under s. 5J(1)(a), an applicant's claim of religious practices may not be accepted or considered plausible on the basis that they are not a witness of truth. In assessing an applicant's well-founded fear of persecution, decision makers are assessing the applicant's subjective fear (in an objective context). The applicant's credibility and supporting evidence is relevant to whether the applicant actually holds the subjective fear of persecution, and whether the subjective fear is well-founded.

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Decision makers should follow these key steps in assessing credibility:

- Establish the facts – through the collection of information and supporting documentation from the applicant and independent country information.
- Consider the facts – identify which facts are material to the claim and identify inconsistencies or aspects of the claim that need to be tested.
- Test the claims – by testing the applicant's knowledge and inviting comment or additional information (affording procedural fairness).
- Make and record credibility findings – determine which claims are or are not credible and accepted or not accepted; determine whether the applicant is generally credible and may be afforded the benefit of the doubt or whether the applicant is not a witness of truth. These findings should be based on evidence including when and how you put relevant information to the applicant, what the applicant's response was and how you took this into account in making your finding.

Testing applicant's claims

Credibility	Notes: _____
• Testing applicant's claims: ◦ Linguistic analysis ◦ Knowledge ◦ Corroborative evidence and the poisoned well ◦ Drawing adverse inferences: s. 91V • Reasoning and evidence: ◦ Standard of evidence: clear/concise/sustainable ◦ Demeanour: do not over-emphasise ◦ Contradictions/discrepancies/inconsistencies ◦ Delay: reasons ◦ Interpreting errors	_____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____

Linguistic analysis

Linguistic analysis is currently used only as the last resort as people move from place to place, raising concerns about its reliability. Consequently, it is discouraged under the Department's policies. Other forms of credibility analysis should be first used.

Decision makers may choose to use linguistic analysis to decide whether an applicant had a long association with a particular ethnic group (e.g. Tamils) by assessing the applicant's knowledge of the language of that ethnic group (e.g. Tamil language) (*Fernando v Minister for Immigration and Multicultural Affairs* [2000] FCA 1182). However, linguistic analysis can be flawed and, where used, the application should still be assessed against all the evidence as a whole. When relied on in applications, linguistic assessments have been treated with caution and in some cases, given no weight. For example, in the Tribunal matter of V03/16490 (22 April 2004), the Tribunal considered three linguistics reports, two of which claimed with certainty that the applicant was from different regions to the other and a third which claimed that the applicant was likely from one of those regions, but showed linguistic patterns from the other as well. The Tribunal remarked that the assessments "[reflect] what the Tribunal considers to be the inherent unreliability of these reports".

Religious knowledge

A person's knowledge of religion will depend on the applicant's claimed involvement with the religion (be careful not to be an 'arbiter of religious knowledge' (See 'Testing applicant's knowledge of religion' above)

In *Wang v Minister for Immigration* [2000] FCA 1599, the Court said:

[16] ...Religion is a matter of conscientious belief, professed adherence and practice. The RRT seems to have approached the issue on the basis that the appellant had to satisfy the RRT that he was possessed of a specific level of doctrinal knowledge to justify being regarded as a Christian. It is not appropriate for the RRT to take on the role of arbiter of doctrine with respect to any religion.

Nejad v Minister for Immigration and Multicultural Affairs [2000] FCA 741

Background: Nejad, a citizen of Iran claimed to have converted from Islam to the Baha'i faith after being introduced to it by his landlord. When arriving in Australia and making his protection claims at the airport, he did not raise a claim based on his religious conversion, rather he raised claims based on other grounds.

The Tribunal rejected his claims, finding a number of inconsistencies in his claims and in addition, that he lacked anything more than a 'limited and superficial understanding' of the Baha'i faith.

The Federal Court considered it not unreasonable for the Tribunal to expect a convert to have a basic understanding of his or her new faith and that it was open to the Tribunal to take this into account.

The Full Federal Court accepted this proposition, noting the primary judge's qualification that an applicant need not have a detailed understanding of the religious philosophy involved or its precise details.

Political knowledge

In *T v Minister for Immigration and Multicultural Affairs* [2000] FCA 467, the Full Federal Court held that it was appropriate for the RRT to test an applicant's claims based on persecution for reason of political opinion by questioning his knowledge of the history of the political party to which he claimed to belong. The Court described this as "a topic which he could reasonably have been expected to have provided reliable information."

Geographical knowledge

It is open to a decision maker to assess an applicant's awareness of the local geography of his or her home region or other relevant locations to assist with determining credibility.

For example, if an applicant claims to have lived in a particular city, it is reasonable that he or she will have good knowledge of its local geography including locations of civic buildings, topography, roads and markets.

The assessment of geographical knowledge has to be used carefully. It is possible for applicants to research geographical aspects of their claim.

Conversely, some applicants may be generally unaware of, or unable to remember, geography.

M17/2004 v Minister for Immigration and Multicultural and Indigenous Affairs [2005] FCA 86

Background: M17 claimed to be a citizen of Afghanistan. Credibility issues arose with this claim when he was matched with an identity photo of a Pakistani citizen. One of the issues before the Tribunal was whether M17 had geographical knowledge of the areas in Afghanistan that he claimed to come from, given the vagueness of information he supplied.

The Tribunal in its findings, stated it:

has found that the applicant's knowledge and description of matters in Afghanistan was deficient in significant respects. ... The Tribunal considers that such matters as geography are capable of being learnt and, having considered the evidence in its entirety, finds that this explains the applicant's knowledge in this case.

The Federal Court held that:

It is evident from that passage that its denial of any weight to the applicant's geographical knowledge was only one of the reasons why the Tribunal found that he was not a citizen of Afghanistan as claimed but a Pakistani citizen ... It was sufficient for the Tribunal to indicate that

it had not been persuaded by, or had attached little or no weight to, the applicant's evidence of his geographical knowledge. It was not obliged to "give a line-by-line refutation of that evidence" or to give "the sub-set of reasons" why it rejected it.

Drawing adverse inferences

Section 91V of the Act is also relevant when dealing with credibility concerns during a PV assessment.

Section 91V of the Act allows officers to request a PV applicant to verify information, by making an oral statement that certain information in their application is true. This section aims to address concerns that some applicants are engaging in sophisticated identity, nationality and claims fraud in order to strengthen their claims to engage Australia's protection obligations.

- It was considered a worthwhile credibility tool to give officers the power to compel applicants to make an oath or affirmation that the information they have given in support of an application was true.

If the applicant refuses or fails to comply with the request, or if they comply with the request but the decision maker has reason to believe that the applicant was not sincere, it is open to the decision maker to draw any reasonable inference unfavourable to the applicant's credibility, as long as a warning was made to the client beforehand.

Decision maker's reasoning and evidence

Decision makers must look at all evidence as a whole, and decide which evidence is relevant or material to the application. By law, decision makers are required to take into account relevant considerations when making a decision on an application.

When looking at evidence, decision makers should consider the:

1. Relevance
2. Reliability
3. Credibility
4. Currency
5. Sufficiency of the material, and as a result of this process,
6. How much weight should be given to the evidence?

Decision makers need to make sure their reasoning is clear, concise and sustainable. In *W148/00A v Minister for Immigration and Multicultural Affairs* [2001] FCA 679 the Court held that:

*The reasoning process and supporting evidence that forms the basis on which a finding that evidence is rejected should be disclosed and **clear findings** made in **direct and explicit terms**. It is not sufficient simply to make general passing comments on general impressions made by the evidence where the issue is important or significant.*

Need evidentiary basis

Credibility of claims is to be determined by the decision maker in light of all the evidence. An adverse credibility finding must have an evidentiary basis. If there are specific aspects of an applicant's account which the decision maker considers may be important to the decision and may be open to doubt, decision makers must at least ask the applicant to expand on those aspects of the account and explain why the account should be accepted (*SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] HCA 63 at [47]).

Demeanour – cultural variations

Decision-making must make allowance for the different cultural settings of applicants and 'avoid applying assumptions about human behaviour which are contingent upon or informed by local culture': *Bakhtyar v Minister for Immigration and Multicultural Affairs* [2001] FCA 947. (See also *Kathiresan v Minister for*

Immigration and Multicultural Affairs [1998] FCA 159; and *Sundararaj v Minister for Immigration and Multicultural Affairs* [1999] FCA 76.) Whilst demeanour (e.g. apparent evasiveness in response to questioning) may form part of an adverse credibility finding, decision makers should be cautious in placing too much importance on it. Under departmental policy, minimal weight should be given to it and it should not be the sole basis for an adverse credibility finding. See also 'Other Considerations' below for further information.

Using information on the Internet

Caution is to be used if considering sources such as Wikipedia as sources of information. Decision makers have discretion to obtain any information they think is relevant to the decision (s. 56), which may encompass using, for example, Wikipedia sources. However, decision makers should be prudent, considering the authors and editors of the information, the nature of the information, and what weight to give to it (see *MZXMM v Minister for Immigration and Citizenship* [2007] FMCA 975 and *MZYYY v Minister for Immigration and Citizenship* [2013] FMCA 34). For guidance on selecting and evaluating country information for use in decision making please refer to the Use of Country of Origin Information PCCF document (VM-3245) available on LEGEND.

The Department uses information on CISNET. If decision makers find information elsewhere, they can request that it be included on CISNET.

Known facts

It is unlikely that a State would be expected to grant refugee status to a person whose account, although plausible and coherent, was inconsistent with known facts, e.g. country conditions as outlined on CISNET (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* [1989] HCA 62 (per McHugh)).

Contradictions and discrepancies

Decision makers should be aware that in some circumstances it may be prudent to provide a client with an opportunity to clarify or elaborate on what appear to be inconsistencies with the evidence. For example, in *Sellamuthu v Minister for Immigration and Multicultural Affairs* [1999] FCA 247, the Court noted that:

mere "vagueness or inconsistencies in recounting peripheral details", or an inability to give a "precisely accurate or consistent account of some past events" would not be enough for an adverse credibility finding.

The Court also noted that discrepancies, which are obviously insignificant and immaterial, are insufficient to undermine an applicant's credibility. Insignificant or peripheral discrepancies are not likely to be material factors.

In *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* [2004] HCA 32, Kirby J noted that there is no necessary correlation between inconsistency and credibility in cases where applicants are inconsistent in their facts. The Court found many factors may explain why applicants present with the appearance of poor credibility. These include:

- Mistrust of authority;
- Defects in perception and memory;
- Cultural differences;
- The effects of fear;
- The effects of physical and psychological trauma;
- Communication and translation deficiencies;
- Poor experience elsewhere with governmental officials; and
- A belief that the interests of the applicants or their children may be advanced by saying what they believe officials want to hear.

Justice Kirby stated (at [7]):

The Tribunal must be firmly told - if necessary by this Court - that the process is one for arriving at the best possible understanding of the facts in an inherently imperfect environment. It is not to punish or disadvantage vulnerable people because they have made false or inconsistent statements, or are believed to have done so.

Courts are prepared to scrutinise such decisions and decision makers should be careful **not to join a series of minor alleged inconsistencies and ambiguities** to reject the whole of the applicant's account.

Where a decision maker finds an applicant to be generally credible, they should give the applicant the **benefit of the doubt** where they are unable to fully substantiate their claims.

Different accounts

Shi Chu Lin v Minister for Immigration and Multicultural Affairs [1999] FCA 192 indicates that, if posed with this problem, decision makers need to very carefully consider the basis for the differing accounts and should be aware that the differences might not have been the result of the applicant's actions.

***Shi Chu Lin v Minister for Immigration and Multicultural Affairs* [1999] FCA 192**

Background: Mr Shi Chu Lin provided a number of different accounts of his background and reasons for persecution in his application, the account prepared by his migration agent and before the Tribunal, where an interpreter was used.

The Tribunal expressed concern about the role played by the migration agent in preparing and submitting an application that was at such odds with the original application and Mr Shi Chu Lin's evidence before the Tribunal. Ultimately, the Tribunal decided the matter on the basis of the original claims and found that they did not engage protection obligations.

The Federal Court expressed similar concerns about the migration agent's role. However, the Court held that the Tribunal had taken care to elicit Mr Shi Chu Lin's account as clearly as possible and that there were no errors in its approach or findings.

Delay in applying for protection

Delay in seeking protection will not be conclusive of itself but it can support an adverse credibility finding as well as a finding that the applicant's fear is not well-founded (*Zhang v RRT & Anor* [1997] FCA 423; *Kavun v Minister for Immigration and Multicultural Affairs* [2000] FCA 370).

***SZJYM v Minister for Immigration and Citizenship* [2008] FMCA 652**

Background: SZJYM applied for a PV approximately 6 years after arriving in Australia. SZJYM had obtained a false passport in order to flee China, fearing persecution for practicing her Christian religion. When questioned about the delayed application, she explained she was very fearful of informing the Australian authorities about her false passport and also claimed she was unaware of the PV option. The delegate refused the application, noting that the details provided by SZJYM were vague and lacked substantiation, as well as credibility concerns raised by her explanations for the delayed application.

The Tribunal affirmed the refusal decision, forming an adverse view of SZJYM's credibility because of the delay in making the application.

The Federal Magistrates Court held that it is jurisdictional error to reject an applicant's credibility solely by reference to the applicant's delay in applying for a PV. The Court remitted the matter for review by the Tribunal because it held the Tribunal erred by treating SZJYM's delay as conclusive of claim fabrication.

***Pannasara v Minister for Immigration and Multicultural Affairs* [2000] FCA 1331**

Background: Pannasara, a Sri Lankan Buddhist Monk, had departed his country of nationality 10 years before applying for protection in Australia (7 of those years spent in Australia). Pannasara provided

extensive submissions relating to his religion, political opinion and membership of a particular social group (Sinhalese).

The Tribunal, in assessing the application for protection, took into account events that had occurred in Pannasara's country in the intervening years; and Pannasara's personal history during that period.

The Tribunal considered that:

- Delay did not fatally undermine Pannasara's claims to have a strong fear of returning to his own country; and
- Delay was one factor in considering whether his claim for protection from persecution was well-founded.

The Federal Court endorsed the Tribunal's assessment of the delay in seeking protection, adding in relation to the second consideration made by the Tribunal that it:

... demonstrates only that the delay by the applicant was relevant in that events that had occurred in Sri Lanka in the intervening years covered by the period of delay were required to be taken into account.

Poor interpreting errors

Poor interpreting may deny a person an opportunity to put his case forward, and may affect the perceptions of the credibility of the evidence or applicant.

MZXPV v Minister for Immigration and Citizenship [2008] FMCA 1225

Background: MZXPV was an Ethiopian citizen and claimed protection on the grounds of his Oromo ethnicity and political involvement. The application was refused and MZXPV sought review before the Tribunal. MZXPV's solicitors requested the presence of an Amharic interpreter during the hearing.

The Tribunal, despite concerns raised by MZXPV's solicitors at the conclusion of the hearing as to the quality of the interpreting, affirmed the delegate's decision to refuse to grant MZXPV a PV. The Tribunal found that MZXPV's evidence was unsatisfactory and considered the evidence regarding election campaign was vague and that some claims were fabricated.

The Federal Magistrates Court held:

- MZXPV had raised concerns about the interpreter at an early stage.
- The case largely turned on the credibility of MZXPV.
- When reading the answers that the interpreter provided, it was easy to obtain the impression that MZXPV was without a clear version of events, constantly trying to create credible answers.
- If the correct interpretation of the answers was read, the impression would be quite different. The poor interpreting created an apparent inconsistency.
- Inadequate interpretation at the Tribunal hearing resulted in a failure by the Tribunal to comply with s 425.

The Court set aside the Tribunal's decision and allowed review because the poor quality of interpreting denied MZXPV proper opportunity to put his case.

There is a difference between poor interpretation and words being actually 'intruded' into the applicant's claims by the interpreter:

W98/45 and Minister for Immigration and Multicultural Affairs [1998] AATA 948

Background: W98/45 was from Algeria and claimed to be a member of the illegal organisation 'Front Islamic de Salut' (Islamic Salvation Front), for which he performed surveillance operations on police

officers who were targets for assassination and informed other members of the targets' movements. During the PV interview there was a suggestion that W98/45 had carried out similar surveillance operations on 20 to 25 occasions.

The Tribunal, in making its findings of fact, highlighted that one of the difficulties with the interview was the quality of the interpretation. At [37]-[38] the Tribunal stated:

... and I have already mentioned the very significant difference between the two versions which appears at the end of the quoted passages, when the interpreter said to Ms Johansen 'I have watched for operations about 20 to 25 times for assassination', whereas those crucial final words 'for assassination' had not been used by the applicant.

It is a matter of concern that these inaccuracies intruded into the English version of this interview. Interviews such as this are of vital importance to the individual seeking a visa. It is essential that they be translated faithfully and accurately and that any ambiguities be resolved by further questions, not by the interpreter intruding an account of what he or she thinks the individual meant to say.

Other considerations

- An applicant may be suffering from post-traumatic stress disorder or otherwise affected by recent travels (see *Selliah v Minister for Immigration and Multicultural Affairs* [1999] FCA 615). But decision makers should not take on the role of medical expert.
- There may be statements that are not susceptible of proof. But this should not lead to an uncritical acceptance of any and all the allegations made by applicants See *Randhawa v Minister of Immigration, Local Government and Ethnic Affairs* [1993] FCA 592.
- Persons engaging protection obligations may be identified as not telling the truth on certain issues and still engage those obligations (*SZIEW v Minister for Immigration and Citizenship* [2008] FCA 522 (18 April 2008)).

SZIF v Minister for Immigration and Citizenship [2008] FCA 913

Background: SZIF's application was considered by a delegate and three different Tribunal members over a four-year period. Two Tribunal decisions were set aside by the Federal Magistrates Court and remitted to be reheard. The third Tribunal member found inconsistencies in the statements provided to the three differently constituted tribunals and the delegate, and rejected a number of SZIF's claims on that basis.

The Federal Court held that the unusual circumstances required particular caution when assessing inconsistency. The third Tribunal needed to ensure it did not overlook the combined effect of delay and disadvantage to SZIF in having to repeat a detailed account of past mistreatment when assessing the overall consistency of his account. The Court stated that the inconsistencies were not properly analysed, several misstated SZIF's earlier position and some involved summaries taken out of context.

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Australian Government

Department of Home Affairs

Protection Visa Interview skills

August 2024

Credibility

- It is your role to assess the credibility of claimed events where these are material to the application
- Establish the facts
- Identify which facts are material to the claim
- Test the claims





Protection Visa Interview Skills Participant Guide October 2024

Disclaimer: Information in this document is sourced from a combination of Department guidelines and external material. It is not intended to replace existing Department guidelines nor is it intended to be instructional. Information presented maybe done so through a layman's interpretation.

Credibility

It is your role to assess the credibility of claimed events where these are material to the application. Should you find some integers of claims lack credibility, it may not mean the entire claim lacks credibility or that *the applicant* lacks credibility.

Conducting an interview with an applicant is an opportunity to explore the applicant's credibility, if you have doubts based on the documents you have received.

The Refugee Law guidelines provide the following information in relation to assessing credibility...

There is no requirement for a Decision Maker to have rebutting evidence in order to find that a particular factual assertion of an applicant is not accepted.

If there are specific aspects of an applicant's account, that do not fall within s57 of the Act but may be important to the decision and are open to doubt, as a matter of best practice, Decision Makers should ask the applicant to expand on those aspects and explain why the account should be accepted under s56. This allows for testing of the applicant's claims, as discussed below.

As general guidance, Decision Makers should follow these key steps in assessing credibility:

- establish the facts - through the collection of information and supporting documentation from the applicant and independent country information
- consider the facts - identify which facts are material to the claims and identify inconsistencies, contradictions, omissions or aspects of the claims that need to be tested
- test the claims - by testing the applicant's knowledge and inviting comment or requesting additional information (affording procedural fairness)
- make and record credibility findings - determine which claims are credible and accepted or not credible and not accepted; determine whether the applicant is generally credible and may be afforded the benefit of the doubt
- these findings should be based on evidence including:
 - o when and how relevant information was put to the applicant
 - o what the applicant's response was and
 - o how this was taken into account in making the credibility finding

Even if you find a claim is credible, you will need to consider if the applicant faces a real chance of serious harm should they return to their home country or if it would amount to significant harm, under complementary protection.

Notes:

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Credibility and the psychologically vulnerable applicant

The UNHCR Guidance note⁸ discusses the difficulties of assessing credibility of psychologically vulnerable applicant. A few summary points are below;

- Demeanour or expression is an unreliable basis for making a credibility finding as they may be altered by a number of factors including mental disorder, medications- even for applicants deemed fit to participate in PV interviews
- A lack of specificity in an applicant's account of events may be explained by their mental disorder. Please refer to Table 1⁹ in the Guidance note.
- An adverse credibility finding may be made on the basis of what an applicant might be expected to know. However, some vulnerable applicants may struggle to recollect information or may be impaired by education or development disability
- Autobiographical memory, even for significant events is mutable and is unlikely to be recalled with accuracy
- There may be an increase in detail over time and some variation. It is a normal characteristic of human memory that elements will change each time they are retold.
- Consider the applicant's profile-is it plausible that they will come to the attention of their claimed persecutors?
- It is a common misconception that consistency is associated with truthfulness and inconsistency is associated with untruthfulness. The provision of inconsistent information is a normal function of memory and this *may be* compounded by mental health disorders.

Activity – other areas of exploration (Iranian case study)



Breakout room group activity:

Consider the Iranian case study. Identify at least one material inconsistency.
Why is it a material inconsistency?

⁸ UNHCR Guidance note on the psychologically vulnerable applicant in the protection visa assessment process, CISNET Ref CISED50AD8811

⁹ Ibid, page 17

Iranian Case Study

Refer to the Iranian case study handouts:

- IRN case study – Country of information
- IRN case study – Departmental records and supporting documents
- IRN case study – Statutory Declaration



Your facilitator will explain how you will use these documents during training to frame your thoughts, ideas and questions around realistic protection visa application.

Notes:

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Testing claims at interview



When testing claims, keep an open mind. You must be familiar with the claims and country information in order to test claims. Remember this is not your narrative. Although you may not behave in a particular way under certain circumstances does not mean that it would be implausible for an applicant to behave in such a way or to interpret events as claimed.

If an applicant claims to have been involved in a political party and to have had a significant profile it may be reasonable that the applicant can provide more than generalised information in relation to that political party. This information may be corroborated or disputed by country information.

It may be reasonable for an applicant to provide geographical information in relation to an area where he claimed to have lived and to provide information about administration in that area. For example, Afghans living in Iran or Pakistan.

It may be reasonable for an applicant who claims to have converted to Christianity to provide a persuasive conversion story and some knowledge of basic Christian faith.

The Refugee Law guidelines state:

Decision makers should look at the entirety of the evidence as a whole and decide which evidence is relevant or material to the application. By law, decision makers are required to take into account relevant considerations when making a decision on a Protection visa application.

When looking at evidence, decision makers should consider:

- *relevance*
- *reliability*
- *credibility*
- *currency and*
- *sufficiency of the material*

And, as a result of this process:

- *how much weight should be given to the evidence?*

If a decision maker decides that an applicant is not credible, the reasons for this determination should be clear and refer to probative evidence. In W148/00A v Minister for Immigration and Multicultural Affairs, 412, the Full Federal Court examined the level of detail that a decision maker must include in their statement of reasons for instance:

When testing claims and integers of claims at interview, look to see if the evidence holds together – that it is relevant and reliable.

It may be reasonable for an applicant who claims to have converted to Christianity to provide a persuasive conversion story and explain their knowledge of Christian faith.

Activity – testing credibility at interview (Iranian case study)



Consider the Iranian case study. What questions could you ask to test the inconsistency (inconsistencies) in the applicant's claims?

Notes:

[illegible]