



‘VA’ and Department of Immigration and Citizenship [2013] AICmr 37 (3 April 2013)

Decision and reasons for decision of
Acting Freedom of Information Commissioner, Toni Pirani

Applicant:	‘VA’
Respondent:	Department of Immigration and Citizenship
Decision date:	3 April 2013
Application number:	MR11/00098
Catchwords:	Freedom of information — Amendment of personal records — Whether the information about the applicant’s date of birth is incorrect — Whether it should be amended — (CTH) <i>Freedom of Information Act 1982 ss 48, 50, 55D</i>

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Summary

1. I set aside the decision of the Department of Immigration and Citizenship (the **Department**) of 5 April 2011 to refuse to amend its record of the applicant's date of birth and substitute my decision, under s 50 of the *Freedom of Information Act 1982* (Cth) (the **FOI Act**), to amend the Department's record to show the applicant's date of birth as 23 August 1975.

Background

2. On 7 March 2011, the applicant applied to the Department under the FOI Act for an amendment of the Department's record of her date of birth from 23 August 1973 to 23 August 1975.
3. By a decision dated 5 April 2011, the Department refused to make the amendment, on the basis that the recorded information was not incorrect.
4. On 5 May 2011 the applicant applied for review of the decision by the Information Commissioner (**IC review**).

Decision under review

5. The decision under review is the decision of the Department of 5 April 2011 to refuse to amend the applicant's date of birth from 23 August 1973 to 23 August 1975.

Amendment of personal records

6. Under s 48 of the FOI Act, a person may apply to an agency for amendment of documents of the agency which contain personal information that is 'incomplete, incorrect, out of date or misleading.' Under s 50(1), an agency may amend the record if it is satisfied that the information it contains is incomplete, incorrect, out of date or misleading. Under s 50(2), an amendment may be made by altering the document concerned to make the information complete, correct, up to date or not misleading; or by adding a note specifying the respects in which the information is incomplete, incorrect, out of date or misleading.
7. The Australian Information Commissioner has issued Guidelines under s 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. The Guidelines explain that the material that an applicant needs to provide to support their claim will vary according to each case.¹

¹ Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (Guidelines) [7.28]. See also 'K' and *Department of Immigration and Citizenship* [2012] AICmr 20; 'M' and

Issues

8. The issues to be decided in this IC review are whether the Department's record of the applicant's date of birth is incorrect and, if so, whether the record should be amended.
9. The applicant contends that her currently recorded date of birth is incorrect; that 23 August 1975 is her correct date of birth; and that the record should be changed to reflect this. Since only the year is in contention, not the day or month, for ease of reference I will use '1975' and '1973' to refer to '23 August 1975' and '23 August 1973' respectively.

Is the currently recorded date of birth incorrect?

10. The applicant was born in Sierra Leone. She left Sierra Leone in 1999, after which she lived in Guinea and then at a refugee camp in Ghana. She came to Australia on an Offshore Humanitarian Visa in 2005.
11. The Department's records show the applicant's year of birth as 1973. The applicant submits that she was born in 1975. However, during the resettlement process she provided information to the Department indicating that her birth date was 1973. In support of her claim that she was in fact born in 1975, she has provided two pieces of documentary evidence: a Sierra Leonean birth certificate, and an Australian driver's licence.
12. I will consider each of these pieces of documentary evidence, and then weigh that evidence against the self-reported information provided by the applicant during the resettlement process.

Birth certificate

13. The birth certificate is headed 'certified true copy BC/99', and is issued by the 'Office of Chief Registrar, Ministry of Health and Sanitation, Republic of Sierra Leone'. The certificate states that the applicant was born in 1975 (the **certificate**).
14. In its decision, the Department found that the certificate was not credible. The Department referred to an admission by the applicant that the birth certificate was not issued to her directly; rather, a friend of the applicant living in Sierra Leone, accompanied by the applicant's mother, obtained the certificate on her behalf. The Department appears to have discounted the certificate for this reason.

Department of Immigration and Citizenship [2012] AICmr 23; 'N' and Department of Immigration and Citizenship [2012] AICmr 26; 'O' and Department of Immigration and Citizenship [2012] AICmr 27.

15. The weight to be given to the certificate is central in this case. The certificate itself is not a contemporaneous record of birth, nor is it an identical certified copy of such a record. It is a new document, issued in 2010 to certify that the applicant was born in 1975. It states that the applicant's birth 'was registered in Registry Volume No DR-327, Page No. 123 No. 0123 of the Register of Births in the Republic of Sierra Leone.' The certificate has a serial number and is shown to have been produced by the Office of the Chief Registrar, Ministry of Health and Sanitation.
16. The document was obtained on the applicant's behalf by a family member rather than the applicant herself, a matter that was considered relevant by the Department in its decision. However, I do not attach any great significance to this. It is more significant that the certificate could be obtained without other proof of identity documents, as would be required to apply for an Australian birth certificate. However, it would be unreasonable to refuse to recognise records issued by other countries on the basis that they do not impose exactly the same requirements as apply in Australia.
17. During this IC review, the Department wrote to the Sierra Leonean government to confirm whether the birth certificate was legitimate. By letter dated 15 March 2013 the Ministry of Health and Sanitation of the Government of Sierra Leone wrote to the Department stating that it appeared that the certificate was 'valid and legitimate'.²
18. The Department also provided information about the Sierra Leonean birth registration system.³ This information indicates that where a Sierra Leonean birth certificate is based upon a record created more than 30 days after the date of birth, the certificate would ordinarily be marked 'late' or 'delayed'. As the certificate was not so marked it appears that, when it was issued in 2010, it was based on a record made in 1975.⁴
19. I find that the certificate is valid and, although it was issued in 2010, was likely based upon a contemporaneous record of the applicant's birth made in 1975. I therefore give significant weight to it as evidence of the date of birth of the applicant.

Driver's licence

20. The applicant also supplied her NSW Driver's Licence, which gives her year of birth as 1975. In her submissions for this IC review, the applicant stated that she relied on the certificate to change the date on the licence. It has not been suggested that she provided any other documentary evidence to change the date on the licence.

² Letter from Deputy Chief Registrar, Births and Deaths, Ministry of Health and Sanitation, Government of Sierra Leone, dated 15 March 2013.

³ Email from DIAC, dated 28 March 2013.

⁴ This is in contrast to the Sierra Leonean birth certificates considered in *'O' and Department of Immigration and Citizenship* [2013] AICmr 27 at [19]–[20], which were marked 'late/delayed'.

21. The licence cannot provide any more support to the applicant's case than the certificate on which it was based. Therefore I give no weight to the licence as evidence of the applicant's date of birth.

Self-reported date of birth during resettlement process

22. The Department's initial decision relied on the information provided by the applicant during the resettlement process as evidence of her date of birth. Her application for an Offshore Humanitarian Visa, which she signed in Ghana on 25 October 2004, gives her year of birth as 1973. Also on the departmental file is a registration form entitled 'Joint Registration Exercise of the Ghana Refugee Board and the Office of the United Nations High Commissioner for Refugees'. This also gives the applicant's year of birth as 1973. The applicant's signature and thumbprint is on this document and it is dated as having been signed on 18 August 2003. A UNHCR document on the file also gives the applicant's birth year as 1973.
23. The applicant's own self-reported information about her date of birth is now different from that which she gave during the resettlement process. The key question is whether the information which the applicant gave during the resettlement process in 2003 and 2004 (that she was born in 1973) is likely on the balance of probabilities to be incorrect, given that the applicant now has provided documentary evidence to back up her claim that she was born in 1975.
24. Both the documents completed during the resettlement process that list the applicant's year of birth state that it is 1973. The applicant signed documents giving her year of birth as 1973 on two occasions 14 months apart, in August 2003 and October 2004.
25. In submissions made during this IC review, the applicant explained that she was sick in August 2003, so she allowed a friend to complete the form for her and signed the form without realising the mistake. She stated that by 2004 she had realised the mistake, but she was told by authorities that it was too late to fix it at that stage and that she should wait until she arrived in Australia to do so.
26. The fact that the date of birth was not corrected during the resettlement process by the applicant could suggest a conclusion that the existing date is correct, but this would be at best a weak conclusion to reach. If an incorrect date is entered in a person's documents through human error early in the resettlement process, it is not improbable that the person would be unwilling to correct it until after the resettlement process is complete. The fear that inconsistencies in resettlement forms will delay resettlement is understandable. I therefore do not attach much weight to the fact that the applicant entered her date of birth as 1973 on the second occasion in October 2004.

27. A separate issue is the significant delay between the applicant's arrival in Australia and her attempt to change government records of her birth date. The applicant came to Australia in 2005, but did not take action to correct her date of birth until around 2010, when she obtained the certificate from Sierra Leone. She changed the date on her driver's licence and then made the application for amendment of the departmental record under s 48 of the FOI Act in May 2011. Before 2011, she used the 1973 date. Her delay in taking action to change the date was, according to her submissions, because she was a 'stressed single mother adapting to life in a new country'.
28. The applicant's explanation for her delay in changing her date of birth once she arrived in Australia is believable. It is not surprising that it would take time to build up the understanding and confidence to engage with the Australian Government in this way. The delay is also supported by the fact that it would not have been practical or possible for the applicant to try to obtain any form of official record of her date of birth until the situation in Sierra Leone had improved and improved government infrastructure was in place.

Findings

29. The information provided by the Department and the Sierra Leonean government in the course of this IC review suggest that the certificate is valid and based on a contemporaneous record of birth. The Department has not provided any evidence to satisfy me that I should discount the credibility of the certificate.
30. I find that the Department's record, which states that the applicant was born on 23 August 1973, is incorrect.

Should the Department's record be amended?

31. The power to amend the record under s 50 is discretionary. As the Freedom of Information Commissioner stated in *'K' and Department of Immigration and Citizenship* [2012] AICmr 20 at [39], it is important that government records are as accurate as possible, but that any changes are justifiable. I have found that the applicant's date of birth on the Department's records is incorrect. Based on the certificate provided by the applicant and the additional material provided by the Department, I am satisfied that 23 August 1975 is likely to be her date of birth. I find that the Department's record should be amended.

Decision

32. Under s 55K of the FOI Act, I set aside the Department's decision of 5 April 2011 and decide, in substitution for that decision, to amend the Department's record to show the applicant's date of birth as 23 August 1975.

Toni Pirani
Acting Freedom of Information Commissioner
3 April 2013

Review rights

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal. The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. The current application fee is \$816, which may be reduced or may not apply in certain circumstances. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.