Emma Liddle
Senior Policy Officer
Migration Review Tribunal & Refugee Review Tribunal

By email: Emma.Liddle@mrt.gov.au

2 June 2006

Dear Ms Liddle

Re: Tribunal’s Draft Guidance on the Assessment of Credibility

I am writing to offer some brief comments on the RRT/MRT draft paper concerning Guidance on the Assessment of Credibility. I welcome this effort to set out some of the considerations relevant to approaching credibility in decision making and note that the Draft Guidance contains some essential and progressive features. Good decision-making on credibility issues is essential because adverse credibility findings are rarely capable of being subject to judicial review.

In my view, the guidelines should also reflect the following observations:

1. An applicant should be given an opportunity to be heard in relation to adverse credibility assessments which are likely to be determinative.

2. Oral evidence is not necessarily any less reliable than documentary evidence.

3. The Tribunal should not only provide clear findings as to what evidence it finds credible or not credible, but also reasons for such findings.

4. In the absence of corroborative evidence, the Tribunal should exercise special care before drawing adverse conclusions about an applicant's credibility based on inconsistencies or other flaws in the evidence.
5. Where an applicant’s evidence seems inconsistent with country of origin information, the reliability of country information should be carefully scrutinized before adverse findings are drawn about the applicant’s credibility.

6. Common categories of immaterial contradictions, inconsistencies or omissions include precise travel details, dates, detention periods and locations and the identity or allegiance of persecutors, though a series of such inconsistencies may sustain a negative inference as to credibility.

7. Inference (but not conjecture) is often necessary due to a lack of evidence, but conclusions must bear a sufficient degree of probability to premises.

8. While delays in applying for refugee status may be relevant to credibility, the guidelines should acknowledge that there may be good reasons for such delays.

9. While document fraud may be relevant to credibility, the guidelines should acknowledge that false documents may be essential in fleeing persecution.

10. Relying on an applicant’s demeanour, body language or silence in assessing credibility is inherently unreliable and irrational and should not be permitted. Decision-makers should be very cautious about relying on intuitive or instinctive judgments or impressions about applicants.

11. Decision-makers should be aware that closed or interrogative questioning significantly increases the likelihood of errors and inconsistencies, while conversely open questioning may improve the coherence of narratives.

12. Other special characteristics relevant to credibility assessments and which should be explicitly acknowledged in the guidelines include:
   - Memory loss or impairment;
   - Poor English language proficiency (in the absence of an interpreter);
   - The impact of detention on the mental and emotional state of applicants;
   - Lack of access to legal advice (or good quality legal advice);
   - Whether minors have any representation or assistance in the process;
   - Whether applicants understand the significance of divulging or not divulging certain information.

Finally, I urge you to take into careful consideration the following scholarly publications in framing your guidelines on credibility:


Yours sincerely

Ben Saul