

Asylum and Immigration Tribunal

SA and IA (Undocumented Kurds) Syria CG [2009] UKAIT 00006

THE IMMIGRATION ACTS

Heard at Bradford
On 10-11 November 2008

Before

Senior Immigration Judge Batiste
Senior Immigration Judge Taylor

Between

SA
IA

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the First Appellant: Mr R O’Ryan, instructed by the Newcastle Law Centre.

For the Second Appellant: Mr S Stanage, instructed by Messrs Jackson & Canter.

For the Respondent: Ms R Pettersen, Presenting Officer.

- 1. The discrimination and deprivations experienced by Syrian Kurds are not such as to amount to persecution or breach of their human rights if returned to Syria.*
- 2. A person with an actual or perceived profile of being anti-regime would be at real risk of persecution by the authorities on return to Syria. The greatest risk is to Islamists but the risk extends to other groups such as Kurdish or human rights or democracy activists.*
- 3. There is no internal relocation option for a person who is perceived by the Syrian authorities to have an anti-regime political profile.*
- 4. Anti-regime activities undertaken by Syrians abroad, which are held to be credible and of which the Syrian authorities are aware, will contribute to*

their risk profile on return and will be taken as seriously as prior anti-regime activity in Syria.

5. A rare attendance at a crowded demonstration outside the Syrian Embassy by a person with no other political involvement or activity from which he might be identified (for example by a person who is simply seeking to bolster an otherwise weak asylum claim) will not constitute a real risk of coming to the adverse attention of the Syrian authorities. However regular attendances at such demonstrations over a lengthy period of time would increase the risk profile, as would membership of and active involvement in other overt political activities and/or organisations which might be penetrated by informers. The greater and more varied the activity, the greater the risk. The extent of the risk is fact sensitive in each case

6. There is no real risk that leaving Syria illegally would, in the absence of additional aggravating factors, result in ill-treatment on return amounting to persecution or a breach of human rights.

7. A failed asylum seeker will not be perceived as being an opponent of the regime simply by reason of having claimed asylum abroad and will not as such be at real risk of persecutory ill-treatment on return.

8. A stateless, undocumented, Kurd who left Syria illegally and is a failed asylum seeker but is not perceived by the Syrian authorities as having an anti-regime profile, will not be at real risk of persecutory ill-treatment or a material breach of his human rights on return

DETERMINATION AND REASONS

1. This is the determination of the Tribunal. The Appellants (hereafter referred to as “SA” and “IA” respectively) are from Syria and are of Kurdish ethnicity. Their separate appeals were listed together, with the consent of the parties, for the reconsideration of their individual appeals, and additionally to provide the basis for reviewing/supplementing the country guidance concerning the position of Syrian Kurds, last considered in AR (Kurd: not risk per se) Syria CG [2006] UKAIT 00048 - in the light of the current country evidence. Initially, a third appeal that of AK - appeal number AA/07648/2006 – was listed for reconsideration with them, with Mr O’Ryan representing AK as well as SA.

COUNTRY GUIDANCE IN AR

2. In AR the Tribunal summarised its conclusions as being that a Syrian Kurd with no political history does not face a real risk of persecution or breach of his human rights on return to Syria. Its material conclusions were as follows.

“88. Taking these matters together we have concluded that the deprivations experienced by Syrian Kurds are not such as to amount to persecution or breach of their human rights if returned to Syria. It is not without significance in this regard that the appellant at interview said that he had experienced no problems as a Kurd prior to the events of 2004 which were disbelieved by the Adjudicator. Clearly he would have had to put up with deprivations of the kind we have set out above but we do not consider that

these materially damaged or would damage the quality of his life and nor could anything different be said with regard to the situation of any other person living as a stateless Kurd whether Ajanib or Maktoumeen in Syria.

92. We assess risk to the appellant on return on the basis first of all that he has no political history in the light of the Adjudicator's findings in this regard which were not effectively challenged. There is no evidence to indicate that the authorities would be aware that he has applied for asylum in the United Kingdom. As Mr Ouseley suggested, Dr George's views on this were essentially speculative as to the ability of the security services in Syria monitoring the activities of Syrians in the United Kingdom. In our view the evidence shows that the appellant would face no more than a risk of imprisonment potentially up to a period of three months. We do not consider that the evidence shows a real risk of ill-treatment giving rise to a breach of his protected rights on return in that regard. Accordingly we do not consider that the risk factor with regard to this aspect of his claim is such as to place him at a real risk of persecution or breach of his human rights. We see no reason to disagree with the earlier conclusions of the IAT in SY (Kurd – No Political Profile) Syria CG [2005] UKIAT 00039 to similar effect, and this decision should be understood as updating SY, therefore.

3. This decision replaced the earlier country guidance in SY (Kurd – No Political Profile) Syria CG [2005] 00039.

PRELIMINARY MATTERS

4. At a case management review hearing on 3 June 2008 for all three appeals originally listed, Mr Stanage (then speaking in the absence of Mr O’Ryan for all the Appellants), and Ms Donnelly (for the Respondent), confirmed their agreement on the following matters, subject to the directions given.
 1. All appeals were for reconsideration on the basis of the findings of fact made by the original Immigration Judges.
 2. Mr Stanage maintained that the Court of Appeal had identified the material errors of law in the appeals of SA and IA as the failure to consider adequately the objective evidence. This would apply also to AK. Ms Donnelly was inclined to agree but this was subject to confirmation after she had had the chance to read all the files. Ms Donnelly was directed to inform the Tribunal and the Appellants’ Representatives within 7 days if the Respondent agreed that the material error of law in each case is inadequate consideration of the objective material. If it is not so agreed, then there will need to be another CMR hearing.
 3. As there were no challenges to the respective Immigration Judges’ credibility findings and therefore there will be no need for oral evidence from any of the Appellants except possibly for IA on the refugee sur place claim as he claims he has continued his political activity in the UK. The direction was made that IA’s Representative shall provide within 14 days to the Respondent and to the Tribunal an updated written statement and the Respondent’s Representative shall

indicate within 14 days after receipt, whether it is intended to challenge the facts as set out in the statement..

4. Subject to this, the oral evidence will come from the expert witness, Mr George, as per his written report. There may be a second witness on the propensity of the Syrian Embassy to photograph demonstrators. This is not yet certain but will not involve any substantial increase in hearing time. It was further directed that if such a witness were to be called a full written statement capable of standing in place of evidence in chief shall be served not later than 14 days before the hearing and that if this witness is a refugee, his Home Office number shall be indicated on the statement.
5. However, at the outset of the hearing before us, Mr O’Ryan (who represented both AK and SA but had not attended the CMR hearing) indicated that AK’s position had not been correctly understood at the CMR hearing. He maintained that the adverse credibility findings by the Immigration Judge concerning AK’s claim were flawed by a material error of law and were unsustainable, and that consequently full reconsideration of his claim would be required. This would involve hearing his oral evidence in full. This was open under the terms of the order for reconsideration. In the light of Mr O’Ryan’s submission, the Tribunal accepted that there must have been a genuine misunderstanding at the CMR hearing. Nevertheless, the time needed potentially to hear AK’s appeal on its own specific facts had not at the CMR been factored into to the time allocated for the country guidance hearing. In these circumstances we decided, with the agreement of the Representatives, that the appeal of AK would be heard and decided by Senior Immigration Judge Taylor sitting alone immediately after the conclusion of the country guidance hearing. It would be the subject of a separate determination made in the light of the present determination if it resulted in it being country guidance (Practice Direction 18.2). However, as Mr O’Ryan also represented SA and as the country evidence produced by him for AK is of general relevance to the remaining appeals, it would be taken fully into account in the country guidance determination. Additionally any questions to the expert witness Dr George, that might affect AK specifically could also be put to him in the course of the country guidance hearing, and would be taken into account for the purposes of his separate determination by Ms Taylor.

THE APPELLANTS’ CLAIMS

6. The appeals of SA and IA come to us from the Court of Appeal where, in IA (Syria) & SA (Syria) v Secretary of State for the Home Department [2007] EWCA Civ 1390, they were linked. Toulson LJ gave the lead judgment and summarised the material facts in each case as follows.

“2. The Appellants, SA and IA, both come from Syria and are of Kurdish ethnicity. Kurds are the largest non-Arab minority in Syria, comprising approximately 10% of the population of 18.5 million. Many are denied Syrian

nationality by the Syrian Government. The Appellants are both stateless, and unable to obtain travel documents for travel outside Syria.

3. SA arrived in the UK on 22 March 2005, and claimed asylum the next day. His application was refused. He appealed to the AIT, which dismissed his appeal. He claimed to have taken part in anti-government activities and to have fled from Syria when he knew that security forces were on his track. His account of those matters was disbelieved by the AIT, and there is no appeal against that finding. The basis of his appeal, in summary, is that the Tribunal fail to deal properly with the risks he would face on return as a Kurd who had left Syria unlawfully and made an unsuccessful claim for asylum.

4. IA arrived in the UK on 11 February 2004 and claimed asylum five days later. His claim was rejected and he appealed. He claimed that he had been threatened by officials of the Ba'ath party with torture unless he joined the party. Under threats, he agreed to report on the activities of fellow Kurds in the area, but instead he fled the country. At the first hearing of his appeal, this account was rejected and the appeal was dismissed. Reconsideration was ordered because the Tribunal had failed properly to consider the risk to him on his return as a failed asylum seeker.

5. A further matter was raised on the reconsideration. From 2005, IA took part in a number of anti-government demonstrations outside the Syrian Embassy. It was argued on his behalf that this would heighten the risk to him if he were returned to Syria. The AIT on reconsideration dismissed his appeal. The basis of his appeal to this court is that the Tribunal failed to deal properly with the risk he would face on return both (as in SA's case) as a Kurd who has left Syria unlawfully and made an unsuccessful claim for asylum, and also on account of his political activities in the UK.”

7. Toulson LJ reached the following conclusions concerning these appeals.

“22. I am troubled by the points raised by both Appellants, and I regret that the Respondent has not been able to put those troubles to rest, in my judgement. In relation to SA I accept that there is substance in both the main criticisms advanced by Ms Plimmer. To treat the Amnesty International letter as if it was simply a letter written with no identifiable foundation was not a satisfactory way of approaching the document. Amnesty International is a body of high repute and the document did indicate, in broad terms, its sources of information.

23. Inevitably, in the areas that such bodies are investigating, there may be difficulties in obtaining evidence from fully identifiable sources, but Amnesty International are well aware of that. It does not follow that a Tribunal was bound to share their opinions on any particular matter, but the substance of that report did require the Tribunal properly to engage with it. The way in which the determination dealt with the report of Ms Laizer was so cursory as not in substance to engage with its content on the relevant point at all.

24. In the case of IA there is again, in my judgement, substance in both the main points made by Mr Stanage. The evidence put forward by Dr George, about the likelihood of IA being identified by the Syrian authorities as someone hostile to the regime for his activities outside the Syrian Embassy, contained enough substance to require the Tribunal to address it properly. It could not simply be dismissed as not amounting to evidence. Similarly the letter from Amnesty International did apply to IA, and its cogency needed to be evaluated. It was not.

25. For those reasons, I would allow both appeals, and direct that they be remitted for reconsideration. I do so with some regret, because the process has already been protracted. I am conscious in the case of IA that this is the

second occasion on which the case will have to be sent back for further consideration. Nothing that I have said in this judgement should be taken to indicate any view on my part that the appeals are likely to be successful in the final analysis. I am far from saying that on the material before either Tribunal the appeals ought necessarily to have been allowed, but I regret that there were, in my judgement, serious errors in the way in which the Tribunals dealt with the issues, for the reasons that I have set out.

26. There is further material before this Court to suggest that the position in Syria may have been changing. There is a report from the Foreign Office, which suggests that although the picture is not wholly good or wholly bad, in some material respects things have become worse since 2006. We are told that there is another country guidance case, supposedly due to be heard in the not too distant future. I am aware that Tribunals are overburdened with cases, but it does seem to be highly desirable that there should be a fresh look at the position of the state of Syrian Kurds who applied unsuccessfully for asylum, as soon as possible. The issues which have been raised in the Amnesty International report need to be evaluated. The sooner they are fully evaluated the better."

8. Thus, as is confirmed in the respective Appellants' Representative's skeleton arguments, the Appellants claim that they would be at real risk on return as stateless, undocumented Syrian Kurds, who had left Syria illegally and were failed asylum seekers. IA claims additionally to be at real risk on return as being perceived by the Syrian authorities as a political opponent, as a result of his attendance at a number of anti-regime demonstrations outside the Syrian Embassy in London. IA claims that anti-regime activities conducted outside Syria are regarded by the regime as seriously as those undertaken within Syria.

THE SUBSTANTIVE HEARING

9. On this basis we proceeded with the substantive hearing. Ms Pettersen confirmed the Respondent's acceptance that there had been material errors of law by the Tribunal in the appeals of SA and IA which, as stated by the Court of Appeal, were the failure to consider adequately the objective evidence. We agree, and on that basis proceeded to second stage reconsideration of both these appeals.
10. Ms Pettersen also confirmed that she did wish to cross-examine IA briefly concerning the matters contained in his written statement of 4 November 2008 about his claimed political activities in the UK.
11. We heard in succession oral evidence from Dr George and from IA, all of which is fully set out in our record of proceedings. We shall refer to the material aspects of this evidence in our conclusions. It was then agreed that each of the Representatives would supply full written submissions and, if they considered appropriate, replies. On that basis we reserved our decision.
12. The bundles/documents provided to us by the Representatives, either before, during or after the hearing are as listed below. A reference list of each specific item of country evidence provided, all of which we have taken into account, is contained in the appendix hereto.

1. The trial bundle for AK
2. The trial bundle for SA
3. The trial bundle for IA
4. The country guidance case of AR Syria
5. The Court of Appeal judgement in IA(Syria) and SA (Syria)
6. AK's bundle
7. SA's bundle
8. IA's bundle
9. Appellants' objective bundle
10. AK's further bundle
11. Skeleton argument for SA and AK
12. COI letter
13. Chronologies
14. Home Office statistics on returnees
15. Originals of the copy photographs in bundle 8
16. Written submissions for SA and AK
17. Written submissions for IA
18. Written submissions for the Respondent
19. Supplementary written information from Dr George in response to questions raised at the hearing
20. Further written submissions by way of reply for IA

THE REPRESENTATIVES' WRITTEN SUBMISSIONS

13. Mr O'Ryan's written submissions for SA are as follows.

- "1 At a hearing at Bradford AIT on 10.11.08, SIJ Batiste and SIJ Taylor directed, following oral evidence from Dr Alan George and Appellant IA, that written submissions should be provided by the parties to the appeals.
- 2 The Tribunal resolved that the appeal of AK will be heard and determined solely by SIJ Taylor, as a 'follower' case, as matters of credibility arise in that appeal such that it should not be determined jointly with SA and IA. Oral evidence from AK is to be heard by SIJ Taylor on 11.11.08. However, there is evidence submitted in the appeal of AK relevant to the Country Guidance issue (Kurd; illegal exit from Syria; failed asylum seeker); not least the updated expert report of Dr. Alan George dated 5.11.08. It is presumed that whilst the AK's case is to be determined separately from SA and IA, such evidence (specified in more detail below) in AK's case relevant to the Country Guidance issue will be taken into account.

Previous Tribunal consideration of risk on return to Kurds, exiting Syria illegally and having claimed asylum in the United Kingdom.

- 3 It is clear that Kurdish ethnicity may be an exacerbating factor for those who come to the adverse attention of the Syrian state authorities (see para 8 ZB and AK (Kurds - Article 3 - Risk - IFA) Syria [2004] UKIAT 00217). The Tribunal noted in that case the reasons for the Respondent conceding the appeals:

"11. It was on the basis of this filed evidence that in the case of both B and K and having regard to their characteristics which we have identified earlier in this determination, the **Secretary of State conceded that each would be likely to be identified as a failed asylum seeker who had left the country illegally and was being returned on the basis of temporary papers**

obtained for that purpose from the Syrian Embassy. This would lead to a real risk that each would be stopped and detained on return. The real possibility of prosecutory [sic] treatment **for the combined reasons of ethnicity and perceived or imputed political opinion contrary to the Refugee Convention 1951,** and of treatment prohibited by Article 3 of the European Convention of 1950, must be accepted to exist.

12. On the basis of the concessions made by Mr Morris it accordingly follows that in the case of B the Secretary of State's appeal is dismissed and B's cross appeal is allowed; in the case of K his appeal is allowed on both asylum and human rights grounds." (emphasis added)

4 In SY (Kurd-No Political Profile) Syria CG [2005] UKIAT 00039, it was held:

"21. It would seem to us to be implicit in the concession made on behalf of the Secretary of State in ZB and AK that a Syrian citizen of Kurdish ethnicity who has an accepted past political profile and who left Syria illegally may be at risk on return on account of those factors. Equally it is clear to our mind from RS that a person who left Syria with their own passport and with a proper exit stamp would not be at risk on return as there would be no reason to suspect any opposition to the Syrian state by dint of that departure and subsequent return. The relevant risk issues are well set out in the Canadian document at page 122 of the Appellant's bundle. Clearly the nature of the departure and the profile and background of the individual are of importance. It seems that an application would have to be made either by the Appellant or on his behalf for documentation from the Syrian authorities in order for him to be returned. **There must be a risk that a Syrian who approaches the Syrian Embassy or on whose behalf an approach is made for documentation might be regarded by the authorities as somebody who had sought asylum in the United Kingdom.** Equally it is clear that no information to that effect would be made available to the Syrian authorities.

22. We do **not** consider that it can properly be said that there is a **real risk** of an inference **of this kind** being drawn. The Appellant, on the Adjudicator's adverse credibility findings, is a person who has no political profile in Syria. Any check of Syrian records that might be made by the authorities as a consequence of an application being made for travel documents would reveal nothing to his discredit. It is in our view purely speculative and indeed fanciful to suggest that nevertheless there would be inferred to him an attitude adverse to the interests of the Syrian state by the fact that he was in the United Kingdom and needed travel documentation in order to return. It may be that it would come to light that he had left the country illegally in which case he would face up to three months' imprisonment, but on the one hand that would involve prosecution and on the other hand would not to our mind, given that it is unclear whether such a person would be sentenced at all, quite apart from how long within the three months maximum they might be in prison, be such as to give rise to a real risk of breach of Article 3 rights. ..." (Emphasis added)

5 The Appellants would not necessarily agree with the observation within paragraph 21 of SY that the concession made in ZB and AK was dependent upon those appellants having (some limited) past political profile - it appeared to be on the basis merely that they would be identified as failed asylum seekers who had left Syria illegally and were being returned on temporary travel documents.

- 6 Certainly, in SY, the proposition that there would be a risk of serious harm to Kurds who had left illegally and were failed asylum seekers was not rejected by the Tribunal - the reason for the appeal failing was that the accepted risk that a Syrian approaching the Syrian Embassy or on whose behalf an approach was made for documentation might be regarded by the authorities as somebody who had sought asylum in the United Kingdom was not, in the assessment of the Tribunal on the basis of the evidence before it, a real risk (para 22).
- 7 The issue was revisited at paragraphs 89-92 of AR (Kurd: not risk per se) Syria CG [2006] UAKIT 00048. It was asserted in a letter from the British Embassy in Damascus *inter alia* that it was 'important not to assume that the Syrian authorities would automatically know that an individual had applied for asylum in the United Kingdom' (para 89). Dr Alan George gave evidence in that appeal (summarised at paragraph 90 of AR), citing various reports including a September 2003 Canadian IRB document that if it became known that a person had applied for asylum abroad the consequences to a returnee may be severe.
- 8 However, it is clear that the Tribunal's reason for dismissing the appeal in AR is contained in paragraph 92, wherein the Tribunal recorded their view that there was 'no evidence to indicate that the authorities would be aware that he has applied for asylum in the United Kingdom', and the Tribunal were of the view that the appellant would face no more than a risk of imprisonment potentially of up to three months for illegally exit, which would not result in Article 3 mistreatment.
- 9 The Appellants aver that there is now further evidence before the Tribunal establishing to a reasonable degree of likelihood that a past claim for asylum in the United Kingdom would come to the attention of the Syrian authorities either due to enquiries made at the Syrian embassy in London or on return to Damascus.
- 10 Such evidence is contained *inter alia* within the expert report of Dr Alan George in AK dated 5.11.08 (bundle 10, pages 8-38), supported by his oral evidence.
- 11 When the appeal of AK was first heard by SIJ Drabu, IJ T Jones and Dr J O de Barros on 7.2.07, the Tribunal had 'no hesitation in finding (Dr George) as being a man of specialist knowledge. His credentials of expertise are impeccable, and we found him to be measured and objective in his oral evidence' (para 18). (Regrettably, the Tribunal then proceeded to err in law by failing to have sufficient regard to his evidence and a letter dated 4.10.06 from Amnesty International, resulting in the present reconsideration of AK's case).
- 12 Dr George's expertise is such that the UK Foreign Office have on several occasions invited him to attend briefing sessions for new British Ambassadors to Middle Eastern countries, including Syria, prior to their posting (bundle 10, page 10 para 12).
- 13 In AR at paragraph 78 the Tribunal questioned the efforts made by Dr George to confirm the truth or lack thereof of suggestions that significant numbers of stateless Kurds were to be granted citizenship. Dr George respectfully addresses this issue at paragraph 46-50 of his report of 5.11.08, confirming his earlier evidence (that there was no real sign of such grant of citizenship on the horizon) as having been accurate. He addresses the Syrian government's current position on this issue at paragraph 52-54 (no progress). Further, the progress of these reforms has been repeatedly 'suspended' or 'stopped' by the government (see quotations from speech made by President Basher al-Assad on 17.7.07 at paragraph 45 of Dr George's report).
- 14 The Tribunal is therefore invited to conclude that Dr George is an appropriately qualified expert, and to give his evidence significant weight. It is further contended that weight ought not be given to his evidence merely on

the basis that his evidence is consistent with other objective evidence - this would miss the point of calling expert evidence - Dr George clearly has sources available to him that are not available to others (eg his contacts within the Syrian embassy in London itself).

15 The Appellants refer in particular to the following passages within Dr George's report of 5.11.08:

| Paragraph: | Issue: |
|-------------------|---|
| 20 | One <i>mukhabarat</i> secret policeman for every 153 adult Syrians |
| 23 | Nature of secret police |
| 24-25 | Human rights abuses and trends in 2007 - downwards - (quoting from various sources) |
| 27 | Numbers of political arrests - 1500 |
| 34 onwards | Position of Kurds |
| 36 | Torture and ill-treatment is routinely inflicted on Syrian Kurdish political detainees whilst they are held incommunicado in Syrian prisons and detention centres. |
| 37 | Oppression of Kurds escalated sharply since March 2004 |
| 38 | Oppression of Kurds continues |
| 40 | Fatal shootings of Kurds at Newroz 20.3.08 |
| 42-54 | No real progress on issue of citizenship (and see para 13 above) |
| 55 | Syrian political leaders stated situation on Kurds more difficult |
| 56 | Effect of new law Decree 49, effective from 10.9.08; restrictions on construction disproportionately discriminating against Kurds |
| 58 | Demonstration against Decree 49 on 2.11.08 leading to 200 arrests |
| 71 | Authorities' view of asylum seekers: critique of Amnesty International report of January 2004. Dr George's <i>firm view</i> (middle of paragraph 71) that a Syrian who has applied for asylum will be perceived to be an oppositionist; the authorities are highly unlikely to make a consistent distinction between 'government opponents', and 'government opponents who are politically active', and a claim for asylum would be quite sufficient cause for him to be detained and maltreated on return to Syria, regardless of whether that person has a history of anti-government political activity. Reference to Canadian IRB report of September 2003: "If it becomes known that they have applied for asylum, the consequences may be severe." This opinion remains valid, according to Canadian IRB report of 1.5.08 (as to which, see further below) |
| 72-73 | Same issue |
| 74 | Dr George's anonymous contact within the Syrian embassy, a <u>senior and respected official</u> , who is <u>personally involved in matters concerning the return of Syrians to Syria from the UK</u> said ..."however, the Syrian security authorities <u>often</u> continued to view such individuals (i.e. those motivated by economic considerations) with suspicion. Old attitudes died hard ..." (Emphasis added) |

- 75 Assessment of risk as a returned asylum seeker. NB Dr George's oral evidence was that this assessment was purely on the basis of failed asylum seeker status alone. It specifically did *not* represent his assessment of risk for persons with additional risk factors such as Kurdish ethnicity and illegal departure from Syria.
- 76 Monitoring of suspected dissidents
(insofar as relevant to SA and AK - but more specifically relevant for cases involving an element of UK political activity)
NB The document at page 195 of Bundle 9 (the common objective bundle) clearly shows in the colour copies handed up at the hearing that a tripod is being used (top photo) - the video camera was not hand-held. This would clearly provide steady images even when the camera was zoomed in close to the subjects, facilitating the process of identifying those filmed.
- 77 Dr. George observes that the British police are able to identify offenders from footage of individuals attending demonstrations in the UK. (And the Appellants observe that this is achieved with substantially fewer (one hopes) than 1 secret policeman for every 153 adult Britons.)

Further NB. The removals statistics provided by present Counsel were for failed asylum seekers (not other immigration categories), and for the last three quarters reported, were 5 per quarter (not per month) (to the nearest 5!). Dr. George suggests that it is reasonable to suppose that the Syrian authorities might apply some of their substantial resources to compare 'their photographic and film records to those relatively few individuals being returned. It would therefore be a relatively easy matter for them to establish whether a particular individual had taken part in an anti-regime demonstration whilst in London.' See also Paragraph 18 of YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360.
- 78 Obtaining travel documentation for return to Syria

An application for a travel document to Syrian embassy in London not only requires that the application be referred to the Foreign ministry in Damascus, but clearance from General Intelligence, one of Syria's key intelligence agencies. 'Even a Syrian without a past political profile will be required, on return to Syria, to report for questioning to the intelligence agencies so that the latter can satisfy themselves that the returnee is not an opponent of the regime. I obtained these details of the procedure from the same Syrian official that I mentioned in Paragraph 74 of my Report.' (Emphasis added)
- 80 Dr George provides his observations on the finding within the case of SY (Kurd-No Political Profile) Syria CG [2005] UKIAT 00039 that if a Kurd applied for documents at the Syrian embassy in London there would be no real risk of an inference being drawn that he or she had sought asylum in the UK. This is refuted by Dr George's source at the Syrian embassy; Syrian authorities 'might indeed' suspect such a person of being a failed asylum-claimant. As Mr Stanage argues at paragraph 15 of his written submissions in IA, the use of the word 'indeed' strengthens the word 'may' (or here,

- ‘might’) such that the phrase as a whole expresses a degree of risk which would found a successful claim for refugee or humanitarian protection.
- 82-83 Further, and importantly (the Appellants aver), Dr George refers to the Canada IRB report of 1.5.08 (full text at pages 39-41 Bundle 9 - common objective bundle). This provides that, in the context of a person returning to Syria as a person who left illegally, that they will have to report to the immigration department for new documentation; this comprises a visit to the Political Security branch by which the person will be interrogated regarding the earlier motives and reasons for the illegal departure from Syria. Should this arise, it will be very difficult for the returnee to keep the information on a potential asylum application abroad confidential. (Emphasis added)
- 84 onwards Consequences for illegal exit from Syria
- 88 “ ... it is standard practice for a returnee to be interrogated by the *mukhabarat*. Bearing in mind the habitual brutality of Syria’s security agencies, I would assert that an individual subjected to *mukhabarat* interrogation would be at real risk of maltreatment. Likewise, I would assert that a person sentenced to imprisonment for leaving Syria illegally would also face a real risk of maltreatment in prison.”
- 89 Arrests of forcibly returned asylum seekers
Details provided.
- 92 “The Amnesty report noted: ‘Scores of Syrian returnees over the last few years, including several juveniles, have been arrested, held in prolonged incommunicado detention and unfairly tried. Many have reportedly been tortured. In the past four years, at least 10 returnees appear to have “disappeared” and several have died, apparently as a result of torture or ill-treatment.’”
- 94 Details of persons arrested on arrival in Syria. Whilst their ethnicity is by and large not known, this evidence clearly establishes the Syrian authorities’ practice of such detentions
- 96 Personal record keeping in Syria
- 98 “The same Danish Refugee Council report cites diplomatic sources in Damascus as stating ‘that the exit-entry procedure in Syria has been considerably tightened in recent years.’”
- 16 The Appellants also rely on the report of Sheri Laizer dated 1.7.05 (bundle 7, page A11 - A21 (please excuse markings on copies provided to Tribunal).
- 17 Ms. Laizer should also be accepted an expert entitled to comment on the risk of harm to returnees to Syria - see her cv at page A11-A12. She observes the deterioration in the position of Kurds in Syria at the time of writing (paras 4(i) - (xi), page A13-A18) (and there is no evidence of any improvement in their lot since then; the reverse, in fact).
- 18 She assesses the risk of harm to SA, as a Kurdish failed asylum seeker who had left Syria illegally, at paragraph 5 (A18-A20). She provides specific evidence of her own experience of the operation of the security services at Damascus airport. See paragraph 5 generally, and in particular, paras 5(ii), (iv), (v), (viii), and (ix). Her conclusion at A21 (iii) that the Appellant SA (and others in his position) would have a political opinion imputed in him is entirely sustainable.

19 The Appellant also relies on the Amnesty International letters dated 4.10.06 (bundle 6 page 165-166, document 26), and of 25.1.08 (bundle 7, page 160-163) which fully support the Appellants' cases. Amnesty's assertions are on the base of sourced material; they set out the nature of the sources at, eg page 160 bundle 7. See specifically the paragraph at the top of page 162; risk on return.

20 The Appellants further refer to the list of essential reading within their original skeleton argument dated 5.11.08.

Conclusion

21 Even in paragraph 21 of SY the Tribunal accepted that there was a risk of a previous asylum claim becoming known on return to Syria. On the basis of the current evidence - not all available to earlier Tribunals - it is apparent that the risk is real. The Court of Appeal in MH (Iraq) v SSHD [2007] EWCA Civ 852 recently restated the principle that the burden of proof in relation to future events is discharged 'by showing that there is a real as opposed to a fanciful risk that they will happen (paragraph 22 of that judgement). There is nothing fanciful in the Appellants' fears.

22 The evidence available to the Tribunal also establishes that there is a real risk that where a previous claim for asylum in the UK becomes known to the Syrian authorities on return, a real risk of harm will result (and indeed this does not appear to be disputed in any earlier reported case). In the alternative, a real risk of serious harm will result where additional risk factors of either Kurdish ethnicity or illegal exit from Syria are present, or in the further alternative, where both are present.

23 The Appellant SA requests that his appeal be allowed on the basis set out in paragraph 22 above....

14. Mr Stanage's written submissions were as follows.

"Introduction and summary

1. IA's appeal was today adjourned part-heard for written submissions after the conclusion of his evidence as to *sur place* activities and live evidence from Dr Alan George.
2. The Tribunal invited the parties to exchange submissions electronically and gave liberty to the Appellants to respond thereafter to any submissions drafted by the Respondent.
3. IA's main submission is that the real risk of persecution or breach of Art 3 ECHR arising from the cumulative factors set out at paragraph 4 of his skeleton argument [bundle 8, section C, page 3] is proved all the more clearly as a result of the evidence heard today.

Submissions on law

4. IA relies upon the submissions in the aforementioned skeleton argument.
5. IA further and gratefully adopts the submissions made in the skeleton argument submitted on behalf of his fellow Appellants [bundle 11]. The Tribunal's attention is particularly invited to paragraphs 23 and 25 in which principles of law directly relevant to an assessment of risk in the instant case are extracted from Court of Appeal decisions in Batayav v SSHD and YB(Eritrea) v SSHD.

Submissions on objective evidence

6. As to objective evidence, IA again gratefully adopts the extracts already set out in the skeleton argument for SA and AK [bundle 11] at paragraph 30.

7. Those extracts confirm the ever more marked propensity of the Syrian authorities to deploy systematic/frequent/common arbitrary detention, torture, malicious prosecution and imprisonment against oppositionists.

8. To that summary of relevant objective evidence [drawn from bundle 9] IA would advance the following extracts from his own bundle 8, section C as corroboration for his well-founded fear of persecution:

page 83: Freedom House, October 30, 2008: para 3, line 3: the State may charge opponents with “spreading false information”;

page 84: Human Rights Watch, October 30, 2008: para 3: the State convicted 12 political activists on vaguely defined charges of “weakening national sentiment” and “spreading false or exaggerated news which would affect the morale of the country” in an attempt (according to the headline) to ‘silence critics’;

page 85: *ibid*, line 8: a further charge exists which, says IA, may be particularly easy to level against him, namely “communicating with a foreign country and inciting it to initiate aggression against Syria”;

page 113: Human rights Watch, February 5, 2008, para 1: eight out of the twelve opposition activists (NB: apparently not Kurds but rather Syrian nationals-see page 115- and activists within an umbrella group of pro-democracy groups) claim to have been beaten in detention;

page 123: Human Rights Watch, October 2007, at page 154, penultimate paragraph: ‘Syrian security agencies frequently arrest activists following their return from trips overseas, apparently as a form of punishment for the activists’ discussion of Syrian human rights issues abroad’.

Submissions on expert evidence

9. IA relies upon all reports submitted by Dr George in respect of all three Appellants.

10. It is further submitted that Dr George’s oral evidence today has helpfully clarified, and fortified, his conclusion that IA is reasonably likely to face risk of persecution on return.

11. In particular, IA invites the Tribunal to recall the following elements of the oral evidence today:

- (a) All of Dr George’s sources indicate that the situation for Syrian Kurds has deteriorated since 2006. None says that it has improved;
- (b) Dr George only days ago spoke to two Kurdish party leaders who confirm that view;
- (c) It is probable that the authorities would be aware of the YouTube video broadcast [reproduced in print at Bundle 8, section C, pages 58-59];
- (d) ‘Certainly’ they are hyper-sensitive to internet activity. An example from Dr George’s book was given. A political cartoon critical of Syrian involvement in Lebanon was emailed to the wife of a businessman. Within half an hour of transmission security services arrived at her home;
- (e) Email communications are monitored. A’s email correspondence with the SHRC is extensively documented and covers a long period of time. Please see bundle 8, section C, pages 14-45 [It is submitted that although translations have not been provided, there can be no doubt

- that the sender is the SHRC and the recipient therefore in contact with them];
- (f) It is 'extremely probable' that filming of demonstrators is undertaken so as to have a record as to who is an oppositionist so that they or their families may be targeted;
 - (g) There is a hard core of people to attend all demonstrations and there will be at demonstrations faces that become known to the Embassy personnel filming/photographing from within. It is submitted that, notwithstanding a change of hairstyle, IA by his regular attendance at a total of nine demonstrations is reasonably likely to have become a 'known face' easily capable of identification as an oppositionist;
 - (h) For a stateless Kurd resident in Syria the only type of exit available is an illegal one because a Syrian Kurd will have no passport, therefore cannot apply for an exit visa and is in effect forbidden to travel. It is therefore submitted that the fact of illegal exit, an accepted fact in IA's appeal, would raise suspicion that he is a Kurd and therefore an oppositionist;
 - (i) The relatively low number of forced returnees (less than 5 per month in recent years) would enable the authorities to search for and root out oppositionists among them;

Submissions on IA's own evidence

12. It is submitted that insofar as it is important to evaluate the genuine nature of IA's political commitment, he has:
 - (i) travelled a significant distance from Newcastle upon Tyne to London on the nine occasions that he has publicly demonstrated his opposition to the government;
 - (ii) corresponded by email with the Syrian Human Rights Committee (SHRC) over a prolonged period;
 - (iii) been less politically active than he would like to be in the Kurdish cause because few Kurds live on Tyneside, many more live in London and IA is therefore prevented by circumstance/NASS from the fuller political involvement which he would choose if resident in London.

Submissions on Home Office evidence

13. Although there was no need to consider in detail the COI information request [bundle 12] at the hearing today, it is significant that its final paragraph appears to corroborate IA's fear of persecution on return.
14. Information from the Immigration and Refugee Board of Canada in May 2008 notes that those who have participated in demonstrations against the Syrian government outside Syrian Embassies 'may indeed have to face prosecution upon return'.
15. It is submitted that the use of the word 'indeed' strengthens the word 'may' such that the phrase as a whole expresses a degree of risk which would found a successful claim for refugee or humanitarian protection. 'May indeed' means 'is reasonably likely to' or 'runs a real risk of'.
16. If a risk of 'prosecution upon return' is thus established then it is submitted that IA's appeal can only succeed because the risk of torture or beatings or disproportionate punishment on politically-motivated charges is plain from all on the objective and expert evidence.

Conclusion

17. IA's appeal is supported by an abundance of:

1. well-sourced objective evidence;
2. well-documented photographic evidence;
3. well-reasoned, recent and researched expert evidence

and should therefore be allowed.

15. Ms Pettersen made the following written submissions

Introduction:-

1. The Secretary of State's representative submits that both appeals should be dismissed on the basis that neither appellant would face a real risk of persecution on return to Syria on the basis of being failed asylum seekers of Kurdish origin.
2. In the case of SA, the original finding that he had not made a credible claim about the events before he left Syria stands. His case is therefore that of a failed asylum seeker with no accepted profile with the Syrian authorities.
3. In the case of IA, his claims surrounding events in Syria were not accepted, but he claims risk on return as a result of attending demonstrations in London which he claims have been filmed by the Syrian authorities – a refugee 'sur place' argument.

Submissions on credibility (IA)

4. This appellant has produced photographic evidence of attendance at a number of demonstrations in London (bundle 8A pp 35-47 and 8C 47-73). It is submitted that IA's evidence about why he was attending the demonstrations to the effect that it was his duty as a Kurd to do this, does not sit with his earlier evidence (bundle 8A p4 para 11) that he was not interested in politics. In addition, the appellant has not in fact been involved in Syrian or opposition groups in the United Kingdom. It is submitted that it is therefore speculation that the Syrian authorities might have a record of his name even if they have filmed demonstrators (bundle 8C pp 76-79). The fact that the appellant may be on a mailing list of the Syrian Human Rights Commission is not something that is reasonably likely to be known to the Syrian authorities, notwithstanding the comments made by Dr George about the case of e-mail monitoring which he says takes place within Syria. The Tribunal's attention is also drawn to the fact that the number of hits on the YouTube clip (bundle 8C pp 57-59) is 210 on one printout (p 58) and 297 on another (p 59). These hit counts do not suggest the clip has been very widely viewed.
5. It is noted that the medical report (bundle 8C pp 81-82) submitted in support of IA's claim is undated, and refers to him having flashbacks to torture that he experienced. It is submitted that little weight should be given to this report on the basis that IA never claimed to have been arrested or ill-treated in Syria.

Dr George's reports:-

6. In relation to the updated report on IA (bundle 8C pages 76-79) it is argued that IA's activities will have been monitored and his photograph taken, or he has been filmed. It is submitted that not all those being filmed (if this is the case) are Syrian or Kurdish, and Dr George acknowledged that some of those demonstrating are people resident in the United Kingdom for many years.
7. Dr George quotes from 'indymedia' (bundle 8C p 77 para 6) who assert that the filming may be used to intimidate the families of demonstrators in Syria. In

cross examination he acknowledged that he had not been told of any occurrences of this in the individuals he had interviewed or done reports on.

8. In relation to the updated report on AK whose case is being dealt with separately, Dr George deals with the general situation of failed asylum seekers, and submissions are being made on this report in the context of the more general information for the two appellants IA and SA (rather than the sections relating to AK). This report is at bundle 10 pp 8-38.
9. Dr George's brief is set out at paragraph 17 (bundle 10 p 11). It is notable that the instances he cites of those who have faced problems in paragraphs 89 to 93 (bundle 10 pp 32-34) take place between 2002 and the end of 2006. Many have connections with the Muslim Brotherhood, and are clearly distinguishable from Syrian Kurds. The cases cited in paragraph 94 (bundle 10 p 34) are taken from a Syrian Human Rights Committee report and are not broken down as to Kurds and non Kurds; only one of these incident Patricia Dabbour is said to have taken place in 2007.
10. In the penalties section (bundle 10 pp 30 – 32) Dr George cites the penalties for illegal exit, which could be a prison sentence of 7 years hard labour if the seal of Syria is falsified (para 87), but it is clear that none of the appellants have claimed that they used false Syrian documents or falsified these themselves. Any penalty for these appellants therefore would be at the lower end of the scale.

Comments on Country Guidance issue on risk on return:-

11. It is submitted that the material put forward both in terms of Dr George's opinion and the objective material does not demonstrate that the situation for Syrian Kurds on return having left illegally has become any worse. See above comments in relation to the cases cited. It is submitted that the Country Guidance on this issue should follow the same principles as AR Syria CG [2006] UAKIT 00048.

Objective material to which the Tribunal's attention is specifically drawn:-

(Bundle 9 pp 68-91) Danish Refugee Council – report from a fact finding mission to Damascus 15-22 January 2007

3.4.2.1, Mistreatment of Detainees:

"An Embassy in Damascus (2) informed the delegation that there were no reports of slapping, beating or torture of people detained because of illegal departure from Syria. It was assumed that slapping, beating or torture was not used against people detained for minor crimes as for instance illegal departure."

Section 5.3

Deals in detail with penalties for illegal departure and quotes a number of sources, **in only one of which is there a reference to the possibility of abuse:**

Embassy 2 Their source had no knowledge of cases where a Syrian cit returning from Sweden has been subject to a fine or prison sentence due to illegal exit....Knew of cases where returning cit interrogated about the reasons for loss of PPT by Immig Ser & detained 2/3 days by Security Services (SS)

Embassy 1 persons who have exited S illegally will be detained & questioned on return. Source had no knowledge of the penalties for illegal exit and knew of no cases where illegal exit lead to a penalty.....detained & questioned by SS, but most often released after a short period of detention"

Embassy 3 "no knowledge of cases where a Syrian cit ...had been sentenced to a fine or prison due to illegal exit..." ...indicated that the

regulations in the Syrian Penal Code regarding illegal exit may have been abolished, but not possible to confirm this information yet."

...not normally a problem to leave for economic reasons or to apply for asylum abroad....(which) is not regarded by the Syrian authorities ...as an expression of anti-govt activities. The authorities have a certain understanding for the fact that Syrians may choose to go abroad due to unemployment etc."

...2 cases of FAS Syrians "In one the returnee was detained by SS and held for 1 month without trial. The reason for the detention was unknown. In another case the returnee admitted having participated in anti-govt demonstrations abroad...referred to the court but eventually released with a suspended sentence of 2 months imprisonment."

Local Lawyer "normally illegal exit ...is not punished. Persons who have left illegally & re-enter ...holding a laissez-passer will be interrogated in order for the authorities to establish the identity of the person."...person interrogated first by Immigration authorities and after that referred to SS, who decide if a new PPT can be issued....most cases SS decides can be issued even in cases where person originally left illegally. The official range of penalty for illegal exit is 6 months imprisonment."

Embassy 4 Alternative source "generally persons who left illegally and then return...will be kept by the intelligence agency from a few days to 2-3 weeks and interrogated. During this period of time **mistreatment may happen**"

Local Lawyer "having applied for asylum abroad does not in itself lead to detention or imprisonment upon return...re-entry...in general is not a problem."

Local Lawyer Military Service deserters "will be arrested and sent to complete their military service."

HR Org "re-entry can lead to problems for HR activists and political activists, including Kurds who are politically active, if the concerned persons are already known by the Syrian authorities."

Kurdish rep 4 returning Kurds "may face arrest due to illegal exit from Syria ...risk depends on how much the authorities know about the activities of the returning person." Referred to a Syrian Kurd sentenced by Syrian court for separatist activity on return from Germany...2 Kurds detained on return from Iraq, one for 9 months without trial, the other being tried by court. Another case where Kurd & his son arrested on return from Norway."

Attorney 1 ..."usual penalty for illegal exit ...is a fine".

Commentary on the Amnesty International letter (of 26 Jan 2008)

(Bundle 9 p 160 – 166). It is submitted that the letter does not cite instances of failed asylum seekers being arrested or detained on their return (p162 final paragraph). The report (p 161 2nd para)) refers to systematic persecution of Syrian Kurds, particularly those who are members of Kurdish organisations. By contrast the Amnesty International report for Syria for 2008 published 28 May 2008 (bundle 10 page 1-4) refers to identity based discrimination for Syrian Kurds and denial of equal access to social and economic rights.

US State Department Report (bundle 9 pp12-37).

It is submitted that whilst the situation for Kurds (pp 34-35) may be discriminatory, the instances cited are not of widespread persecution solely for

being a Kurd. The arrests cited mostly refer to leaders of opposition parties rather than widespread persecution of all Kurds.

Closing summary

It is submitted that for both IA and SA the risk as a Syrian Kurdish failed asylum seeker would be at worst the possibility of a fine or a short term of imprisonment. It is submitted that this is not a real risk of persecution or a breach of Article 3. With regard to IA the risk needs to be assessed in relation to whether or not it is accepted that his UK activities have been monitored by the Syrian authorities and that he would as a result be identified on his return.

It is respectfully submitted that the appeals should be dismissed on all grounds.”

16. Mr Stanage made further written submissions by way of reply on behalf of IA in the following terms.

“Introduction

18. Counsel has within the last hour had sight of written submissions on behalf of the Respondent in this matter.
19. The Respondent, no doubt inadvertently, therein invites the Tribunal to err in law. A brief rebuttal of certain submissions is therefore necessary.

Rebuttal

20. As to the Respondent’s paragraph 4:

Counsel cannot find a bundle 8A but in any event recalls that it has been IA’s case throughout that he has no desire to join any Kurdish nationalist political party but to promote the Kurdish cause free from political party restrictions. Such was his oral evidence before Mr Aitken at North Shields.

IA’s oral evidence yesterday made abundantly clear his commitment to that cause:

He explained that he attended demonstrations because

‘I am Kurdish; the world knows how much Syrian Kurds suffer; We face unbelievable difficulties; They take our properties, belongings, not giving us our ID cards; If we don’t go to defend Kurdish rights whatever the Syrian government does to Kurds no-one would know about it. I am trying by going to demonstrations to stop the injustices being done to the Kurdish people’.

21. Further, as to the Respondent’s paragraph 4, it is potentially misleading to suggest that ‘the appellant has not in fact been involved in Syrian or opposition groups in the United Kingdom’. It is right that he is not a member of any group but the Tribunal has seen the overtly political and oppositionist nature of the demonstrations and has heard from Dr George that they are mainly organised by the Western Kurdistan Association.

It would therefore be misconceived to suggest that A, if he came to the attention of the authorities at all, would be deemed apolitical by them.

22. Further, as to the Respondent’s paragraph 4, the number of hits on the YouTube site if more than, say, 10 would, in IA’s submission, lead to the conclusion that there is a real risk that someone from the Embassy was one of the ten viewers.

23. As to the Respondent's paragraph 5, IA confirms that he does not rely on the contents of the medical report. Counsel has made no reference to it and had not advised that it be before the Tribunal on this occasion.
24. As to the Respondent's paragraph 6, it is submitted that the fact that not all demonstrators are Syrian or Kurdish only increases the likelihood that the Embassy staff will focus their attention on those who are or appear to be Kurdish such as IA.
25. As to the Respondent's paragraph 7, it is submitted that, in law as in logic, absence of evidence is not evidence of absence.
26. As to the Respondent's paragraph 10, IA is unsure what is meant by a penalty 'at the lower end of the scale'. Torture in detention is systematic/common i.e. reasonably likely to attend even a 'short' custodial sentence where cumulative risk factors, as in IA's case, are present: see skeleton argument for IA, para 4, factors (a)-(e).
27. As to the Respondent's extracts from objective material, IA asks the Tribunal to note the information attributed to 'Kurdish rep 4': a Kurd returned from Iraq was detained for 9 months without trial i.e. persecuted.
28. As to the Respondent's 'closing summary' if imprisonment is an alternative to a fine it is a real risk, with the attendant risk of breaches of Art 3 ECHR.

Conclusion

29. IA's appeal should be allowed."

THE EVIDENCE OF DR GEORGE

17. Dr George is a freelance consultant, writer and academic specialising in Middle Eastern political and economic affairs. He has a BA degree from Oxford University and MA and PhD degrees from Durham University. In our view he is plainly well-informed on Syrian affairs. His two reports of 20 July 2006 and 5 November 2008, which he adopted as his evidence in chief, were prepared for the AK appeal but, whilst they contain elements that were specific to it, the general opinions expressed in them as to the situation in Syria are of wider relevance. He also adopted his reports dated 7 November 2006 on IA and his supplemental report of 10 June 2008.
18. The material thrust of these reports, as well as the differing views of the Representatives about them, is clear from the above written submissions by the Representatives and we do not therefore wish to be unnecessarily repetitious by summarising them again now. We shall however draw from these reports and submissions in more detail when we come to our conclusions. We must however record at this stage Dr George's oral evidence and supplementary written information, made in response to questions put to him from the Representatives and the Tribunal, which we found to be helpful and illuminating.
19. Dr George was referred to the original Tribunal determination in AK where he was reported to have expressed the following opinion.

“9.... Dr George said that whilst it is true that in the past there was a greater likelihood of failed asylum seekers being at risk on return to Syria the conditions are not as bad now, but the improvement is “not by much”, and the authorities at the airport may sometimes not assume economic motivation having caused a person to leave....”

20. He said he was baffled by this reporting. He referred to paragraph 74 of his 5 November 2008 report which stated that:

“I would add that in 2006 a senior and respected Syrian official who is based at the Syrian Embassy in London and is personally involved in matters concerning the return of Syrians to Syria from the UK told me that there was now some realisation on the part of the Syrian authorities that Syrians who claimed asylum might have done so for purely economic reasons, rather than because they genuinely opposed the regime. He also stated however that the Syrian security authorities often continued to view such individuals (ie those motivated by economic considerations) with suspicion. Old attitudes and died hard, he said.”

21. He concluded that the reporting in AK may have been intended to reflect this. However, whilst it is true that some Syrian officials have some understanding of reasons for claiming asylum, that is not much improvement from a very repressive regime. In the 1980s there was an uprising which resulted in severe repression. One cannot put precise dates on changes in levels of repression but it was less in 1990s, and less again under the new President post 2000. However recently it has become more oppressive again. The overall position for Kurds as compared to 2006 is now worse. The context matters. After March 2004 there were violent confrontations and the situation has deteriorated since then. In last couple of years it has become bad for non-Kurdish groups as well, for example for democracy activists. He had recently telephoned Kurdish leaders (described in paragraphs 53/55 of his 2008 report) and they were clear that the position of Kurds has deteriorated since 2004. He had not found any Kurds who say other than that it has got worse in last couple of years.

22. In paragraph 75 of his report of 5 November 2008 he had said:

“The available information on the Syrian authorities' attitude towards asylum applicants is clearly somewhat contradictory. In my opinion however it would be imprudent to assert categorically the claiming asylum abroad in and of itself would never cause adverse attention from the Syrian authorities. I say this because several of the reports on this question cite specific cases where individuals have been targeted solely for having applied for asylum. Evidently, it is something that does happen, albeit that it does not happen routinely or even often. In my view, especially bearing in mind the arbitrary manner in which the Syrian security services conduct themselves, unsuccessful asylum claimants do run the risk, at least, of attracting adverse official attention on their return to Syria.”

Dr George added that this passage related specifically to people who claimed asylum and not to those who left Syria illegally. That would be a cumulative risk factor.

23. He was then asked about the photographs at demonstrations outside the Syrian Embassy in London and he confirmed that two of them (the enlargements) appeared to show a camera being used from inside the Embassy to record the demonstration. He was told that IA claimed one of the demonstrations he had attended was videoed by the organisers and published on the internet on YouTube and was asked if the authorities would be interested in this. He replied that they would, if it was drawn to their attention. They are hypersensitive to criticism and there are several examples of rapid reaction by the authorities if information about criticism comes to their attention. He was shown the photo which suggested that a videocam was being used from the Embassy and was asked why this was being done. He said that if it was a one off it may be due to the interest in an individual. But he had been told that this was routine and in that case it was very probable that it is being done to create a record with view to targeting the demonstrators and their families. People attending demonstrations say they see photography from the Embassy happening routinely.
24. Paragraph 5 of his 10 June 2008 report described evidence by two named witnesses, Dr J Mella, the head of the London-based Western Kurdistan Association, a lobby group for Syrian Kurds and Mr M Al-Abdeh, the head of the policy unit of the Movement for Justice and Development, a non-Kurdish Syrian opposition group. Both confirmed that they had attended demonstrations outside the Syrian Embassy and had personally witnessed the filming of the demonstrations from within the Embassy. Dr Mella considered this to be routine. Dr George was later able to confirm that both of these witnesses had been in the UK for many years and were now British citizens. Dr George thought that such demonstrations occurred every 3 or 4 months and about 50 or 100 attended at a time; or say 20-70 to be safe. It may be that the demonstrations took place only a couple of times a year or a little more. He later confirmed that Dr Mella had told him that there were at least two per year and could be as many as four depending on specific events. Dr George said it would normally be the same hard core of people who attended the demonstrations, though there will be others who may attend intermittently.
25. Dr George drew attention to paragraph 71 of his report of 5 November 2008 where he had highlighted what he considered to be an inconsistency in a report of the Canadian section of Amnesty International which had stated that:
- “Syrians seeking political asylum abroad are perceived to be government opponents by the Syrian authorities. The very fact of leaving the country to seek asylum abroad is imputed to be a manifestation of opposition to the Syrian government. If in addition the asylum seeker has been affiliated with an unauthorised political party will group, he/she risks arrest and torture upon return to Syria. This is done by the authorities to attempt to extract information about the group and its members.”
26. He was asked how opponents in the UK of the Syrian regime would be identified, when the evidence on identification related to attendance at

demonstrations only. He said that political activity in eyes of Syria would certainly include a demonstration outside the Embassy. Also a Kurd, who had fled from Syria to escape allegations of anti-regime activities, would be regarded as a political oppositionist whether he attended demonstrations or not. Thus there is the potential of risk. However there are not infinite resources available for surveillance, and it will be targeted on those who are most of interest. Also if a person left Syria illegally he would not have proper documentation. So an application would have to be made at the Embassy for travel documents. That would attract attention from the security services that may be adverse. If however the individual was an economic migrant only, it is a grey area. Security can be arbitrary. If he is a Kurd and the officer has had a bad experience of Kurds there could be a problem. There were a range of factors that could be significant given the arbitrary nature of the security services. There is greater understanding of the fact of economic migration but also there are still hard-liners who do not accept this. Serious charges could be made against the most innocuous of democracy activists and possibly against economic migrants. There is a risk but he said he could not quantify it. He leaned to the view, if pushed, that there would be a real risk even for a purely economic migrant of being perceived as an oppositionist by some elements of the security services. However such risk would be much less than for someone who had a political history.

27. As for economic migration from Syria, there were no statistics. However he thought it was significant, given the number of Syrians who work abroad in various countries and send remittances home. There were no official unemployment figures either but he thought unemployment could be running at about 25%. It was very significant. Many Syrians leave legally. Getting permission is not that difficult. Many also come to Europe to study. Syrians can travel to Lebanon on an ID card, without the need for a passport. They can then travel onwards from Lebanon. Syria does not unduly restrict the ability of its citizens to travel abroad if they have a good reason. They can get an exit visa. However a stateless Kurd does not have a passport and cannot therefore get an exit visa. Thus a stateless Kurd can only exit illegally. If he is abroad it would be very problematical whether he would be let back. The Home Office would be better placed to say. He did not know of any stateless Kurd seeking re-admission and being refused, but he could not see how he could get in. At paragraph 65 of his report of 5 November 2008 he had identified difficulties that exist for stateless Kurds even for travel within Syria. None of his reports had dealt with refusal of documentation. That would be a follow-up issue which would not come to him and was not within his knowledge.
28. He was then asked about the consequences/penalties for illegal exit only. He referred to paragraph 86 of his 5 November 2008 report which stated:

“Under law 42 of 31 December 1975... any Syrian national who departs his country illegally faces judicial consequences that may in principle result in up

to three months imprisonment... the penalties for leaving Syria using false documents or a false identity are much stiffer: ranging from one month to two years..."

29. He was asked if law 42, which he said applied to a "Syrian national", also applied to a stateless undocumented Kurd. He said that he did not know. For a stateless Kurd the law was what a secret policeman wanted it to be. On a return on emergency documents, problems could arise in refusal to approve return, or on return at the airport, or afterwards. He was asked if the Syrian authorities cared if stateless Kurds left the country. Dr George replied that the position was contradictory. They were sensitive to issues touching national unity, as the Government came from a minority group. It did not like to acknowledge problems. It tried to maintain the notion of a unity that embraces Kurds even if it is a fiction in terms of reality. Thus they would not wish to push Kurds out as this would go against the concept of unity.
30. Syria operates on an "as if" system, based upon presumptions that are not true in fact. Thus if Kurds behave as members of the national family then what happens in their private lives is not of real interest. Dr George later commented further in writing about the "as if" culture, which is described in a paper entitled "Ambiguities of Domination: Politics, Rhetoric and Symbols in Contemporary Syria" by Lisa Wedeen, from which he quoted as follows.

"Asad's cult operates as a disciplinary device, generating a politics of public dissimulation in which citizens act as if they revere their leader. A politics of "as if", while it may appear irrational or even foolish at first glance, actually proves politically effective".

31. Dr George was asked whether and if so which of the people identified in paragraphs 89-94 of his report of 5 November 2008 as being forcibly returned asylum seekers who had been arrested on return, were Kurds. He said he did not know. The names in the reports could be Druse or others. Some of the names are neutral. Some are not Kurdish. One them, Jihad Sha'ban Qabaqeebu could be a Kurdish name. The sources did not identify whether the individuals named had been involved in political activity. He added that he did not know of any instance of any arrests or intimidation of the Syrian families of demonstrators in UK. There was no follow up mechanism to monitor what happened after return. Amnesty International gave examples of what happened to some individuals.
32. He then referred to paragraph 10 of his report of 10 June 2008 concerning the identification by the Syrian authorities of demonstrators where he said;

"I would add that I have no information as to precisely how Syria's security services identify individual anti-regime demonstrators who had been photographed or filmed. I presume however that they would use a variety of techniques and sources of information, including information from informants..... Far more pertinent would be the risk of identification attendant on unavoidable encounters with the Syrian authorities in the

course of his return. To the best of my knowledge, meanwhile, only a small number of Syrian Kurds are returned forcibly to Syria from the UK each year. I would assert that it is reasonable to suppose that the Syrian authorities will apply their photographic and film records to those relatively few individuals being returned. It would therefore be a relatively easy matter for them to establish whether a particular individual had taken part in an anti-regime demonstration whilst in London."

33. He added that identifying 5-10 individuals in a few weeks would not be hard. The names will be disclosed on applying for documentation. Some of the applicants might have files already. In the Middle East, people do not live anonymously. People live in extended families. They would not be returned in a vacuum. It was pointed out to him that the Home Office statistics were that there had been 70 recent returns from the UK to Syria over a period of 15 months. He observed that not everything that happened in Syria was reported. Human rights violations were very random. There is no free press. Also as there were few demonstrators they can readily be checked when applications for travel documents are made. Moreover these statistics included voluntary returns and were not broken down. There were many Syrian students in the UK.
34. That was the thrust of Dr George's oral evidence given, as supplemented by his subsequent written comments. IA then gave his oral evidence concerning his political activities in the UK.

THE EVIDENCE OF IA

35. In his oral evidence, given to us through a Kurdish Kurmanji interpreter without any apparent difficulty or complaint, IA first adopted his written statement of 4 November 2008. In it, he said that he had attended in total about nine demonstrations organised by various organisations outside the Syrian Embassy in London. Some had been organised by Kurdish organisations and others by other groups opposed to the Syrian government. He was on the mailing list of the Syrian Human Rights Committee (SHRC), which is banned in Syria and based in London. He attached a number of e-mails and photographs to corroborate his attendance at demonstrations and also in particular to demonstrate the filming of the demonstrators from within the Embassy. He said he did not belong to any particular party or group because his loyalty was to the Kurdish people. At demonstrations he often carried a placard. He identified some of the dates on which he attended demonstrations, the last being on 6 June 2008. At each demonstration there was a film crew recording the demonstration and the coverage was shown on Arab media throughout the Middle East. Additionally at three of the demonstrations which he attended, he personally saw cameras in the Embassy filming the demonstrators.
36. IA then responded to questions put to him. He confirmed that the dates of the photographs were as in the index to the bundle and related to demonstrations on 7/10/06, 12/03/07, 29/02/08, 4/03/08, 6/06/08. There was also the YouTube film of the demonstration on 4/03/2008, which was attended by about 40 people. There had also been earlier

demonstrations. He could not remember the date of the first but it was about a year after coming here. The photographs were taken by a friend. The YouTube video came from the SHRC, who had e-mailed him about it.

37. When it was pointed out to him that 29/2/06 (the date given by him for one demonstration) did not exist as 2006 was not a leap year, he accepted that he could have made a mistake about the precise date. In all he had attended 9 demonstrations. The attendance varied. It could be in the 100s, or 50s, or more or less. He confirmed that he was not an officer of any of the organising groups. He attended because he was Kurdish and he wanted the world to know how they have suffered. If Kurds did not go to demonstrations, they would not be fighting for their rights. He did not do anything else politically besides attending demonstrations, because he had been housed in Newcastle by NASS. London is a long way to travel. The Kurdish activities were based in London. If he had been housed in London his activities would have increased.

OTHER OBJECTIVE EVIDENCE

38. There was extensive further documentary evidence as itemised in the appendix hereto. We have taken it all into account in our conclusions even if we do not mention each item specifically outside the annexe. Much of it deals with matters that are not disputed, or is broadly repetitive of evidence given elsewhere, or is not the most recent evidence on the subject.

THE RELEVANT LAW

39. The legal framework for our determination is now provided by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (the “Qualification Regulations”), the Statement of Changes in Immigration Rules Cmnd 6918, and the AIT Practice Direction of 9 October 2006.
40. The burden of proof lies with the Appellant. The standard of proof in relation to both past and future events is that of “real risk”, otherwise expressed as “reasonable likelihood” or “serious possibility”. In assessing this we have adopted the approach described by the Court of Appeal in the leading case of Karanakaran [2000] IAR 271 CA, where the task of the Tribunal was described as this.

“It has to reach a well-rounded decision as to whether, in all the circumstances, there is a serious possibility of persecution for a Convention reason...This balancing exercise may necessarily involve giving greater weight to some considerations than to others, depending variously on the degree of confidence the decision-maker may have about them, or the seriousness of their effect on the asylum-seeker's welfare if they should, in the event occur.....

What is relevant in the present context is the methodology they adopted. Unless something is so trivial that even on a cumulative assessment it would be bound to carry no weight, or the decision-maker has no real doubt that it is

entitled to discard some point from its consideration altogether, it would be wrong to eliminate that point completely. In my judgment, the tribunal's technique in *Sayandan* of evaluating both the likelihood of a risk eventuating and the seriousness of the consequences if it were to eventuate demonstrates a correct approach. It was also correct for it to assess the cumulative effect of the matters it was considering, particularly if there was a likelihood that they would all affect the applicant at the same time. It will be seen that that tribunal, whose decision predated *Manohoran* by three months, seems to have experienced no difficulty in deciding whether in the conditions it had evaluated it would be unduly harsh to expect the appellant to live in Colombo. The tribunal in the present case adopted a similar approach when it said that a common-sense approach, rather than a legalistic or formulaic approach, should be adopted (as opposed to considering whether it was more likely than not, or only a serious possibility, that conditions in Colombo would be unduly harsh).

The fact-finder must be careful, however, to evaluate each of the considerations suggested on behalf of the applicant. In my judgment it was completely wrong for the tribunal in the present case to dismiss considerations put forward by experts of the quality who wrote opinions on this case as "pure speculation". It was also quite wrong for it to say that certain matters were "not considerations which we should take into account" merely because in *Robinson* this court said that such considerations would not in themselves be enough to satisfy the requisite test. It was also wrong for it to consider each matter in isolation as opposed to considering their potential cumulative effect: see now *Gnanam* [1999] INLR 219 per Tuckey LJ."

41. Mr O’Ryan has suggested in his written submissions that the Court of Appeal in paragraph 22 of MH (Iraq) v SSHD [2007] EWCA Civ 852 restated the principle that the burden of proof is discharged “by showing that there is a real as opposed to a fanciful risk”. If Mr O’Ryan intended to imply by this that the Court intended to redefine what is meant by “real risk” or in some way to lower the standard of proof, then we do not agree. Indeed the Court said in terms that it was restating the position that had existed since R. v. Secretary of State for the Home Department ex parte Sivakumaran [1988] 1 A.C. 958 . The reality is that the Courts have over the years used equal and interchangeable expressions to reflect what falls above the line and what falls below. Thus “reasonable likelihood” is often used for “real risk”, and “mere possibility” as the converse. We do not consider that “fanciful risk” is materially different from “mere possibility”.
42. A refugee is defined in the Qualification Regulations as a person who falls within Article 1(A) of the 1951 Geneva Convention and to whom the exclusion clauses in regulation 7 do not apply. Article 1(A) describes a refugee as a person who

“owing to a 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.”
43. Regulation 6(2) provides additionally that

“In deciding whether a person has a well founded fear of being persecuted, it is immaterial whether he actually possesses the racial, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to him by the actor of persecution.”

44. Regulation 5 describes what is required to amount to an act of persecution.

- (1) In deciding whether a person is a refugee an act of persecution must be:
- (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or
 - (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).
- (2) An act of persecution may, for example, take the form of:
- (a) an act of physical or mental violence, including an act of sexual violence;
 - (b) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
 - (c) prosecution or punishment, which is disproportionate or discriminatory;
 - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
 - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7.
- (3) An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention.”

OUR GENERAL CONCLUSIONS

The Issues

45. We start with some matters arising from AR that have not been argued specifically before us but need to be clarified for the avoidance of doubt. There is no evidence of any material progress concerning the granting of Syrian citizenship to stateless Kurds. The Appellants’ Representatives have not specifically challenged the conclusion in AR that the discrimination and deprivations experienced by Syrian Kurds are not such in themselves as to amount to persecution or breach of their human rights on return. Ms Pettersen has not sought to argue that a Syrian Kurd, who is credibly perceived as having an anti-regime political profile, would not be at real risk of persecution on return.
46. We shall expand on some of these matters later but, proceeding from this basis, we have identified the substantive questions in dispute before us as being these:
1. Is the conclusion in AR - that the likely penalty for illegal exit coupled with prison conditions in Syria would not in itself give rise to a real risk of a breach of protected rights - sustainable in the light of the current evidence?

2. Would a stateless, undocumented Syrian Kurd, who had no real or perceived political profile in Syria, who left Syria illegally and who is a failed asylum seeker, be at real risk of persecution on return? We acknowledge Dr George's view that each of these components is a separate aggravating factor, and shall take that into account. Nevertheless we have aggregated the factors together in posing the question in this way because it appears that they cannot in practice be separated. Dr George maintained, without contradiction, that a stateless, undocumented Kurd is not entitled to a passport and cannot therefore obtain a proper exit visa. Thus if he is a failed asylum seeker he must by definition be outside Syria and have left illegally.

3. To what extent would anti-regime political activity by such a person only after his arrival in the UK, be likely to come to the adverse attention of the Syrian authorities, and with what consequences in terms of risk on return?

The Objective Context

47. These questions can only be answered properly when set in the overall Syrian context. We would observe at this stage that we found Dr George to be well informed about Syrian affairs and his evidence to us was thoughtful, detailed and helpful. We were impressed by the way in which in his oral evidence he was careful to avoid exceeding his brief as an expert witness; to indicate clearly when he did not know the answers to questions; and to indicate where there was in his view a grey area. We also have the benefit of having several written reports from him as well as his oral evidence, which taken together have given us the opportunity to see the evolution of his thinking in the context of the other objective evidence. Of course we have to reach our own conclusions on the evidence as a whole and in line with the law but we have given serious weight to his evidence.

48. We found helpful his description of the historic background up to 2006 as set out in his report of 7 November 2006.

"12. To set the context requires a brief exposition of the nature of the Syrian state. In 1963 the Arab Ba'ath (Renaissance) Socialist Party seized power in Syria in a military coup. One of the coup-makers was Hafez al Assad, who at the time was a captain in the air force. A protracted series of intra-regime struggles culminated in November 1970 with the seizure of power by Assad, who at the time was defence minister. Assad at once set about extending his personal control into every niche of public life.

13. Under Assad, the armed forces and a series of intelligence agencies were expanded and became key agencies of the regime's survival... The multiple and overlapping intelligence agencies employ perhaps 100,000 people. As the country's total population is 16.7 million, there is one secret policeman per 257 Syrians. However 59.5% of Syrians are aged over 15 years and if only these adults are counted the ratio is one secret policeman per 153 Syrians.

14. Since the initial coup of March 1963, a state of emergency has been in force which effectively gives unlimited powers to the security agencies. Although Syria has a constitution which theoretically guarantees human and

other rights, the reality is that it is a police state in which citizens have no meaningful recourse to the law, and no protection from abuse by state agencies..

17. Syria's security services are notorious for their casual disregard of human rights... The role of the security services extends far beyond strict security matters and they operate independently and generally outside the control of the legal system. Abuses included arbitrary or unlawful deprivation of life; torture in prison; poor prison conditions; arbitrary arrests and detentions; absence of rule of law; severely restricted civil liberties; discrimination against the Kurdish minority...

21. In the late 1970s Hafez al Assad's regime faced domestic opposition which escalated into a widespread armed rebellion. Although they were not the only parties involved, the Islamic fundamentalist Moslem Brotherhood played the central part in the rebellion. The regime countered with extreme violence...

22. During and in the years after the Islamist-led rebellion, repression by the regime was especially fierce, involving arbitrary arrests, disappearance, torture and murder...

23. To understand the significance of the Moslem Brotherhood involvement in the rebellion it is important to grasp that Syria is a patchwork of ethnic communities and religious groups. Approximately 74% of Syria's 16.7 million population are Sunni Muslims and about 15% are Shi'a (divided into several sub-sects notably the Alawi, Druse and Ismaili). Most of the rest are Christians (mainly Greek Orthodox). Although the country's various religious communities generally live together harmoniously, there is a marked tendency for each to limit interaction with the others. This tendency has a noticeable geographical expression... The Ba'athist regimes that have ruled since 1963, have been dominated by the Alawis - a traditionally low status minority considered by many Sunnis to be heretics... Of the Muslim minorities, the biggest are the Alawis, accounting for some 12% of the population...

26. The Kurds, almost all Sunni Muslim other than the small number of Yazidis, are the largest ethnic/linguistic minority, accounting for about 9% of the population. As non-Arabs in this explicitly Arab nationalist estate and as members of a nation (divided between Turkey, Syria, Iraq and Iran) which has presently unworkable dreams of independent statehood, the Kurds have been subject to much discrimination. As a part of a program to Arabise the North-East it was decreed in 1962 that Kurds who could not prove that they had lived in Syria at least since 1945 would lose their citizenship. A special census in Hassakeh province (adjacent to the Turkish and Iraqi borders) identified about 120,000 as "alien infiltrators" who allegedly had arrived illegally from Turkish Kurdistan. At a stroke they were rendered stateless, losing their civil and political rights, including the ability to hold a passport, to own land, to work for the government and to be admitted to public hospitals. They and their descendants now number at least 200,000 although estimates ranged as high as 360,000...

29. Oppression of Kurds has escalated sharply since March 2004 when violence at a football match in the north-eastern town of Qamishli sparked rioting that developed into large demonstrations against the Syrian regime by Kurds. Security forces opened fire on demonstrators, killing and wounding many. Hundreds were arrested.. Those detained were maltreated and tortured in several died as a result.. All but about 200 is thought to have been released by December 2004. Amnesty International has received many allegations of torture and ill-treatment from those released...

33. President Hafez Al Assad died in June 2000 and was succeeded as president by his son, Bashar. Although the political atmosphere has lightened in the period since Bashar's assumption of the Presidency, the apparatus of repression remains firmly in place."

49. It was against this context that the Tribunal in AR reached its conclusions. Ms Pettersen maintained that there have been no material changes since AR, and all its conclusions should be upheld. Mr O'Ryan and Mr Stanage maintained that the position has deteriorated.
50. Dr George maintains that Syria has a very repressive regime which always has been and remains ruthless in its suppression of real and perceived opposition. The position may fluctuate from time to time dependant on events but the fluctuation is from a high base. The lightening of the political atmosphere under the new President from his succession in 2000 has been overtaken by the events of 2004 and subsequently and the regime's response to it. In his report of 5 November 2008 he identifies for example 1500 political arrests; fatal shootings of Kurds at Nevroz celebrations on 20 March 2008; further demonstrations and arrests in November 2008 in the course of protests against new laws.
51. His assessment is reinforced by Ms Sheri Laizer in her report of 1 July 2005 (which has not been updated for us) and by material from Amnesty International and the SHRC. Freedom House on 30 October 2008 observed that the Syrian authorities may charge opponents with "*spreading false information*". Human Rights Watch on the same date drew attention to the conviction of 12 political activists on vague charges, and in October 2007 reported that the Syrian security services frequently arrested activists on their return from overseas trips in punishment for discussion of human rights issues when abroad.
52. A consistent but broader overall perspective is revealed elsewhere in the objective evidence. We have found the Freedom House report of 2008 on the world's most repressive regimes to be particularly informative in its analysis. It evaluates Syria as being on a downward trend due to its suppression of opposition activities. It explains that the toppling of the Ba'athist regime in Iraq in 2003 re-invigorated Syria's secular and religious dissidents leading to co-operation between them in seeking the release of political prisoners, the cancellation of the state of emergency and the legalisation of political parties. Syrian Kurds were a part of this movement for change. They were especially encouraged by the empowerment of the Iraqi Kurds. This led to the Kurdish rioting in March 2004. The opposition was also encouraged by international frustration over the failure of the Syrian regime to prevent the infiltration of terrorists into Iraq, to end its occupation of Lebanon, and its claimed involvement in assassinations in Lebanon. Initially the Syrian regime made placatory moves. In 2005, it released hundreds of prisoners and began to hint at sweeping political reforms, but as time passed nothing of substance actually materialised and later in the year the President openly ruled out any major constitutional change or loosening of the power of the Ba'athist party. In response, in October

2005, representatives of the three main strands of opposition to the regime – the Islamists, the Kurds and the secular liberals – signed the Damascus Declaration for Democratic and National Change. This called for the country's leaders to step down and endorsed a broad set of democratic principles. In February 2006 exiled opposition leaders created the National Salvation Front to bring about regime change. Also a number of Syrian political and human rights activists signed the Beirut-Damascus Declaration calling for recognition of Lebanese sovereignty. It is in this context that the regime has increased its suppression of real and perceived opposition activities.

53. The US State Department report for 2007 offers a more focused analysis of the nature of the repression itself. It cites examples of arrests of Kurds but identifies that they relate essentially to political activists and party leaders, rather than evidencing the general persecution of Kurds as such. This view also receives support from the report of the Danish Refugee Council fact-finding mission to Syria of January 2007 which noted comments from various sources that the authorities generally turn a blind eye to the political activities of some 13 popular and well supported Kurdish parties, even though they are illegal. However sometimes the activists are arrested.
54. There appear therefore to be, at least at face value, some differences between the various sources as to the extent and focus of the repression of the political parties. In part this can be explained by the dates of the various sources cited in the reports and the escalation of repression in the face of increasing opposition. However, Dr George provided us with the separate analysis of the “as if” culture that prevails in Syria, which we have described in our summary of his oral evidence and which we found to be particularly illuminating in our assessment of risk. If people behave *as if* the President is revered and *as if* the Syrian nation is united, then they can in the main get on with their lives without difficulty, but those who do not conform to this culture and are perceived as being engaged in anti-regime activities, face persecution.
55. We derive the following view of the overall context from the evidence as a whole. The Syrian leadership is drawn from a sub-sect of a minority community and believes that it can maintain its pre-eminent position by the suppression of effective or threatening opposition. It has put in place the security apparatus capable of achieving this, irrespective of the terms of the Syrian constitution, which acts outwith the rule of law. Having said that, common sense suggests that the maintenance of power would be difficult to maintain on such a narrow base as the Alawi alone (this being the minority group to which the President and much of the ruling class belong), even given the security apparatus in place, and must to some extent rely upon at least the passive acquiescence of a larger segment of the population. The growth of escalating opposition from a range of differing and divergent groups, triggered by aspirations of empowerment, democracy and human rights arising from the 2003 regime change in Iraq, triggered a repressive response from the regime focused upon those perceived to have been involved in it. Kurdish

political activists are caught up in this, as are the other dissentient groups. Even so, it is the leaders and activists of those opposition groups who run the real risk of arrest and persecutory ill-treatment. Those who behave *as if* the President is revered and *as if* the Syrian nation is united are able to live their lives without being at real risk of persecution by the regime.

Our Assessment

56. Against this overall context, we reach the following material conclusions, some of which have been disputed and others not. The first relates to paragraph 88 of AR, where the Tribunal decided that:

“The deprivations experienced by Syrian Kurds are not such as to amount to persecution or breach of their human rights if returned to Syria.”

57. This conclusion, as we have already observed, has not been specifically challenged before us on the basis of subsequent evidence. However Mr O’Ryan referred, albeit in a different context, to the effect of Decree 49 imposing restrictions on construction and embodying discriminatory provisions against Kurds. We have assessed this, but consider that this additional and aggregated factor does not in the overall context materially affect the ability of Kurds to live a normal life and enjoy the normal benefits of living in a society and we confirm the continuing validity of the conclusion in AR. For the avoidance of doubt we confirm that the discrimination and deprivations experienced by Syrian Kurds are not such as to amount to persecution or breach of their human rights if returned to Syria.
58. No-one has argued before us that a person perceived by the Syrian regime as being an oppositionist would not face a real risk of persecution by the Syrian authorities on return. Indeed we consider this is manifest from a wide range of objective evidence before us and is implicit in the conclusions reached by the Tribunal in AR. To put this into perspective, whilst human rights, democracy and Kurdish activists all fall within this risk category, there is evidence from various sources quoted in the Danish Refugee Council report of January 2007 at 3.4.2 that the greatest risk is to people perceived to be Islamists and that an estimated 95% of the political prisoners at that time were Islamists or were perceived as being so. Therefore, we conclude that a person with an actual or perceived profile of being anti-regime would be at real risk of persecution by the authorities on return to Syria. The greatest risk is to Islamists but there is real risk for each category.
59. The potential actor of persecution in these appeals is the Syrian State. Ms Pettersen has not sought to suggest that, should a person be able to demonstrate a well-founded fear of persecution by the Syrian authorities, he would nevertheless have a viable internal relocation option. That must be right, given that the risk will initially arise at the point of return and the writ of the Syrian regime runs across the whole country. We conclude therefore that there is no internal relocation

option for a person who is perceived by the Syrian authorities to have an anti-regime political profile.

60. Nor is there any logical reason why the Syrian authorities would make any distinction between anti-regime activities by Syrians on the basis of whether they were undertaken at home or abroad. Indeed much of the opposition to the regime is now based abroad. Thus we conclude that anti-regime activities undertaken by Syrians abroad, which are held to be credible and of which the Syrian authorities are aware, will contribute to their risk profile on return and will be taken as seriously as prior oppositionist activity in Syria.
61. There are a variety of ways in which a Syrian can potentially undertake anti-regime activities in the UK. At the one end of the spectrum he could become a committed, highly visible officer of an overtly political opposition organisation. At the other end of the spectrum is the person who in reality is an economic migrant, holding no political views, who cynically seeks to bolster a weak asylum claim by some claimed sur place activity with little or no perceptible visibility. As was made clear by the Court of Appeal in Danian v SSHD [2000] IAR 96 CA, bad faith in undertaking sur place activities does not exclude the protection of the 1951 Convention. What we have to balance, in order to decide if there is a real risk of those activities becoming known to the Syrian authorities, are the nature and visibility of those activities against the resources and expertise committed by the Syrian authorities to monitoring its expatriate community.
62. Dr George dealt with this in his written and oral evidence to which reference has already been made. It is not clear whether “*the 100,000 people employed by the multiple and overlapping intelligence agencies*” who he describes, comprise full-time intelligence officers only, or includes a host of informers. Common sense might suggest the latter. However be this as it may, the Syrian Government plainly commits extensive resources to intelligence/security. Overwhelmingly this is based in Syria where the immediate threat to the narrowly based regime arises. Of relevance in assessing the extent of the commitment of resources to the UK is Dr George’s oral evidence when, talking of overseas activities, he said that “*there are not infinite resources for surveillance, and it will be targeted on those most of interest.*”
63. One place where there is evidence of at least some level of surveillance is at demonstrations outside the Syrian Embassy. The enlargements of the photographs taken during the demonstration on 13 March 2008 unambiguously show the demonstrators being filmed on a small video camera. In one photograph, the camera appears to be hand held and in another it appears to be on a tripod. This photographic evidence is supported by Dr Mella and IA, who both claim that this is a regular occurrence at demonstrations. This incident is also referred to in reports from SHRC and UK Indymedia. We see no good reason to disbelieve this.

64. Mr O’Ryan and Mr Stanage have sought to draw parallels with the extensive camera surveillance of football crowds by British police with a view to identifying those responsible for violence. However there was no evidence before us as to the type of camera shown in the photographs and its capacity to produce clear images of individuals in a crowd on the far side of a street from the Embassy, as compared to the equipment used in surveillance at UK football grounds. We cannot speculate but we can apply common sense.
65. Dr George opined that if the use of the camera was a one-off it could have been taken for individual purposes. However if it was a regular event, then it suggested organised surveillance. His main point about this was that the Syrian authorities would not have to identify participants at large. They would only need to compare a photograph supplied by an applicant for emergency travel documents with the films of those who had attended demonstrations. Given the small number of returnees that would not be onerous. Moreover they could cross-check the photographs taken at demonstrations against reports from informers within the UK based organisations opposed to the Syrian government. There might be a relevant file on a specific individual already to which the photograph could be added. This in our view is the more relevant comparison with UK police surveillance of football hooligans, where there is extensive material on file on known offenders frequently leading to travel and other restrictions being imposed.
66. COI could not provide detailed information concerning the method and level of surveillance by the Syrian authorities at home or abroad. It was able however to report a source identifying the existence of an “external security” branch of the General Security Directorate. It also reported that intelligence staff are frequently stationed abroad in Embassies to co-ordinate terrorist activities. It also notes an observation from the Research Directorate of the Immigration and Refugee Board of Canada that:
- “Persons who have engaged abroad in political activities (eg demonstrations in front of Syrian Embassies against the Syrian Government) may indeed have to face prosecution upon return.”
67. Dr George had acknowledged in his oral evidence that he had no knowledge of any specific reprisals by the Syrian authorities against the families of UK demonstrators. Ms Pettersen asked us to note that not all the demonstrators outside the Syrian Embassy were Kurds and many had been resident in the UK for years but Mr Stanage suggested in his Reply that this would only make the task of identification easier.
68. Assessing this evidence in the round, we conclude that we cannot in the abstract be prescriptive about the type or level of activity in the UK that could come to the adverse attention of the Syrian authorities. Clearly the perception on the part of the authorities of anti-regime activity by an individual would create for him a real risk on return. Whether in any particular case information about an individual’s activities would come

to the attention of the Syrian authorities is a judgement that needs to be made after balancing the established facts in each case. There are between two and four demonstrations outside the Syrian Embassy each year, organised by various organisations, including non-Kurdish organisations. The numbers attending vary considerably, depending on the event that triggered the particular demonstration. The size of a crowd, the prominence of an individual in a crowd and what he does during the demonstration to attract attention may be relevant to assessing risk. The filming of the event from the Embassy could be for propaganda purposes. It could also be for the purpose of surveillance of the participants, which is an activity that would fit the profile of the regime. There is clear evidence that, irrespective of any filming from the Embassy, the demonstration organisers themselves, for their own political and propaganda purposes, film the events with a view to publicising them on news broadcasts and YouTube, and that people who attend such demonstrations for whatever reasons will be aware of it. SHRC for example produces frequent press releases and uses attendance at such demonstrations as evidence of opposition to the Syrian regime. The possibility of there being an existing security file on an individual would increase the risk of his being identified by the Syrian authorities at a demonstration.

69. Our assessment is this. A rare attendance at a crowded demonstration outside the Syrian Embassy by a person with no other political involvement or activity from which he might be identified (for example by a person who is simply seeking to bolster an otherwise weak asylum claim) would not in itself in our judgement constitute a real risk of coming to the adverse attention of the Syrian authorities. However regular attendances at such demonstrations over a lengthy period of time will increase the risk profile, as would membership of and active involvement in other overt political activities and/or organisations which might be penetrated by informers. The greater and more varied the activity, the greater the risk. However, the extent of the risk is fact sensitive in each case and a single activity of significant visibility could be sufficient.
70. Next we consider the risk on return arising from illegal exit itself. We accept that it is in principle an offence under Syrian law, though it carries only a maximum sentence of three months in the absence of aggravating factors. It is also clear from the objective evidence that Syria has an effective computer system which records legal exits and will make this information available at border control when any individual returns. We also accept that there is an effective border control system in place for returnees, to which Ms Laizer has referred in her report based on her own personal experience. It follows therefore that on return there is a distinction between those who left illegally, and those who left legally but return without travel documents, and the Syrian authorities will be able to tell in which category a person falls. Dr George said that the offence of illegal exit related to Syrian nationals and he did not know whether stateless, undocumented Kurds would come within the scope of this definition. However for our purposes and in the absence of any

better evidence, we shall presume that if stateless undocumented Kurds are accepted by the Syrian regime for return, they will be subject to this law.

71. It has not been suggested by any of the Representatives before us that there is in general any material difference in terms of the issues which we are considering between the “Ajanib” (some 120,000-150,000 Kurds who were stripped of their Syrian citizenship in the 1962 census) and the “Maktoumeen” (those Kurds who failed to take part in the 1962 census or were born of unions between Ajanib and Syrian citizens). However, although we are for present purposes concerned with undocumented Kurds, we must record for the sake of completeness that there is evidence at 5.1 in the January 2007 report of the Danish Refugee Council that some Kurds who are registered as foreigners in Syria can under special circumstances obtain a travel document, but this would not apply to the Maktoumeen. We should also record that a person returned from the UK would have at least emergency travel documents.
72. The same report at 5.3 quotes Brigadier Ahmed, the Chief of the Immigration and Passports Department as saying that those who leave illegally will be arrested on return and referred to the competent authority, who will decide what to do. However there is contrary evidence of how the system works in practice. Local lawyers are quoted as saying that re-entry is in general not a problem and illegal exit is not normally punished. Those who left illegally and re-enter with a laissez-passer will be interrogated in order to establish identity. Such detention is generally brief in the absence of adverse interest. Another lawyer said that the usual penalty for illegal exit is a fine.
73. We conclude on the evidence in the round that prison sentences are not in practice imposed for illegal exit unless there are aggravating factors, generally in terms of known or perceived anti-regime activity abroad, or in the context of trafficking. We would add that, in the unlikely event of a prison sentence being imposed, the objective evidence does not suggest that prison conditions have deteriorated since AR. We therefore conclude that there is no real risk that leaving Syria illegally would, in the absence of additional aggravating factors, result in ill-treatment on return amounting to persecution or a breach of fundamental human rights.
74. Having said that, illegal exit would normally mean that an application would have to be made to the Syrian Embassy by or on behalf of a returnee for appropriate travel documents. We accept Dr George’s evidence that enquiries will then be made about the individual that would include vetting by the Syrian security services. Indeed, in the Syrian context, it would be surprising if this were not so. Such vetting would be likely to include consideration of whether the applicant has a political profile. Thus the applicant would not be returning in a vacuum.
75. We therefore move on to the next issue before us of whether a stateless, undocumented Kurd who is a failed asylum seeker (who by definition

must have left Syria illegally) would be at real risk of persecutory ill-treatment on return to Syria on that specific profile. Obviously if the Syrian regime is not prepared to accept him back he will not be returnable, but Dr George was unaware of any specific example of a refusal on this basis. We have proceeded therefore on the basis that return will be permitted in these circumstances. Dr George identified the potential risk as arising from a perception by the Syrian authorities that the act of claiming asylum abroad is in itself a criticism of the regime, thus identifying an opponent, and this perception being reinforced by the other components of the profile.

76. Dr George provided both written and oral evidence on this subject. In paragraph 74 of his recent report of 5 November 2008, he described his conversation with a senior official at the Syrian Embassy who said that there was now some realisation on the part of the Syrian authorities that Syrians who claimed asylum might have done so for purely economic reasons, rather than through genuine opposition to the regime. This is a material development from what Dr George has said in his previous reports, even though Dr George has expressed personal reservations about the extent to which this might be applied in practice. However the comment by the official reflects the reality, accepted by Dr George in his oral evidence, that there is extensive economic migration from Syria where there is high unemployment. Many of those who work outside Syria send remittances home, which must be a valuable addition to national income. Moreover Dr George acknowledged that the regime did not seek to prevent citizens from leaving if they had a good reason to do so.
77. The specific problem for undocumented Kurds is that as they are not entitled to a passport, they cannot obtain the required exit visa. They would always therefore have to exit illegally. Dr George accepted in his oral evidence that the extent of risk to a pure economic migrant who left illegally was “*a grey area*”. He said that if pushed, he would maintain that there was still real risk on return as an asylum seeker per se, and this risk would be increased by the possibility that an individual security officer could be hostile to Kurds, or still held an adverse view of the motives of asylum seekers. However he properly acknowledged that this was a judgement for us to make on the evidence as a whole.
78. Dr George in his report of 5 November 2008 identified a number of arrests of named asylum seekers on return to Syria. He was of course questioned about this in his oral evidence and as stated above, said that he did not know how many of the people he had named were Kurds. Only one name was specifically identifiable as Kurdish. Moreover the sources upon which he drew had not indicated whether these named individuals had been involved in political activity.
79. The 2007 report of the Danish Refugee Council’s fact finding mission to Damascus was concerned with “Kurds, honour-killings and illegal departure”. Some of the passages summarised above in relation to illegal exit generally are relevant here also. It quotes the observation of a local

lawyer that “*having applied for asylum abroad does not in itself lead to detention or imprisonment on return to Syria.*” An Embassy was also quoted as saying that “*the Syrian authorities do not regard applying for asylum abroad as an expression of anti-government activity. The authorities have a certain understanding for the fact that Syrians may choose to go abroad due to unemployment etc.*” The thrust of this evidence was that those who did not have an anti-regime profile would not face problems on return but those who did could.

80. A report by the Immigration and Refugee Board of Canada of 1 May 2008 cites an official from SHRC as stating that “*anyone who applies for asylum and is known to the Syrian security services will be arrested prosecuted and detained, for distributing false information about Syria.*” This reflects the view of SHRC which is set out in more detail in its seventh report on human rights in Syria for the period to December 2007.

81. On the other hand, the Canadian report cites UNHCR as stating on 14 June 2008 as follows:

“According to information available to the UNHCR representation in Damascus, and confirmed by a number of European embassies in Syria, the mere unsuccessful application for asylum abroad will not lead per se to prosecution or other forms of persecution in Syria.

1. However, persons who left Syria may have to face prosecution because of illegal departure and this is in many cases most probable.

The Syrian authorities have indicated to the different embassies that mere illegal departure is not considered as a serious crime. This does not apply if there should be any person who is suspected on matters related to terrorism. The same is the case if there is any indication that the person was involved in trafficking activities.

2. Persons who have engaged abroad in political activities (e.g. demonstrations in front of Syrian embassies against the Syrian government) may indeed have to face prosecution upon return...

4. The procedure upon return of the unsuccessful asylum seekers as Syria is the following:

a. The person has to report to the Immigration Department in order to apply for new documentation.

b. The procedure also comprises a visit to the Political Security Branch by which the person will be interrogated regarding their earlier motives and reasons for the illegal departure from Syria. Should this arise, it will be very difficult for the returnee to keep the information on a potential asylum application abroad [sic] confidential. Inquiries on the reasons for an asylum application abroad may follow.

c. Should there be no problem then the person will obtain in about three months new identity documents.

d. Should the authorities come to the conclusion that the person may be considered as an opponent against the regime, the consequences may be very serious.”

82. The letter from Amnesty International of 4 October 2006, referred to by the Court of Appeal when sending SA’s appeal back to us, offered general comments on the position of Kurds in Syria, (which are expressed in more detail and more recently by Dr George) and also the following opinion on risk on return.

“Syrians seeking political asylum abroad are perceived to be sympathetic to movements opposed to the Syrian authorities. The act of leaving the country to seek asylum abroad is imputed to be a manifestation of opposition to the Syrian government. According to Amnesty International's information, asylum applicants who have left Syria in an illegal manner are also at risk of arrest, detention and torture upon their return. This applies to the following three categories of returnee.

- (a) Those who departed Syria without official authorisation. Government employees are required to obtain permission to leave the country. Men who are leaving the country have to show that they have completed military service or if not, that they have permission to leave.
- (b) Those who have used/are using false documentation. Article 428 of the Syrian penal code defines this as documentation "which carries real or false stamps or seals of the Syrian or foreign country for illegal purposes.
- (c) Those who are not in possession of a valid Syrian passport.

In instances in which a request for asylum has been refused and the asylum seeker is expelled, he/she may risk imprisonment in Syria ranging from one month to two years if he/she is found to have used false documents or a false identity pursuant to article 452 of the Syrian penal code. In accordance with article 427, a person is punishable by seven years imprisonment with hard labour (though Amnesty International has never heard of any case in which hard labour has been enforced if the seal of the Syrian authorities has been falsified. Falsifying seals of public authorities is punishable by one to three years imprisonment according to article 428 of the Syrian penal code.

Syrian Kurds returning to Syria in the manner described above would face a heightened risk on return due to institutionalised discrimination against Kurds in Syria together with the routine practice of torture and cruel, inhuman and degrading treatment in Syrian detention centres.

Amnesty International can confirm that asylum applicants who have applied for a new passport at the Syrian Embassy for any reason will have been brought to the attention of the Syrian authorities. The fact that they are outside Syria would, by itself, evoke the authorities' interest in them. The Syrian government is known to employ people to carry out surveillance on Syrians living abroad.

I hope this information is understood to be a strong statement that Amnesty International opposes the enforced return of Syrian Kurds of the above profiles to Syria."

Amnesty International also provided a further letter to the Greater Manchester Immigration Aid Unit on 25 January 2008 offering essentially the same opinions.

83. The British Government's position is set out in the OGN on Syria dated 16 June 2007 in the following terms:

"There is no evidence to suggest that individuals who have been absent from Syria for any period of time or who are returning failed asylum seekers are liable for adverse treatment by the authorities solely for those reasons. Moreover there is no evidence that an application for asylum abroad, should the authorities become aware that one has been made, will in itself put a Syrian national at risk of state-sponsored ill-treatment amounting to

persecution. The grant of asylum or humanitarian protection in such cases is therefore not likely to be appropriate.”

84. We have set out above the main objective evidence before us which describes the range of opinions offered. There is more that is essentially older or repetitive of opinions expressed elsewhere (including the 2005 report of Ms Laizer) and we have taken it all into account. What then do we make of it?
85. We would make some preliminary observations. First, we must make clear that although we have identified evidence that the greatest focus of suppression by the Syrian regime is targeted on Islamists, we do not mean to imply by this that Kurdish, or human rights or democracy activists would not also be at real risk on return. Second, it is important to identify carefully what each source is specifically referring to. Some sources lump failed asylum seekers together to draw broad general conclusions and do not differentiate between those who have an anti-regime profile and those who do not. Third, we must bear in mind that there are not large numbers of forcible returnees. The Home Office statistics to Q1/2008 showed between 5 and 10 returnees from the UK in each quarter since Q1/2007 but removals, voluntary departures and assisted returns have been lumped together without any means of distinction. Nevertheless there appear to be returns from other countries also and the number is not so insignificant as to render unreliable the lack of clear evidence of regular or routine targeting of failed asylum seekers as such. Fourth, the date of source material may be significant in terms of the weight to be attached to it. Events in Syria have in some respects moved on since 2005/6.
86. Thus since 2006 some sources identify recognition by the Syrian authorities that failed asylum seekers can be economic migrants rather than opponents of the regime. This is not surprising in our judgement, given the extent of economic migration from Syria and the national significance of remittances sent home by economic migrants as identified by Dr George in his oral evidence. In his report of 5 November 2008 he confirmed that the available information on the attitude of the Syrian authorities towards asylum seekers is clearly somewhat contradictory. Indeed that is obvious from the evidence which we have cited above. Dr George offered his judgement of the position at the time of his report that it would be imprudent to assert categorically that the claiming of asylum abroad in and of itself would never cause adverse attention from the Syrian authorities. This is because there had been several specific cases where individuals appear to have been targeted solely for having applied for asylum, albeit that it does not happen routinely or even often. In his report he summarised his conclusion in terms that *"in my view, especially bearing in mind the arbitrary manner in which the Syrian security services conduct themselves, unsuccessful asylum claimant do run the risk, at least, of attracting adverse official attention on their return to Syria."* He then added that leaving illegally and being a Kurd would be additional risks. In his oral evidence he explained it slightly differently. He said that if the failed

asylum seeker was in reality an economic migrant only, the risk on return would be a grey area as there was greater understanding of economic migrants on the part of the security forces. Again he added that being a Kurd and having left illegally would be additional risks.

87. In broad terms the objective evidence reveals disagreement with Dr George's opinion from two directions. First, there are sources, such as Amnesty International, SHRC and Ms Laizer (though there are others also) who consider that all failed asylum seekers are at risk as such. We do not accept this view. There is no doubt that there are examples of some returnees being severely ill-treated but a reading of the evidence as a whole suggests that overwhelmingly they are perceived to be anti-regime activists with specific profiles as such, rather than simply failed asylum seekers. We consider that the sources maintaining the above viewpoint do not address or properly factor into their assessment the evidence of a more complex and evolving situation.
88. A contrary view is expressed by the various sources cited in the Danish Refugee Council report of January 2007. A local lawyer stated that having applied for asylum abroad does not in itself lead to detention or imprisonment on return to Syria. An Embassy indicated that the Syrian authorities do not regard applying for asylum abroad as an expression of anti-government activity but have a certain understanding for the fact that Syrians may choose to go abroad due to unemployment. Of particular weight is the statement from UNHCR of 14 June 2008 that according to information available to the UNHCR representation in Damascus and confirmed by a number of European embassies in Syria, the mere unsuccessful application for asylum abroad will not lead per se to prosecution or other forms of persecution in Syria. This is also the view expressed in the UK Operational Guidance Note. There is a fair degree of commonality between these views and those expressed by Dr George who now regards this as a grey area, having previously shared the view expressed by Ms Laizer.
89. We prefer the recent view expressed by UNCHR and corroborated by the Danish report sources. We consider that the picture portrayed by UNHCR is a logical reflection of the extent of economic migration from Syria, and the reality that an asylum claim may for many be a way into work overseas. We do not believe that UNHCR would make such a statement without there being adequate evidence on the ground for doing so. We conclude therefore that a failed asylum seeker will not be perceived as being an opponent of the regime simply by reason of having claimed asylum abroad and will not thereby be at real risk of persecutory ill-treatment on return to Syria.
90. We then have to consider whether in addition to being failed asylum seeker, a person who is also a stateless, undocumented Kurd who left Syria illegally would be at real risk on return. We have set out above the thrust of the objective evidence concerning illegal exit and our conclusions on it. There are relatively minor penalties in law for illegal exit which do not in practice appear to be enforced, beyond perhaps the

possibility of a fine. Indeed the very fact that a stateless, undocumented Kurd cannot legally get an exit visa may even diminish the seriousness of the offence. The real significance of illegal exit is that a failed asylum seeker will only be returned by the Respondent if there are some travel documents for him, and this will, for a stateless undocumented Kurd, require an approach to be made to the Syrian Embassy at the least for emergency travel documents. The objective evidence suggests that before issuing such papers in the UK a reference will be made to the security service and on return the returnee will be questioned by them not least to confirm his identity. This process of checking may take several days, though for a person with a perceived anti-regime profile it may extend considerably longer. We accept this evidence, which seems entirely plausible in a police state.

91. It is at this stage that a Kurdish returnee's profile will be examined and if there is a perceived anti-regime profile, this will be identified and then real risk will arise on return. Even if there is no perceived anti-regime profile, Dr George maintains that if a particular security officer has had a bad experience of Kurds there could still be a problem, given the arbitrary powers which they have. We have considered this opinion very carefully but do not consider that the risk comprised in this amounts to more than a mere possibility. It does not in our judgement constitute real risk. Thus we conclude that a stateless, undocumented, Kurd who left Syria illegally and is a failed asylum seeker but is not perceived by the Syrian authorities as having an anti-regime profile, will not be at real risk of persecutory ill-treatment or a material breach of his human rights on return.

OUR CONCLUSIONS ON THE SPECIFIC APPEALS

92. Having established our general conclusions on the country guidance issues we can now deal with the specific appeals before us.
93. SA was born on 3 December 1989 and came to the UK on 22 March 2005, when he was 15. The credibility of his specific claim was rejected and that rejection has not been challenged before us. His appeal is therefore based upon his being a stateless, undocumented Kurd who left Syria illegally and is a failed asylum seeker. He has no real or perceived anti-regime profile. In line with our general findings we concluded that he will not be at real risk on return to Syria on this basis and we dismiss his appeal on all grounds.
94. IA was born on 1 November 1977 and came to the UK on 11 February 2004. His claim of fleeing from Syria, having been tortured by the authorities to make him spy on the activities of other Kurds, was rejected as lacking credibility. However he claims to be at risk not just as a stateless, undocumented Kurd who left Syria illegally and is a failed asylum seeker, but also as someone who as a result of his activities in the UK will be perceived as anti-regime. His activities have been described in the course of his oral evidence. He is not an officer or member of any specific organisation but has participated in nine demonstrations

between 2005 and 2008 in favour of Kurdish rights outside the Syrian Embassy. He was not an organiser but did on occasion carry a Kurdish flag or a placard. On three such occasions he personally saw the demonstrations being filmed from within the Embassy. There are clear photographs of this from one demonstration. Ms Pettersen did not seek to challenge the credibility of his account and indeed there is ample corroborative evidence of it. We accept his evidence of being committed to Kurdish causes but that his activities were constrained by his being housed in Newcastle by NASS and that if he were in London he would do more. We consider that the views expressed by him in oral evidence and the consistency of his activities throughout his time in the UK, show a genuine commitment to the Kurdish cause and this would provide the 1951 Convention reason of political opinion.

95. The issue therefore is whether there is a real risk that the Syrian authorities would be aware of his activities in the UK. As he is not a member of any organisation and does not attend meetings of Kurdish groups we consider there is no real risk that the authorities would have identified him through informers in those organisations. However the question arises of whether his attendance at nine demonstrations over 3 years outside the Syrian Embassy would create in themselves the real risk of his identification as being anti-regime. We have looked at the evidence of his participation. Whilst he is identifiable from the angle of the photographs taken by his friend, most of these were taken with IA's back to the Embassy, or as part of a crowd. There is therefore some doubt as to whether the Embassy would have any clear pictures of him that could be used to identify him when making an application for emergency travel documents. This is in our view a marginal case.
96. However we have come down in IA's favour because of the low standard of proof and the sheer number of demonstrations he has attended over a sustained period of time. Some of those demonstrations were quite small and we accept that arising from them there is a real risk that identifiable photographs were taken that could be matched to him when making an application for emergency travel documents. Thus he could be identified as participating in anti-regime activities. Accordingly we allow his appeal on asylum grounds.

DECISION

97. The Immigration Judge in each case made a material error of law. The following decision is accordingly substituted:
1. SA's appeal is dismissed on asylum, humanitarian protection and human rights grounds.
 2. IA's appeal is allowed on asylum grounds and under Article 3.

Signed

Dated 8 December 2008

Senior Immigration Judge Batiste

APPENDIX

2008/11/05 Report of Dr George
2008/10/30 HRW Report
2008/10/30 Freedom House Release
2008/10/17 Reporters Sans Frontieres Release
2008/10 Amnesty International Report
2008/08/08 HRW Release
2008/06/19 USCRI Report
2008/06/12 HRW Release
2008/06/10 Supplemental Report of Dr George
2008/05/28 Amnesty International Report
2008/05/06 Freedom House Report
2008/05/01 IRB of Canada Report
2008/05 Indymedia Photographs
2008/03/25 UK FCO Report
2008/03/13 Indymedia - 21 pages of photographs at demonstration
2008/03/11 US State Department Report for 2007
2008/03/02 SHRC Release
2008/03 Indymedia Photographs
2008/02/05 HRW Release
2008/01/31 HRW Report
2008/01/25 Amnesty International Letter
2008 UK Asylum Statistics Q1
2007/12 SHRC Report
2007/10 HRW Report
2007/06/16 UK Home Office OGN
2007/05/23 Amnesty International Report
2007/05/09 Freedom House Report
2007/01 Danish Refugee Council Report
2007 Photographs of Demonstrations
2006/11/24 SHRC Release
2006/11/21 Amnesty International Further Information
2006/11/15 Amnesty International Release
2006/11/07 Report by Dr George
2006/10/17 Amnesty International Further Information
2006/10/12 UK FCO Report
2006/10/07 Letter from Dr Mella of Western Kurdistan Association
2006/10/04 Amnesty International Letter
2006/09/06 Freedom House Report
2006/07/20 Report of Dr George
2006/07/18 Society for Threatened People Release
2006/07/18 Amnesty International - Sentence of Moslem Brotherhood returnee from US
2006/07/14 Amnesty International Update
2006/07/13 SHRC Release
2006/06/26 Amnesty International - Sentence of Moslem Brotherhood returnee from UK
2006/06/15 European Parliament Resolution
2006/06/14 USCRI Survey
2006/06.07 SHRC Report
2006/05/23 Amnesty International Report
2006/05/23 Amnesty International Report
2006/05/20 SHRC Release
2006/04/24 IRIN Report

2006/04/05 Society for Threatened People Press Release
 2006/04/04 Amnesty International Release
 2006/03/10 Kurdish Community Statement in Britain
 2006/03/08 US State Department Report on Syria for 2005
 2006/03/07 UNHCR Statement
 2006/02/14 Refugees International (US) Report
 2006/02/14 Amnesty International Update
 2006 SHRC Report
 2006 Photographs of Demonstration
 2006 HRW Report
 2005/12/09 SHRC Press Release
 2005/11/28 Amnesty International Release
 2005/11/20 IRIN Report
 2005/09/30 BIA Report
 2005/09/19 Amnesty International Report
 2005/08/16 SHRC Release
 2005/08/05 SHRC Release
 2005/07/01 Report of Ms Laizer
 2005/05/13 Amnesty International Report
 2005 Foreign Dispatches Report
 2005 Amnesty International Report
 2004 Bakutoday Report
 2004 Amnesty International Report 2004
 2003/09/16 IRBC Update
 2003 Kurdish Media Report
 2000 Kurdish Media Report

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

Heard at Bradford
On 10-11 November 2008

Before

Senior Immigration Judge Batiste
Senior Immigration Judge Taylor

Between

SA
IA

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

FUNDING DETERMINATION

The Tribunal orders that the Appellants' costs in respect of the application for reconsideration, the preparation for reconsideration and the reconsideration are to be paid out of the relevant fund, as defined in Rule 33 of the Asylum and Immigration Tribunal (Procedure) Rules 2005

Signed

Dated 8 December 2008

Senior Immigration Judge Batiste