

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO: 71938/2000**

**AT AUCKLAND**

**Before:** A R Mackey (Chairperson)  
D J Plunkett (Member)

**Counsel for the Appellant:** M Bell

**Date of Hearing:** 15 May 2000

**Date of Decision:** 31 May 2000

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**DECISION**

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[1] This matter comes before the Authority as a re-hearing of the appellant's appeal directed by Mr Justice N C Anderson in *K v the Refugee Status Appeals Authority and Anor* (High Court Auckland M1586 – SW99 (22 February 2000)). Anderson J, quashed the decision of a differently constituted panel of this Authority, which was delivered as *Refugee Appeal No 71148/98* (12 August 1999).

[2] The Authority had available to it all of the information and evidence that was on the file presented to the first Authority, and the arguments and submissions of both the plaintiff and the Crown presented in the Judicial Review, together with the judgment of Anderson J.

**INTRODUCTION**

[3] The appellant is a 29 year old single man from the town of L in Syria. His personal details and background are set out in *Refugee Appeal No 71148/98*. The essential elements of his claim before this Authority are those set out on pages 8 and 9 (paragraph 15(a) to (h)) in the decision of Anderson J. Accordingly, they are not repeated in this decision.

[4] This Authority traversed all of the appellant's claim in detail over a full day of hearing. The only new evidence that the appellant presented was that, after having no direct contact at all with his family since he left Syria, he had, in the past few weeks, contacted his mother and had a telephone conversation with her. He had not ascertained any further information from his mother as to whether the authorities were continuing to look for him in Syria, as she had been distressed during the telephone call and they had confined their conversation simply to family matters.

### **THE APPELLANT'S CASE**

[5] As stated, the essential elements of the appellant's case are set out in the judgment of Anderson J at paragraph 15(a) to (h).

[6] When the appellant arrived in New Zealand on 17 January 1998, he claimed refugee status at the airport. In the application form and short statement he completed at that time, he stated that he had insulted an adherent of the Morshidi sect and that, as a result of this, he had been threatened with death. To escape the threat he had applied for an exit visa from the immigration office in L. He presented his passport to have the exit visa entered in it. The exit visa was refused and the appellant then directed "verbal slander to the immigration office". As a result of this, steps were taken to arrest him. He ran off however and, the following day together with a colleague, B, departed L and soon after left Syria illegally at the Turkish border. Before leaving, his parents had told him that the Intelligence Service had been at their home looking for him.

[7] His claim was expanded upon in a statement he presented to the Refugee Status Branch of the New Zealand Immigration Service (RSB). He presented a statement to the RSB on 10 February 1998 in which he set out the following significant details:

- (a) When he was approximately 16-18 years of age, members of the ruling Ba'th Party came to his school and tried to recruit students. Because he had been smiling during the meeting, he was detained by the secret police for failing to show respect. He was taken to a detention centre where he was beaten severely and forced into a tyre so his arms and legs could not move. He was tormented for three or four days and eventually, was able to be released when his father paid a bribe, and he undertook to join the Ba'th

Party.

- (b) In 1987, he applied for post-tertiary training in statistics. However, when he went to make his application, he was apprehended and taken to a detention centre where he was held for five months without formal charge. During this time, he was again accused of not joining the Ba'th Party. It was also noted by the authorities that they knew that one of his elder brothers, M, had been taken by the authorities in 1979/ 1980 because of M's involvement in the Muslim Brotherhood Movement.

During the five month detention, he was again put inside a tyre, beaten on many occasions and burnt with cigarettes and electric wires. Ultimately, he was released when he gave an undertaking to regularly attend Ba'th Party meetings.

- (c) He then completed his studies in statistics, remaining there for two years. In 1990, he then undertook his military service. He was drafted into the tank unit as a cook. After preliminary training, he was sent to Lebanon to fight with the Syrian forces. After approximately one month in Lebanon, he deserted because of his abhorrence of war and the slaughter that he saw going on. He returned to his home briefly and then went into hiding at the home of a friend. However, approximately one month later, he was caught by the Syria army. He was then beaten and tortured and sentenced by the military authorities to nine months' imprisonment at the infamous Tadmor prison. At Tadmor, he stated that the prison conditions were terrible, that he was beaten regularly and that he had to suffer awful living conditions. He was released when he had served his sentence and returned to the army to finish his military service.
- (d) From 1993 until he departed in late 1997, he lived in his home town of L and had to report continually report to the intelligence service twice a week, because of his past background. He eventually found work in a supermarket between 1995 and 1996. However, because of the constant difficulties with the secret police visiting the shop and demanding free food and intimidating him, he ultimately had to leave. During this time he was detained for short periods of no more than one day when again he was harassed and beaten.
- (e) In 1996, he got another job as a porter in an hotel. However, he was still

unable to escape troubles with the secret police who harassed him in relation to the manner in which he registered people in the hotel.

- (f) In May/ June 1997, a man came into the hotel and asked for a room. After a dispute over the price, the appellant told the man that he could not have a room at a reduced price and that he had to leave the hotel. As the man left, he was told that "his family would contact the appellant and kill him to avenge the man's honour". At that time, the appellant realised the man was a member of the Morshidi religious sect, known for their revenge killings when threats were made to their honour.
- (g) The appellant then went into hiding with a friend in his home town of L and tried to obtain a passport. On the second application in October 1997, after payment of a bribe, he was able to obtain a passport. Soon after that, he endeavoured to obtain an exit visa from the Syrian Immigration and Passport Department. However, as stated, his application for the exit visa was rejected. When officials tried to detain him, he was able to run away and then, within a few days, departed illegally through Turkey, using the services of a people smuggler. He went to Scotland on an Italian passport and then, using the services of another people smuggler and the use of a false Dutch passport, made his way to New Zealand a few weeks later.

[8] Also at the RSB interview, the appellant presented a medical report from Dr D de Castro, dated 8 April 1998. This report set out quite a lengthy personal background of the appellant before giving the details of the medical examination. The medical examination report sets out the doctor's recording of a number of past injuries in the form of scars or lacerations to the appellant. Also, it recorded that the appellant had rhinorrhoea and a cough as a result of being held for long periods in damp and dirty conditions. Additionally, a record of his having lost teeth was noted. The doctor found that the various scars, swellings and condition of the appellant were consistent with "...heavy blows, punches, burns and a blow from a whip". The report records a considerable amount of description and commentary given by the appellant to the doctor.

[9] At the RSB interview, after considerable questioning, the appellant expanded his story. The officer conducting the assessment considered that the appellant had embellished his claims in certain areas but considered that the benefit of the doubt could be given to the core elements of his claim, which are basically those set out above by the Authority.

[10] The RSB officer, however, did not consider that the appellant had a real chance of being persecuted if he returned to Syria and thus his application was not well-founded. The RSB officer quoted extensively from the United States Department of State – *Country Reports on Human Rights Practices 1998 – Syria* (February 1999) and, in particular, noted that that report stated that Syrian citizens had to have government permission to travel abroad and that:

“Some have been denied such permission on political grounds, although government officials deny this practice occurs. The authorities may prosecute any person found attempting to emigrate or travel abroad without official permission, or who is suspected of having visited Israel. There is no evidence that the government persecuted upon their return those who applied for but were denied asylum abroad.”

[11] The officer then went on to conclude that it was not the Syrian authorities who were trying to locate the appellant, laying considerable stress on the appellant’s incident with the member of the Morshidi religious sect. He then went on to state that the country information suggested that illegal departure or asylum seeking were not normally the subject of persecutory treatment. The officer did accept that the appellant’s past persecution and severe treatment in prison was consistent with country information but was a result of prosecution by the Syrian authorities which was not discriminatory.

[12] The appellant then appealed to this Authority and, as stated, was declined on credibility grounds. That decision was judicially reviewed before the High Court. In the decision of Anderson J, the first decision of the Authority was found to be unsafe and His Honour stated, at paragraph 40:

“I find it impossible to accept that the Authority had no credible evidence which could justify its holding that the plaintiff may have had a well-founded fear of persecution if he were to return to Syria. It took a plainly wrong view about the physical character of the “telegram” and its view significantly coloured its evaluation of the plaintiff’s evidence, with the result that it failed rationally to examine whether on the basis of probability there was sufficient in the principal grounds advanced by the plaintiff to bring him within the terms of the Convention.”

[13] The “telegram” referred to was received by the appellant, apparently before his RSB decision, and was stated by him to have come into his hands, together with a letter from his sister, through the medium of a brother of a New Zealand resident Syrian. That brother, a permanent resident of Austria, had visited Damascus and carried the letter and a copy of the urgent telegram back to Austria, when handed them by an aunt of the appellant. They had then been sent on to New Zealand where the sender’s brother in New Zealand was quickly able to

locate the appellant through contacts at a mosque in Auckland.

[14] The telegram is effectively a warrant to arrest the appellant because of his illegal departure and also notes that all his family members were absolutely barred from leaving the country. It is directed to all the land, sea and air entry boundaries in the Syrian Arab Republic. Full details are set out in the decision of Anderson J.

[15] The first Authority had rejected the credibility of that document and had written, in its decision, that it was a “hand-written” document. As noted by His Honour in his decision, and indeed it is obvious by inspection of the document, that it is, in fact, a printed form into which details relating to the appellant have been hand-written in Arabic.

[16] In the appellant's evidence given to this Authority, he was closely questioned on all matters in his evidence particularly where there was a potential for problems with credibility or embellishment.

[17] In addition to revisiting the medical evidence presented, the Authority also researched and noted the latest country information available on Syria.

### **Country Information**

[18] The country information searched by the Authority included:

- (a) United States Department of State *Country Reports on Human Rights Practices Syria - 1999* (February 2000) (DOS report).
- (b) An Amnesty International report - October 1996 - “*Refugees from Syria*”
- (c) All country information contained in the UNHCR “*REFWORLD*” - 8<sup>th</sup> edition (July 1999) - Syria.

[19] Relevant comments in the DOS report (*supra*) states:

#### “SYRIA

Despite the existence of some institutions of democratic government, the political system places virtually absolute authority in the hands of President Hafiz Al-Asad. Al-Asad's election to a fifth 7-year term was confirmed by a March national referendum, in which he received 99.9 percent of the vote. Key decisions regarding foreign policy, national security, internal politics, and the economy are made by President Asad with counsel from his ministers, high-ranking members of the ruling Ba'th Party, and a relatively small circle of security advisers. Although

the Parliament is elected every 4 years, the Ba'th Party is ensured a majority. The Parliament does not initiate laws, but only passes judgment on and sometimes modifies those proposed by the executive branch. The judiciary is constitutionally independent, but this is not the case in the exceptional (state of emergency) security courts, which are subject to political influence. The regular courts display independence, although political connections and bribery can influence verdicts. In general all three branches of government are influenced to varying degrees by leaders of the Ba'th Party, whose primacy in state institutions is mandated by the Constitution.

The powerful role of the security services in Government, which extends beyond strictly security matters, stems in part from the state of emergency that has been in place almost continuously since 1963. The Government justifies martial law because of the state of war with Israel and past threats from terrorist groups. Military Intelligence and Air Force Intelligence are military agencies, while General Security, State Security, and Political Security come under the purview of the Ministry of Interior. The branches of the security services operate independently of each other and outside the legal system. Their members commit serious human rights abuses. ...

The human rights situation remained poor, and the Government continues to restrict or deny fundamental rights, although there was continued marginal improvement in a few areas. The Ba'th Party dominates the political system, as provided for by the Constitution, and citizens do not have the right to change their government. The Government uses its vast powers so effectively that there is no organized political opposition, and there have been very few anti-regime manifestations. Serious abuses include reports of extrajudicial killings; the widespread use of torture in detention; poor prison conditions; arbitrary arrest and detention; prolonged detention without trial; fundamentally unfair trials in the security courts; an inefficient judiciary that suffers from corruption and, at times, political influence; infringement on citizens' privacy rights; denial of freedom of speech and of the press, despite a slight loosening of censorship restrictions; denial of freedom of assembly and association; some limits on freedom of religion; and limits on freedom of movement. ...

#### RESPECT FOR HUMAN RIGHTS, Section 1 ...

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment  
Despite the existence of constitutional prohibitions and several Penal Code penalties for abusers, there was credible evidence that security forces continued to use torture. Former prisoners and detainees report that torture methods include electrical shocks; pulling out fingernails; the insertion of objects into the rectum; beatings, sometimes while the victim is suspended from the ceiling; hyperextension of the spine; and the use of a chair that bends backwards to asphyxiate the victim or fracture the spine. Although torture may occur in prisons, torture is most likely while detainees are being held at one of the many detention centers run by the various security services throughout the country, and particularly while the authorities are trying to extract a confession or information about an alleged crime or alleged accomplices.

The Government continues to deny the use of torture and claims that it would prosecute anyone believed guilty of using excessive force or physical abuse. ...

Prison conditions vary but generally are poor and do not meet minimum international standards for health and sanitation. Facilities for political or national security prisoners generally are worse than those for common criminals. The prison in Palmyra, where many political and national security prisoners have been kept, is widely considered to have the worst conditions. At some prisons, authorities allow visitation rights, but in other cases, security officials demand bribes from family members who wish to visit incarcerated relatives. Overcrowding and the denial of sufficient nourishment occurs at several prisons. Some former detainees have reported that the Government prohibits reading materials, even the

Koran, for political prisoners.

The Government does not permit independent monitoring of prison or detention center conditions.

d. Arbitrary Arrest, Detention, or Exile

Arbitrary arrest and detention are problems. The Emergency Law, which authorizes the Government to conduct preventive arrests, overrides Penal Code provisions against arbitrary arrest and detention, including the need to obtain warrants. Officials contend that the Emergency Law is applied only in narrowly defined cases. Nonetheless, in cases involving political or national security offenses, arrests generally are carried out in secret, and suspects may be detained incommunicado for prolonged periods without charge or trial and are denied the right to a judicial determination for the pre-trial detention. Some of these practices are prohibited by the state of emergency, but the authorities are not held to these strictures. The Government apparently continues to detain relatives of detainees or of fugitives in order to obtain confessions or the fugitive's surrender. ...

Detainees have no legal redress for false arrest. Security forces often do not provide detainees' families with information on their welfare or location while in detention. Consequently, many persons who have disappeared in past years are believed to be in long-term detention without charge or possibly to have died in detention. It appears that the number of such disappearances has declined in recent years, although this circumstance may be due to the Government's success in deterring opposition political activity rather than a loosening of the criteria for detention. Many detainees brought to trial have been held incommunicado for years, and their trials often have been unfair. ...

A prisoner amnesty in July is believed to have benefited some political prisoners and detainees. While the number of those released is unknown, AI identified six political prisoners who were released, and there have been unconfirmed reports that the number may be as high as 600. According to AI, hundreds of persons held for political reasons also were released in 1998 ... The last major releases of political prisoners and detainees took place in late 1995, with approximately 2,200 to 3,000 persons believed to have been released. Some former prisoners reported being required to sign loyalty oaths or admissions of guilt as a condition of their release. ...

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Although laws provide for freedom from arbitrary interference, the Emergency Law authorizes the security services to enter homes and conduct searches with warrants if security matters, very broadly defined, are involved. The security services selectively monitor telephone conversations and facsimile transmissions. The Government opens mail destined for both citizens and foreign residents. ...”

[20] In Section 2 “Respect for Civil Liberties”, the report states:

“a. Freedom of Speech and Press

The Constitution provides citizens with the right to express opinions freely in speech and in writing; however, the Government restricts these rights significantly in practice. The Government strictly controls dissemination of information and permits no written or individual criticism of the President, the President's family, the Ba'th Party, the military, or the legitimacy of the regime. The Government also does not permit sectarian issues to be raised. Detention and beatings for individual expressions of opinion that violate these unwritten rules occur frequently. ...

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and



### Repatriation

The Government limits freedom of movement. The Government restricts travel near the Golan Heights. Travel to Israel is illegal. On November 13, the Government eased many of its travel restrictions, which made it easier for most citizens to travel abroad. Exit visas generally no longer are required for women, men over 50 years old, and Syrian expatriates. In the past, individuals have been denied permission to travel abroad on political grounds, although government officials deny that this practice occurs. The authorities may prosecute any person found attempting to emigrate or travel abroad illegally, or who is suspected of having visited Israel. ...”

[21] The Amnesty International report “*Refugees from Syria*”, October 1996, states in part I - “Background” :

#### “A. General

The current President of Syria, General Hafez al-Assad, came to power in a bloodless military coup on 16 November 1970. He had previously served as Minister of Defence under the previous President, Nourreddin Attassi. The military coup, called the “corrective movement”, marked the establishment of the Regional Command of the Arab Socialist Ba’th Party as the party in power in Syria.

Syria gained its independence from France in 1946. The immediate post-independence period was characterised by a series of coups and counter coups which lasted until 1958. In 1958 the Syrian leaders contracted a unity agreement with Egypt, and the two countries formed the United Arab Republic (UAR) under Gamal Abd al-Nasser's presidency. The UAR collapsed in 1961 following a military coup staged by Syrian officers in Damascus on 28 September 1961.

On 8 March 1963, the Ba’th Arab Socialist Party assumed power in Syria. The National Revolutionary Command Council was created and led by Salahadin al-Bitar who became Prime Minister under the then President of Syria, Amin al-Hafez. At that time the State of Emergency was established.

On 23 February 1966, the left wing of the Arab Socialist Ba’th Party, also known as the Neo-Ba’thists overthrew the government of Amin al-Hafez. Nourreddin Attassi assumed the Presidency, until the coup of November 1970, which brought Hafez al-Assad to power.

In 1972, Syrian President Hafez al-Assad set up the Nationalist Progressive Front (NPF), an alliance of pro-government parties, led by the Arab Socialist Ba’th Party. Six other Syrian parties participate in the NPF: the two wings of the Syrian Communist Party, the Khalid Bakdash wing and the Yussef Faisal wing; the Arab Socialist Union Party, led by Safwan Qudsi; the Arab Socialist Movement; the Socialist Unionist Democratic Party; and the Arab Democratic Union Party. None of these six parties are allowed to carry out political activities in the army or with students, workers, women, or youth. Members of the military may only belong to the ruling Ba’th Party; those who belong to other parties are subject to indefinite prison sentences and those who create other parties in the military are punishable by a minimum sentence of 10 years' hard labour.

President Hafez al-Assad is currently in his fourth seven-year Presidential term, which expires in March 1999. There is a 250-seat Parliament or People's Council; its members serve four-year terms. Although the Parliament has constitutional power to initiate laws, it does not do so. Rather it generally approves or revises legislation proposed by the executive. The President and his senior aides make all basic decisions on political and economic life in Syria. ...

On the economic front, Syria has undertaken a certain liberalization of the

economy which, little by little has relied on foreign capital. Laws have been amended to facilitate changes towards liberalization and a market economy. These changes, however, have not yet led to political liberalisation or signs of moves towards pluralism and Syria remains virtually a one party state, and is still ruled by the state of emergency which the regime declared in 1963.”

[22] Under part II of the report, “A. General Information”, it states:

“Apart from participation in the National Progressive Front, opposition political activity is not permitted in Syria. Opposition parties are not authorized. Members of opposition parties are frequently subjected to persecution on charges including:

- "opposing the goals of the Revolution";
- "publishing false information with the aim of causing disorder and shaking the confidence of the masses in the aims of the Revolution";
- "membership in a secret organization created to change the economic or social structure of the state or the fundamental fabric of society".

In this atmosphere of repression, groups carry out their activities clandestinely or abroad and scant information pierces the wall of silence which surrounds opposition groups. In their struggle for existence or survival, as members of the opposition, there are periods in which the groups disappear, sometimes reappearing, even years later, in different forms. The disappearance of a group, however, does not mean that it no longer exists and does not mean that its members are not persecuted.

In order to obtain information about the names and numbers of such opposition groups, one can rely only on their publications and communiqués which sometimes bear names of their most well-known members who have been arrested. Sometimes, names of new groups appear, as a result of alliances created around a well-defined political programme. Divisions and dissidence within the groups also create additional groups bearing the same or different names.”

[23] Also in Part II “Opposition Forces”, under paragraph B. 3., it states, in relation to the Syrian Muslim Brotherhood:

“The Syrian Muslim Brotherhood is an illegal organization that operates clandestinely within Syria. Membership of the Muslim Brotherhood remains a crime punishable by death in Syria. Since no “official” membership records exist a distinction between supporters and members can not be made. Several of its leaders are living in exile. It appears that in several cases membership documents have been produced by these representatives in exile. However, we can no expect that every name of those who have been active for the Muslim Brothers in Syria is known to those in exile.”

[24] Also under part II “Opposition Forces”, at paragraph 4, there is a brief report on the “Nasserist Parties”. These are stated to be pan-Arab parties calling for unification of one Arab nation as pursued by the late Egyptian president. This Party split in 1974 and a dissident faction of the party has been unauthorised. The report states that many of its members have been detained and tortured.

[25] It is noted at this point, that the appellant's brother M, was stated to be a member of the Nasserist Party, and the appellant himself, many years ago, flirted

with an interest in the Party. However, the appellant did not claim that it was an unauthorised section of the party with which he had been associated.

[26] Under part V of the report, “Deserters from Syrian Military Service”, it states:

“Military service is compulsory in Syria. Article 40 of the Constitution states:

All citizens shall be required to carry out the sacred duty of defending the security of the Homeland and of respecting the country's constitution and its unionist and socialist regime. Military service shall be compulsory and regulated by law.

Accordingly, all male citizens are called for military service upon reaching the age of 19 for two years and a half. Individuals called up for military service who fail to join the army are liable to imprisonment, according to law. They remain required to carry out the compulsory period of military service. Article 98 of the Syrian Military Penal Code provides that those who fail to report during peace-time are subject to imprisonment of 1-6 months. Those who fail to report during times of war are subject to 1 month to 5 years' imprisonment. The sentence is indefinite if the person who fails to report during war-time reports for service after more than 3 months (Article 99).

The penalty for desertion ranges depending on whether the desertion takes place during peace-time or war-time or whether while in service inside or outside the country. The maximum sentence of 15 years can be imposed if:

- the deserter took with him a weapon or other equipment (including a uniform) belonging to the army;
- if the deserter absconds during the exercise of duties or in the face of rebels;
- if the deserter has deserted previously;
- if he deserts during a time of war or from a war zone or during a state of emergency;
- if the deserter is an officer (Article 101).

Desertion in front of the enemy is punishable by life imprisonment; desertion into enemy lines and some instances of disobeying military orders are punishable by death.

The number a years a deserter spends abroad may result in the imposition of a higher penalty. Deserters who serve in allied armies may, nonetheless, be subjected to the above-mentioned penalties.

Based on testimonies of asylum-seekers, it appears that a deserter or someone who has failed to report for military service risks arrest by Syrian authorities, if returned to Syria. The military police are responsible for presenting such a person before the military court.”

[27] Under part VIII of the report, “Risks Asylum Seekers Face on Return to Syria”, it states:

“A. General

Syrians seeking political asylum are automatically perceived as government opponents. The very fact of leaving the country with the intention of demanding

asylum abroad is perceived to be a manifestation of opposition to the Syrian Government. If the asylum-seeker has been affiliated with an unauthorized political party or group, he or she risks arrest and torture upon return to Syria, in an attempt by the authorities, among other things to extract information about the group and its members. According to recent reports, torture in Syria continues to be systematic.

It is reported that prior to their release, former political prisoners who have been released have been constrained to sign documents in which they renounced their political opposition activities. For former prisoners, the very fact of requesting asylum abroad is considered to be proof of their continuation of opposition activities, and they therefore risk persecution if returned to Syria.

Syrians are forbidden to leave the country without authorization. The government reportedly refuses permission to anyone thought likely to express views contrary to its policies. Syrians seeking to leave and claim asylum abroad are often forced to take recourse to the use of false identities or falsification of documents in order to enable them to leave Syria. Restrictions imposed by the "receiving countries" only encourage recourse to such fraud. Obtaining visas for access to countries in the West is almost impossible for those who manifest their intention to claim political asylum upon arrival abroad.

Turkey, Lebanon and Jordan are the countries most frequented and the most well-known for the transit of refugees who leave Syria bound for countries in Western Europe.

In 1991, Syria signed an agreement, the Lebanese-Syrian Treaty of Brotherhood and Co-operation, guaranteeing military co-operation, exchange of intelligence information and extradition of fugitives wanted by the other side.

Those asylum-seekers who left Syria in an illegal manner, without authorization or with false papers are generally at risk of arrest and detention upon their return. In instances in which a request for asylum has been refused and the asylum-seeker is expelled, he or she may risk imprisonment in Syria ranging from one month to two years for having used false documents or a false identity, pursuant to Article 452 of the Syrian Penal Code. Such a sentence can be increased, in accordance with Article 427 of the Syrian Penal Code to include 7 years of hard labour 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.

B. Is the Syrian Government made aware of a persons' demand for asylum?

If a refused asylum-seeker is accompanied by security forces from the country where he or she has sought asylum, then the answer is probably, yes. In addition, Syrian secret service agents working abroad may become aware of requests for asylum, as their task is to monitor the Syrian community and opposition abroad.

C. Cases of Refoulement

Information about the fate of people who have been returned to Syria after having been refused asylum abroad is scant. Over the past years we have registered an increase of cases of rejected asylum seekers who have been detained by the Syrian Authorities after they have been returned to Syria. Our experience has repeatedly shown that supporters of unauthorized organisations are usually under risk of persecution. The following cases are only a sample of which we have learned about during the last decade:

On 20 October 1995 a rejected asylum seeker was returned from Switzerland to Syria. He was witnessed being detained by the Syrian authorities immediately upon his arrival at the airport in Damascus. His family in Syria has not

been able to discover his whereabouts since. We fear that he is at great risk of torture and "disappearance".

It was also reported in 1995 that three Syrian Kurdish asylum-seekers were returned from Austria to Syria. Reportedly, they were arrested upon their arrival, but since that time there has been no further information about their fate.

It was reported that 'Adel al-Zu'bi, a Syrian asylum-seeker who was returned involuntarily from the Netherlands in April 1990, was arrested upon arrival at Damascus airport. He was detained and his fate and whereabouts remained unknown."

## **THE ISSUES**

[28] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

[29] In terms of Refugee Appeal No. 70074/96 (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANT'S CASE**

[30] At the outset, it is necessary to consider the credibility of the appellant's evidence as presented to this Authority. The Authority found the appellant to be often evasive, casual and arrogant in his manner and the presentation of his evidence. However, whether his approach and demeanour results from his personality or his mental state, subsequent upon post traumatic stress disorder noted by Dr. de Castro, is a matter on which the Authority remains inconclusive. The Authority did consider that the appellant has embellished his claim in several respects and that the letter from his sister and "telegram" may have been fabricated to assist his claim before the first Authority. However, after considering all of the evidence presented, and close examination of the appellant before the Authority, we consider that the benefit of the doubt as to their timing, and method

of arrival, must be given to the appellant. The core of his story is therefore accepted.

[31] In this situation noting the country information set out above, the appellant's past profile, including his requirement to report twice weekly to the intelligence authorities in the town of L, his illegal departure, and the, now somewhat distant, problems of his brother, M, as an imputed member of the Muslim Brotherhood, the Authority has reached the conclusion that the appellant does have a real chance of persecution should he return to Syria. That well-founded fear of persecution is for the anti-government, Ba'th Party beliefs that would be imputed to the appellant by the authorities in Syria on his return.

[32] As both issues are therefore answered in the positive, the appellant is found to be a refugee.

### **CONCLUSION**

[33] As we find that the appellant has a well-founded fear of persecution should he return to Syria, and that well-founded fear is based upon imputed political beliefs, the appellant is found to be a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[34] Refugee status is granted. The appeal is successful.

.....  
[A R Mackey]  
Chairperson