

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76245

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairperson)
<u>Counsel for the Appellant:</u>	I Chorao
<u>Appearing for Department of Labour:</u>	No Appearance
<u>Date of Decision:</u>	7 August 2008

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Chad.

INTRODUCTION

[2] The appellant is a married man in his mid-twenties who holds Chadian nationality but who was born and has lived most of his life in Saudi Arabia. His wife, also Chadian, and three children remain in Saudi Arabia. This is his second appeal to this Authority.

[3] The appellant arrived in New Zealand in February 2007 and claimed refugee status for the first time at the airport. After being interviewed extensively by the RSB, a decision declining the grant of refugee status was published. The appellant then appealed to this Authority for the first time. A hearing took place. The Authority dismissed his appeal and declined him refugee status (*Refugee Appeal No 76080* (14 November 2007)).

[4] Three months after the Authority's first decision was published, the appellant lodged a second application for refugee status. He was interviewed. The RSB declined the second application stating that they had no jurisdiction to

consider the subsequent claim as the requirements of section 129J of the Immigration Act 1987 (“the Act”) had not been met.

[5] The appellant lodged his second appeal with this Authority. The Authority wrote to the appellant’s representatives setting out the *prima facie* conclusion that the appellant’s appeal was manifestly unfounded or clearly abusive and it appeared the RSB had reached a valid conclusion that they lacked jurisdiction as there had been no significant changes in circumstances since the original claim made a few months earlier. The Authority allowed, with an agreed extension, the appellant or his representatives time to respond to the letter. The representatives replied in a timely fashion. A letter was received accompanied by submissions of counsel on the question of jurisdiction.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[6] In certain circumstances the Authority is permitted to determine an appeal on the papers without giving the appellant an interview. This arises under section 129P(5)(a) and (b) of the Act, where the appellant was interviewed by the RSB (or given an opportunity to be interviewed but failed to attend) and where the Authority considers the appeal to be *prima facie* manifestly unfounded or clearly abusive. The Authority’s general jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 April 1998).

[7] As noted the Authority, through its Secretariat, wrote to the appellant’s representatives on 3 July 2008. The letter from the Secretariat set out the issues involved and referred to the relevant provisions relating to jurisdiction in the Act. A brief assessment of the appellant’s case was set out in the letter in the following terms:

“[The appellant’s] first claim was based on claims that he could not return to Saudi Arabia because he did not have valid residence status in that country and would be arrested and subjected to unduly harsh treatment because of his past immigration and identity fraud offences. He also claimed that he would be at risk if he went to Chad, the country of his nationality, because:

- he had never lived in Chad,
- he may be pursued by the authorities in Chad for being the nephew of someone who opposes the ruling Chadian regime,
- he is a member of the same tribe as the former President Habré,
- he may be extradited to Saudi Arabia on charges of identity fraud,
- he may be forcibly conscripted into the army in Chad, and
- he may be interrogated, detained and suffer serious harm as a consequence of returning to Chad without documentation.”

The first Authority, after hearing evidence from the appellant (who was represented), found that the appellant had given, at that time, three accounts of his background. In an assessment of his case, the Authority found the appellant was not a credible witness and the account could not be believed except to the limited extent that he was a national of Chad who had travelled to New Zealand on a false Saudi Arabian passport. In an assessment based on the facts as found, his appeal was dismissed.

That first decision was published on [date]. Three months later, the appellant lodged a subsequent claim with the RSB where he again claimed, if returned to Saudi Arabia, he would face the same risks (based on identity fraud and having valid residence status) as he had claimed on the first occasion. In the alternative, he claimed that country information indicated that conditions in Chad had deteriorated significantly since his first claim [file reference]. These appear to be a rerun all of the grounds upon which the first appeal to this Authority was based.

After the interview on [date], the RSB declined the second application on [date], considering it did not have jurisdiction in the terms required under s129J(1) of the Act. That section states:

“129J. Limitation on subsequent claims for refugee status—

(1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.”

In the RSB decision, the RSB concluded [file reference] that the majority of the appellant's second claim was a repetition of his previous claim. Consideration was also given to whether the situation in Chad had deteriorated since the first claim and a brief analysis of country conditions was carried out, leading to the conclusion that there was an absence of “significantly different grounds” from the first claim.

The Authority, based on the evidence now presented in the RSB file and the country information, together with the submissions put forward by you in support of the appellant's second claim to the RSB, finds that it is satisfied that the decision of the RSB in declining jurisdiction appears to be a valid one. Even if jurisdiction were established, it appears the appellant, based on the lack of credibility and the current country information available, cannot succeed.

Accordingly, the preliminary view of the Authority is that the appellant does not have a valid basis for an appeal from a jurisdictional point of view or, in the alternative, even if jurisdiction is available pursuant to s129O of the Act, the claim now presented is manifestly unfounded/clearly abusive. The appellant, *prima facie*, does not face a real chance of being persecuted if sent to Chad, his country of nationality.”

[8] A copy of the Authority's file was sent to the appellant's representatives and the letter explained that the appellant bore the responsibility for establishing his refugee claim, pursuant to section 129P(1) of the Act as explained in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647.

CONCLUSION ON WHETHER TO DISPENSE WITH AN INTERVIEW

[9] The appellant's representatives replied to the Authority as noted above on the jurisdiction issue. The 24 paragraphs set out in those submissions have been carefully considered by the Authority.

[10] The provisions of section 129J(1) of the Act provides:

"A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim."

[11] Noting that the RSB conducted an interview with the appellant in respect of his second claim, and considering the submissions now provided from the appellant's representatives, the Authority concludes that based on all of the evidence presented, the interview conducted with the appellant and a reassessment of the most recent country material relating to Chad that the refugee status officer correctly concluded there was a lack of jurisdiction. The additional submissions now provided, and assessed below, do not indicate that since the first determination circumstances in Chad have changed to such an extent that a further claim is based on significantly different grounds from the previous claim.

[12] In the circumstances, the Authority considers this appeal is manifestly unfounded or clearly abusive because the Authority has no jurisdiction to consider it. This conclusion has been arrived at by comparing the appellant's original claim and his further claim (see below). The Authority thus concludes, pursuant to section 129P(5)(b), that an interview be dispensed with in this case.

THE APPELLANT'S FIRST CLAIM

[13] The appellant stated that he was born in Saudi Arabia and his parents were both from Chad. He had married another Chadian in Saudi Arabia at the Chadian Embassy in Riyadh. He and his wife had three children all born in Saudi Arabia but who are all considered Chadian nationals. He claimed that, after completing 11 years of schooling, because of problems his father had he was forced to leave Saudi Arabia and went to N'djamena, in Chad to complete his studies. He had a comfortable life there with his parents. His father was arrested in 2000 and never seen again. The appellant considered that this was because of his father's

political activities in Chad. The appellant then returned to Saudi Arabia where he remained for seven years and nine months. He was never able to legitimise his residence in Saudi Arabia during that time. He had, however, been able to work in a number of companies using a Saudi identity card that he had purchased.

[14] He predicted various individuals in Saudi Arabia would notify the Saudi authorities because he had impersonated another person's identity (used a false passport) if he returned to that country. Alternatively, if returned to Chad, because of his family background, the authorities in Chad would imprison him.

[15] By the time his case reached this Authority, in his first appeal, the details of his background had been changed by him such that he had presented three different accounts of his former life and grounds for his claim to refugee status in New Zealand. On each occasion he completed a written statement which he had confirmed as being true and correct. He had also presented oral evidence at a series of RSB interviews. The Authority found that the appellant had made a cynical presentation of three irreconcilable accounts (paragraphs [43]-[49] of the decision) and then went on to find further credibility concerns in the third account that he had presented.

[16] The Authority therefore at [54] concluded:

"[54] Taken cumulatively, the above concerns lead the Authority to conclude that the appellant's third account is not credible except to the limited extent that the Authority does accept that he is a national of Chad and that he travelled to New Zealand on a false Saudi Arabian passport. The Authority does not accept any details about the appellant's claimed former residence in Saudi Arabia or about the personal situation he claims he will return to in Chad, including his claim to be undocumented."

[17] An assessment of the risk to him, given the above profile, was then carried out in respect of both Chad and Saudi Arabia. At [56] the Authority set out the reasons the appellant relied on in his claim to be at risk of being persecuted in Chad.

[18] In a summary of findings at [60] the Authority stated:

[60] In summary, the Authority finds that the appellant is a national of Chad who travelled to New Zealand on a false Saudi Arabian passport. All other aspects of the appellant's claim (the third account) are rejected as not credible. The appellant has no well-founded fear of being persecuted in Chad for any of the reasons he has advanced, namely: his undocumented return; his uncle's political activities; his tribal affiliations; forced military service; extradition to Saudi Arabia; and his never having lived in Chad.

[19] The Authority therefore found the appellant was not a refugee and dismissed his appeal.

THE APPELLANT'S SECOND CLAIM

[20] In the Confirmation of Claim to Refugee Status completed by the appellant the nub of his claim was that circumstances had changed in Chad. He claimed that about two weeks previously the opposition rebels had come to the capital of N'djamena and surrounded the president's palace and that foreigners and diplomats had been taken out of N'djamena. This personally affected the appellant as he was the nephew of a member of a group who were opposed to the government, he was from the same *guran* tribe as the previous president and he was a young man he could be called up for military service.

[21] As noted, the appellant was interviewed by the RSB. A detailed statement prepared in Arabic and translated into English, was provided in support. This statement sets out his history in detail up to the time of his arrival in New Zealand in February 2007 and states the troubles he would face when he went to Chad. These would include being killed. He states "this is the main reason and this is definite according to my uncle's talk". He also feared going to prison, compulsory military service, being extradited to Saudi authorities according to a convention between the two countries, and war and instability in Chad. With a letter the appellant's representatives attached the following country information:

- (a) The United States Department of State *Country Report: Saudi Arabia* (11 March 2008).
- (b) A Human Rights Watch Report "Saudi Arabia: Chadians Barred from Schools, Hospitals" – this report came from New York on 6 September 2006.
- (c) A report sourced from UNHCR – "Refworld" – "Integrated Regional Information Networks (*IRIN*), *Chad Foreboding With First Rebel Attacks Since February* (1 April 2008), a report from Freedom House – *Freedom in the World – Chad* (2007).
- (d) Further documents sourced from the Canadian Immigration and Refugee Board, "Chad: whether the government of Chad conducted forced recruitment in 2005 for the purpose of sending individuals to fight in the

conflict between the eastern and northern regions of Chad; if so, the profile of persons recruited; and whether a military training centre exists in Koundoul (2005-2006)", (26 October 2006).

- (e) *BBC News* report – “Eyewitness: Revolution’s Going On” (published 2 March 2008).
- (f) *BBC News* – “Chad Declares State of Emergency” (published 14 February 2008).

[22] The appellant’s representative also provided her analysis of the above country information and submissions on the jurisdictional issue. All of this material has been taken into account.

ASSESSMENT OF THE JURISDICTION ISSUE

[23] At the outset it must be noted that the Authority in its first decision published on 14 November 2007, for the reasons set out between paragraphs [42] and [53], found that the appellant was almost totally lacking in credibility. At [54] the Authority found that the appellant’s third account was not credible except to “the limited extent that the Authority does accept he is a national of Chad and he travelled to New Zealand on a false Saudi Arabian passport”. The first Authority then made its assessment of the appellant’s case, based on the “facts as found”. The Authority considered all the relevant issues and found that the appellant had no well-founded fear of being persecuted in Chad for any of the reasons he had advanced. These were namely: “his undocumented return; his uncle’s political activities; his tribal affiliations; forced military service; extradition to Saudi Arabia; and his never having lived in Chad”.

[24] The Authority must now consider the jurisdictional base upon which it assesses the evidence put forward by the appellant in his second claim. Here section 129P(9) is relevant. This states:

“In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on such finding.”

[25] The Authority therefore in this subsequent claim relies on the findings of the first Authority as to both the appellant’s credibility and the facts. It is against that

context that the appellant's additional evidence, relating to a potential change in circumstances, must be assessed.

[26] The only new information, presented by the appellant, which relates to potentially significantly changed circumstances in his country of nationality since the first decision was published in November 2007, are the reports, set out in the *BBC News* reports noted above and the *IRIN* report of 1 April 2008 "Chad: Chad Foreboding With First Rebel Attacks Since February". The *BBC News* reports set out that the president of Chad declared a state of emergency in February 2008 in order to restore order after a recent coup attempt. President Idriss Deby said that the emergency powers would be in effect for 15 days. The report states that the rebels, who it was claimed were backed by Sudan, had been driven from N'djamena, after two days of fighting, back to the eastern border with Sudan. It also reported that the former President Choua had been found alive after three missing opposition leaders had disappeared during the fighting. The same report goes on to state that some 30,000 people fled Chad to Cameroon and that government forces were going from house to house mistreating civilians because they "cheered for the rebels". The coup attempt was stated to have begun on 2 February when rebels seized control of large parts of the capital and the Red Cross reported more than 160 people killed and 1,000 injured. It also notes that the deployment of a 4,000 strong EU force was delayed by rebel attacks but was due at the end of February. It also reports that Mr Deby seized power in a coup in 1990 but had won three elections since then, although their legitimacy was challenged.

[27] A second report from *BBC News* reported gun battles between rebels and government troops taking place on 2 March 2008 and the French military were telling people to stay indoors.

[28] The *IRIN* report of 1 April 2008 reports an attack on government troops on 1 April 2008 in the town of Ade in eastern Chad and that this was the first serious attempt by rebels to challenge government forces since February when the rebels got as far as the capital before withdrawing.

[29] The Authority does not consider that these events of February/April 2008, which clearly post-date the Authority's decision of November 2007, amount to a change of circumstances to the extent that the appellant's claim is now presented based on significantly different grounds from the first claim. As noted in the United States Department of State report for 2007, in the introduction:

“Fighting between the government and rebel groups continue despite peace accords signed by the United Front for Change (FUC) in December 2006 and the four other rebel groups of October 2005. The October 25, 2007 agreement was not implemented. Violence interethnic conflict, banditry, cross border raids by Darfur based militia also continued. Civilians were killed and tens of thousands were displaced.”

[30] It is clear from the country information that was before the RSB and the Authority when the first claim was made that fighting between government and rebel groups has been going on for many years. Thus whilst the events of February/April 2008 may have escalated the situation to some degree it is not a significantly different set of circumstances from that which prevailed when the appellant made his first claim and appeal. In addition he is not a person of any political or other risk profile. He is simply a national of Chad. Accordingly the Authority is satisfied that the appellant does not, from the evidence and submissions presented, overcome the jurisdictional bar set out in section 129J(1) of the Act. The second refugee claim is therefore not presented on significantly different grounds from the previous claim.

[31] In reaching this conclusion the Authority has taken into account the submissions presented to the Authority on 25 July 2008 noted above. In those submissions, the challenges to credibility (paragraphs [11]-[18]) must fail as this Authority relies on section 129P(9) of the Act. There are no grounds for concluding that the credibility findings of the first Authority were flawed. If the appellant had considered the credibility assessments in the first appeal were so egregious that it was a perverse or irrational decision then that challenge could only have been made by way of judicial review and not by way of subsequent claim.

[32] The submissions on country conditions and additional country information supplied to the RSB and to this Authority have been taken into account. As noted above the Authority does not consider on an analysis of the country information that any changes in country conditions have given rise to a subsequent claim based on significantly different grounds.

[33] Finally, the submissions that are set out in paragraphs [8]-[10] of the submissions relating to previous Authority decisions have no merit. The cases can be distinguished. The decisions in *Refugee Appeal No 75730* (25 August 2006) and *Refugee Appeal No 75576* (21 December 2006) both found, based on intensification and deterioration of country conditions, that subsequent claims

presented were on significantly different grounds. For the reasons set out above that simply is not the case in this appeal.

CONCLUSION AS TO JURISDICTION

[34] After noting the jurisdictional provisions of section 129J, section 129O and section 129P(9) of the Act, the Authority finds that this Authority lacks jurisdiction to consider this subsequent claim for the reasons set out above.

DECISION

[35] For these reasons the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"A R Mackey"

A R Mackey
Chairperson