

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

**REFUGEE APPEAL NO 75035**

**AT CHRISTCHURCH**

<b><u>Before:</u></b>	D J Plunkett (Chair) V J Shaw (Member)
<b><u>Counsel for the Appellant:</u></b>	J Williamson
<b><u>Appearing for the NZIS:</u></b>	No appearance
<b><u>Date of Hearing:</u></b>	28 April 2004
<b><u>Date of Decision:</u></b>	26 July 2004

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**DECISION**

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[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch of the New Zealand Immigration Service, declining the grant of refugee status to the appellant, a national of Sudan.

**INTRODUCTION**

[2] The appellant is a 43 year-old married man who arrived in New Zealand in July 1998. His wife lives in Egypt. He made an application for refugee status on 20 August 1998. Following interview with a refugee status officer on 16 January 2002, his application was declined in a decision issued on 12 April 2002. There followed an appeal to this Authority.

[3] It was heard on 22 August 2002 and dismissed in a decision issued on 26 May 2003. That decision was subject to judicial review proceedings and was set aside in a judgment of the High Court issued on 22 December 2003. The appeal was accordingly restored and heard *de novo* by a differently constituted panel of the Authority. Our decision follows.

## **THE APPELLANT'S CASE**

[4] The appellant is a Coptic Christian, as were his parents. He was born in A, a city northeast of Khartoum. His father was born in Egypt but moved to Khartoum when the appellant was very young. He does not know the nationality of his (now deceased) father, though believes he was Egyptian. The appellant attended Catholic and Coptic Christian schools and then a technical institute, qualifying as a mechanic in 1982. He then worked in Khartoum until 1989, his last job as supervisor in a tannery located outside the city.

[5] In early 1989, the appellant travelled to Kenya for a holiday, with accommodation arranged at a large Coptic Christian church. He had no problems getting an exit visa from the Sudanese authorities. He was offered employment at that church as a supervisor of the non-religious staff (carpenter, driver and nursing staff) and remained for six months. There was a "big difference" between his remuneration in Kenya (which included accommodation and a car) compared with what he had received in Sudan.

[6] He returned to Sudan in August 1989 but there had been a change of government in the interim, the new government being Islamic. He found that the country was becoming more Islamic. For instance, he was told by his old employer that he was no longer welcome back as Muslims were now being employed. The government was also heavily recruiting young people for the civil war in the south against a population which was predominantly either Christian or followers of traditional religions.

[7] The appellant decided to return to Kenya and approached the relevant Sudanese authorities for an exit visa but was refused, without any reason being given. He approached somebody who was able to bribe an official to secure an exit visa. He accordingly left Sudan for the last time, having been there only two to three weeks and resumed his former job at the church in Kenya.

[8] In 1992, the appellant registered with the United Nations High Commission for Refugees in Nairobi as a refugee (he produced to the refugee status officer a registration form issued by the UNHCR in Kenya). He was required to live in a refugee camp, which he found "inhuman", so within a month, he left the camp and abandoned his status as a registered refugee. He told the Authority he had based

that registration on the same grounds he was putting forward to us, namely the desire to avoid conscription and the “pressure” being suffered by Christians in Sudan.

[9] In 1995, the appellant went to Egypt to marry his wife (who was already related to him through his father’s side of the family). She is an Egyptian national and also a Christian. She returned with him to Kenya.

[10] While the appellant had no problems as a Christian in Kenya and enjoyed a comfortable existence there, including the ability to save US\$10,000, he felt there was no real future for him. He had a work permit but with the arrival of a new bishop and priest, he was not sure whether the church would continue to sponsor him in the future. He was also concerned about the crime rate there and had twice been robbed himself. He did not wish to live in Egypt, as he believed he would not be able to work in that country. As the church knew of a Coptic Christian priest in New Zealand, it was arranged that the appellant would come here. He left Kenya in June 1998, with his wife going to live in Egypt at the same time. He arrived in New Zealand in July 1998 on his own passport with a valid visa.

[11] The appellant maintains contact with his wife (in Egypt) and his mother (in Sudan). His mother lives with his brother. He is not aware of any problems that his mother or brother have had since he left Sudan. His brother has never served in the armed forces (indeed, he was never asked or instructed to report). The appellant fears that if he returns to Sudan, he will be severely punished (tortured and probably killed) for failing to serve in the military and, if not killed, at the very least he will be conscripted. Even if he was able to enter the country without any major difficulties at passport control, he fears being rounded up and pressed to serve in the civil war in the south. He points out that his passport (which remains in his possession) has expired and he therefore no longer has a valid travel document. He also believes an aggravating feature of his circumstances is his religion.

[12] An article concerning the appellant was published in a prominent New Zealand newspaper in 2003. It names him and recites the core of his story. A large photograph of him accompanies the story. The appellant believes this article puts him at additional risk in Sudan.

[13] The Authority acknowledges counsel's comprehensive undated submissions, with a bound volume of past decisions of the Authority and country information. Counsel also delivered a further statement (brief of evidence) from the appellant dated 21 April 2004. At the hearing, counsel produced the Danish Immigration Service *Report on the fact-finding mission to Cairo (Egypt) and Geneva (Switzerland), 29 January to 12 February and 3 to 7 March 2000*. The Authority also handed over two bundles of country information, one relating to conscription and the other concerning the situation of the Assyrian Christians in Sudan. Counsel produced further submissions and country information on 4 June 2004 and the Authority sent additional country materials to counsel on 8 June 2004. A further letter was sent to counsel on 13 June 2004. Additional documents were sent to the Authority on 22 June 2004, including Further Submissions of even date and correspondence from the United Kingdom office of Amnesty International concerning the appellant with attached Amnesty (UK) report on another Sudanese Coptic Christian.

## **THE ISSUES**

[14] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is 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."

[15] 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**

[16] The first issue for the Authority, prior to addressing the principal issues, is to determine whether the appellant is a credible witness.

### **Credibility**

[17] The appellant has had a somewhat chequered history concerning his veracity. Both the refugee status officer and the first panel of this Authority made findings that aspects of his evidence were not credible. Immediately prior to the hearing before this panel, the appellant produced a statement (dated 21 April 2004) admitting that he had told certain untruths in his refugee claim. In particular, he admitted the existence of a brother living in Sudan (having previously denied any siblings) and conceded that the Sudanese authorities had never sought him since he had left Sudan, contrary to earlier evidence that a "secret group" was making enquiries about him. The Authority nonetheless accepts that he has given truthful evidence to us.

### **Conscription – Well Foundedness**

[18] The issue for the Authority is whether the appellant's circumstances (as told to us) put him at risk (at the real chance) of serious harm amounting to persecution, should he return to Sudan. This is said to be on the basis of his failure to serve in the military, (including the paramilitary or militia – the People's Defence Force) with his Christianity (it is submitted) being an aggravating feature of his circumstances. He fears he will be severely punished (tortured or killed) or, at the very least, conscripted to fight. We have concluded that there is no real chance of either fate. Our reasons follow:

- (a) The appellant has never been requested or instructed to report for military service. He has not refused to serve. He has never received any papers requiring him to report for military service.
- (b) There have never been any enquiries from the military or police concerning his whereabouts or seeking him, let alone visits instructing him to report.

The authorities have displayed no interest in him whatsoever (though it is acknowledged he has been out of the country for the last 15 years).

- (c) The appellant, aged 43, is well outside the official conscription age, which is 18 to 33 years; War Resisters' International 1998 *Refusing to bear arms - Sudan* (15 September 1998), The National Service Act 1992, Canadian Immigration and Refugee Board, Research Directorate *Sudan: Medical doctors and military service, exemption and restrictions on exit from the country* (11 January 2002), United Kingdom Home Office *Sudan Country Report* (April 2004) 5.18.

Counsel refers to an entry in the United States Central Intelligence Agency's *The World Fact Book - Sudan* (updated 18 December 2003) showing military manpower availability for males aged 15 to 49, which is said to be evidence of an extended conscription age up to 49 years. It is not. It is a standard entry for all countries.

In his submissions of 22 June 2004, counsel cites a report from Amnesty International concerning another Sudanese Coptic Christian which states that any Sudanese male born in or after 1959 (as is the appellant in this case) is eligible for militia service "so the age range is officially up to 43 years" and that it can be as high as 50 years or more in practice. The Amnesty report is undated and concerns an anonymous individual whose circumstances are unknown, beyond being a Sudanese Coptic Christian in his late 30s. The report boldly states that "paragraph 17 of the Home Office letter" (which is not disclosed) is "inaccurate". We assume from the context that paragraph 17 gives the age range for conscription as 18 to 33 years (see 2004 Home Office report on Sudan *supra* 5.18). No evidence is offered to support this contention. We reject it in the light of the above references. As to the possibility of those above 33 years being conscripted in practice, see [20] – [25] below.

- (d) It is clear from country information that millions of men who were conscripted did not report for service, yet there is no evidence of any systemic punishment for draft evasion (though deserters risk severe punishment); Human Rights Watch/Africa *BEHIND THE RED LINE, Political Repression in Sudan* (1996) 271, War Resisters' International 1998

*Refusing to bear arms – Sudan* (15 September 1998), Gale Group *Sudan Draft Dodgers Subject of Crackdown* February 04/MENL (4 February 2002). While draft dodgers are liable to spend three years in jail, there is no evidence that large numbers have, in fact, ever been punished; Agence France Presse *Sudan draft evaders face jail* (24 December 2001), Gale Group *Sudan Draft-Dodgers Subject of Crackdown* February 04/MENL (4 February 2002). In any event, the appellant is neither an evader nor deserter.

- (e) His brother (aged 34), who has always lived in Sudan, has never been requested to serve and never suffered any problems with the government.

[19] The Authority acknowledges that persons outside the legal conscription age can be forced to perform military service when they are caught by press gangs in indiscriminate conscription campaigns. These largely occur at times of heightened military activity when serious losses of manpower require the replenishment of military strength. This brings the Authority to a consideration of the situation in Sudan today.

### **Civil War in Sudan**

[20] Civil war between the Islamic Khartoum government and mainly animist and Christian southern Sudan has been raging since 1983, as the southerners seek self-determination. It is estimated to have claimed 1.5 million lives and displaced 4 million people; Agence France-Presse *Sudan peace talks resume after setback over truce violations* (29 January 2003).

[21] However, there has been a significant reduction in hostilities in the south, following several years of peace negotiations. The government and the *Sudan People's Liberation Movement/Army* (SPLM/A), the main rebel group, signed a Cessation of Hostilities Agreement in October 2002 which has been extended every three months since then. They entered into an Interim Security Agreement in September 2003 confirming the resumption of negotiations towards a final comprehensive peace agreement. In May 2004, the parties signed protocols resolving "key remaining issues"; BBC World Service *'Breakthrough' at Sudan talks* (25 May 2004). See also UN Office for the Co-ordination of Humanitarian Affairs *Sudan: Government, rebels sign new MOU on cessation of hostilities* (4

February 2003), UN Office for the Co-ordination of Humanitarian Affairs *Sudan: Cessation of hostilities agreement renewed* (30 June 2003), <http://southsudanfriends.org> *Interim Security Agreement* (accessed 26 May 2004), [www.ecosonline.org/back/paf-reports](http://www.ecosonline.org/back/paf-reports) *Agreement of Cessation of Hostilities* (accessed 26 May 2004), Inter Press Service *Sudan: Another Step Towards Lasting Peace* (27 May 2004).

[22] Despite the agreements, there have been numerous ceasefire violations, though not the large-scale fighting there was previously. The United States Department of State reports that both parties have largely respected the cessation of hostilities agreement; *Country Report on Human Rights Practices 2003 – Sudan* (25 February 2004) 1. The violations have not derailed the peace negotiations. Due to the progress in the peace talks and the reduction in violence, the United Nations High Commissioner for Refugees is intending to repatriate people to the south. His office has drawn up plans to help more than 150,000 refugees return from neighbouring countries during the first 18 months after the signing of any peace plan. The first actual returns are expected to start in 2005. Tens of thousands of displaced people are already returning in advance of a peace agreement. See UNHCR *UNHCR plans for Sudan repatriation as peace talks inch forward* (12 May 2004), UN Office for the Co-ordination of Humanitarian Affairs *Sudan: Tens of thousands of displaced people returning to Bahr al-Ghazal* (14 May 2004).

[23] While there is considerable violence in the west in Darfur, that is predominantly being perpetrated by local Arab Muslim militia (known as *janjaweed*), though it is acknowledged there is central government support and even operational participation from government soldiers; Human Rights Watch *Sudan Darfur in Flames: Atrocities in Western Sudan* (April 2004) 1, 2, 15, 16, 22, 26. We accept that there is not peace throughout the country. There is some evidence of contemporary round-ups (see for example the 2004 Home Office report on Sudan *supra* 5.28), but not at earlier levels and they are predominantly targeted at young men and boys, so the risk for the appellant would be below a real chance.

[24] It is accepted that the possibility remains that the military will escalate the forced drafting of men at checkpoints in public areas or in indiscriminate house searches and therefore that persons over 33 might be captured, but the security



forces have clearly targeted younger people, particularly students, in such campaigns in the past; Human Rights Watch/Africa *BEHIND THE RED LINE - Political Repression in Sudan* (1996) 268, 271, 272, Sudan Human Rights Organisation *The SHRO – Cairo Report on the Compulsory National Service in Sudan* (January 1998) 2 - 5, 10, Danish Immigration Service report (2000) *supra* sections 5, 5.1 and *Report on fact-finding mission to Cairo, Khartoum and Nairobi (8 to 19 August and 20 to 23 November 2001)* 35, 41, National Geographic *Shattered Sudan: drilling for oil, hoping for peace* (1 February 2003), UN Office for the Co-ordination of Humanitarian Affairs *Sudan: Government accused of violating ceasefire agreement* (7 March 2003), Amnesty International *Sudan* (January – December 2003) 1, United States Department of State *Country Reports on Human Rights Practices – 2003: Sudan* (25 February 2004) 22.

[25] It is worth noting that the appellant does not himself come from the Darfur region so will not be caught up in this fighting (except to the extent he could be drafted as to which, the Authority finds, the chance is remote indeed).

[26] Counsel relies on the decisions of the Authority granting refugee status to Sudanese nationals in *Refugee Appeal Nos 73378* (11 December 2003) and *74884* (18 February 2004). In the former, the asylum seeker (aged 34) feared *inter alia* conscription for the fighting predominantly in the south. The Authority in that case wrongly assumed that the age of eligibility could be 49 (based on the CIA report). Furthermore, this appellant (aged 43) is even less likely to be forced to perform national service than the asylum seeker in that case, who was only marginally outside the legal conscription age. In the second case, the asylum seeker was 33 years of age, within the legal conscription age. He had been summonsed to report for service and the Sudan authorities had displayed an ongoing interest in the claimant's whereabouts since his departure from that country. It is observed that the Authority regarded its grant in the second case as marginal. Again, it was also wrongly assumed that men up to 49 years of age could be conscripted.

[27] The decision in *74884* also notes (as did counsel in the instant case) the statement in the Danish Immigration Service report (2001) *supra* that it is even possible for people outside the age group of 18 – 30 to be recruited and that there were examples of people older than the rules being forcibly recruited (pp35, 39). We accept that but when the conscription campaigns were conducted in the past,

it has been young people, especially students, who have been the focus. As we have already found, the chance of the appellant in this case being conscripted is, for the reasons given above, remote indeed.

### **Risk as a Returnee**

[28] The appellant has a valid though expired passport (it expired in November 1999) but there is no reason why he cannot renew his current passport at the nearest Sudanese embassy or at least obtain a temporary travel document. He will have no trouble establishing his identity given the existence of this document. This is not a material risk factor for him (whether or not he is able to renew his passport before his return).

[29] The appellant left Sudan for the last time in 1989 legally on his own passport, albeit that the exit permit was obtained through bribery. It is inconceivable that 15 years later his mode of departure would be a problem for him.

[30] He has been living in Kenya and New Zealand, largely (if not entirely) legally and in employment. From the point of view of the Sudan authorities, he is one of thousands (probably hundreds of thousands) of Sudanese nationals who left the country to seek a better life and spent a prolonged period away. It is not accepted that his extended absence overseas will excite any interest on his return. Neither the appellant nor his family had ever been involved in any political activities. In the absence of a political profile, it is not accepted that he would be of interest to the authorities on his return. While he may well be questioned at the airport (if he has a valid travel document, and almost certainly will if he does not), there is no reason to believe that would be any more than routine to confirm his identity and nationality and perhaps where he has been and what he has been doing since he left Sudan.

[31] The Danish Immigration Service report (2000) *supra* mentions one source which reports a Sudan law decree requiring Sudanese nationals who have been abroad for over one year to be detained on their return and transferred to the security service for questioning (p22). However, the same report notes the advice of the Netherlands Embassy in Cairo that there was no such decree and nationals

who had been abroad for more than one year did not have to report to the security authorities but only to tax officials (p22). Another source informed the Danes that ordinary people returning to Sudan would not be questioned about their situation on re-entering the country, not even people who had been abroad for some while (p23). The report goes on to record that their sources had no knowledge of any ill-treatment of rejected asylum-seekers expelled to Sudan (though prominent active members of opposition parties would be at risk) (p23).

[32] The later Danish Immigration Service report (2001) *supra* doubts the existence of such a decree, though a source knew of a practice for Sudanese citizens who had been away from the country for a couple of years to be questioned by the police on arrival, often because of a failure to pay tax (p55). It is recorded that the Netherlands Embassy was not aware of any examples of people suffering harm while being questioned (p55). A “well-informed local source” said that Sudanese citizens in possession of a valid national passport could enter Sudan without any difficulty, but if they only had a temporary travel document they would be questioned about their circumstances on arrival in Sudan, if they returned voluntarily. The source had no information on those forcibly repatriated (p55). It was reported that Germany had never had any problems with the deportation of rejected asylum applicants back to Khartoum (p55).

[33] The United Kingdom Home Office also doubts the existence of the decree, though noted the questioning of returning nationals for tax purposes; *Sudan - Country Report* (April 2004) 6.84.

[34] Even if the appellant is forcibly repatriated from New Zealand, we do not accept that his circumstances put him at risk (at the real chance level) of serious harm. There is no support for this in the country materials concerning returnees (as to the Amnesty International report concerning another individual – see [36] below).

[35] The appellant further says they might know of his refugee applications, indicating he is “against the government”. However, his refugee application in New Zealand is a confidential process and the Sudan authorities will not know of it unless he tells them. The UNHCR in Nairobi presumably also maintains confidentiality. However, even if the Sudan authorities know of these applications, it is implausible that they would be of any concern to them. There must be many

tens of thousands of Sudanese who have made refugee applications outside the country, based on similar grounds to the appellant. From the perspective of the Sudan authorities, he will be just one of many thousands who have sought a better life overseas and taken advantage of asylum procedures to do so. Many must have been unsuccessful in their applications and returned to Sudan, yet there is no country information that returnees, particularly those who have made asylum claims, are treated harshly. No country information has been adduced by the appellant that evidences ill-treatment of returning asylum seekers. Indeed, the available evidence indicates otherwise; Danish Immigration Service report (2000) *supra* 23, United Kingdom Home Office *Sudan – Country Report* (April 2004) 6.257-6.259.

[36] Counsel cites the Amnesty International (UK) report concerning another Sudanese Coptic refugee claimant. The author of the report predicted that that claimant would face serious consequences on his return and that there was a “high possibility” he would be stopped by immigration officials and “subjected to hostile and quite possibly life-threatening treatment” (as a Coptic Christian). In another section of the report, it is stated that the claimant will be interrogated at the point of entry and if the authorities realise he is an avoider of the militia as well as a failed asylum seeker, then this will compound the problems he faces on re-entry. We do not know the circumstances of that claimant but in the light of the above country materials, do not accept that the appellant in this case faces the risk (at the real chance level) of hostile treatment tantamount to persecution on re-entry.

### **Christianity**

[37] Nor is the appellant’s religion, as a Coptic Christian, a sufficient basis for a refugee claim, whether on its own or as an aggravating feature of his failure to serve in the military. He has not advanced country information which would establish that Coptic Christians face a real chance of persecution based on their religion, nor has the Authority’s research identified any such information. Indeed, the government generally is less restrictive of those Christian groups which have historically had a presence in the country, such as Coptic Christians: United States Department of State *International Religious Freedom Report 2003 - Sudan* (18 December 2003) 3. There have been only a few reports of harassment, threats and violence by the security forces against persons because of their religious

beliefs and these reports continue to decrease; *ibid* 4. Coptics suffer harassment and discrimination (which has caused large numbers to leave the country) but not persecution; United Kingdom Home Office *Sudan - Country Report* (April 2004) 6.173-6.175.

[38] It is notable that none of the appellant's family have ever suffered any trouble as Christians. While the appellant says they would not tell him of any problems in order not to hurt his feelings, the Authority has no doubt that they would advise him of any serious problems.

[39] Counsel has produced an email (dated 26 May 2004) from Amnesty International in London, authored by an individual who is described as a specialist on Sudan. The author opines that as the appellant has not been in Sudan since 1989, he would (as a Copt), be "very vulnerable, especially where PDF militia service is concerned" and "they'll be keen to give him the message he isn't welcome".

[40] While the author may well be experienced in advising on Sudanese refugee claims, little weight can be given to such a brief unsupported opinion (couched in somewhat vernacular language), based on an equally abridged description of the appellant's circumstances given to the Amnesty specialist. It is not even apparent whether Amnesty appreciates the appellant's age or that he had never been called up for military service, which are highly relevant factors.

### **Publicity in New Zealand**

[41] As to the article published in the New Zealand newspaper one year ago, it is fanciful to suggest this would create any danger for him in Sudan. It is highly unlikely it would find its way back to Sudan or would interest anyone there even if it did. It has certainly not caused any difficulties to date for his mother or brother.

**CONCLUSION**

[42] The Authority accordingly finds that his fear of persecution is not well-founded. The first principal issue is answered in the negative and the second does not therefore arise.

[43] For the above reasons, the Authority finds the appellant is not a refugee in the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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D J Plunkett  
Chair