

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76375

AT AUCKLAND

Before: B A Dingle (Member)

Representative for the Appellant: Heval Hylan

Appearing for the Department of Labour No appearance

Date of Hearing: 28 September 2009

Date of Decision: 7 May 2010

DECISION

INTRODUCTION

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

[2] This is the second time that the appellant has claimed refugee status in New Zealand.

[3] He claims that he is a Chadian national, born and raised in Saudi Arabia where he no longer has a right to reside. He says that his father’s family have a long history of political opposition to the Chadian government and therefore he is at risk of being persecuted if returned to Chad. He acknowledges that the circumstances of his father’s family’s political involvement existed at the time of his first refugee claim and that he did not disclose these facts (as he now presents them) at any time during the determination of his first claim to refugee status. He asserts that this Authority has jurisdiction to hear and determine his second appeal on its merits.

[4] The central issue to be determined in this appeal is whether the Authority has jurisdiction to determine the appellant’s second claim to refugee status.

PROCEDURAL BACKGROUND

[5] The procedural history of this appeal is relevant to the Authority's determination and is therefore set out in brief.

[6] The appellant arrived in New Zealand on 8 June 2006 and lodged a claim to refugee status on 9 June 2006. He adopted a false identity and claimed to be 17 years old and to have escaped the Chadian authorities who sought him in relation to his father's and his own activities relating to the political opposition. He was interviewed by the RSB on 17 and 18 July and 1 September 2006 and his application was declined by decision dated 27 April 2007. On 30 April 2007, he lodged his first appeal ("the first appeal") with this Authority (differently constituted). Following a hearing on 5 and 7 June 2007, the Authority dismissed his appeal; see *Refugee Appeal No 76041* (20 November 2007).

[7] The appellant applied for judicial review of the findings of the Authority in the High Court. In a decision delivered on 26 August 2008, Priestly J dismissed the application finding that there was no basis to interfere with the Authority's decision given the thorough and comprehensive nature of the Authority's determination. The Authority's decision of 20 November 2007 therefore stood as the final determination of the appellant's refugee claim.

[8] On 13 February 2008, the appellant appealed to the Removal Review Authority ("RRA") against the requirement to leave New Zealand pursuant to section 47 of the Immigration Act 1987. To the RRA he maintained his false identity and the story he had presented in his first refugee claim. However, on 22 October 2008 the RRA was advised by his counsel Ms Curtis, that the appellant had disclosed that his first refugee claim, including his claimed identity and age, was false. On 21 October 2008, the appellant filed a detailed written statement setting out the grounds on his appeal to the RRA. It is essentially the same as the account he has given for his second refugee claim (as outlined below).

[9] The RRA appeal was dismissed in a decision dated 17 November 2008 on the basis that the appellant's appeal was, in essence, a second refugee claim and therefore the RRA did not have jurisdiction to consider that claim. The RRA also found there was no other basis from which it could establish that the appellant had met the first statutory requirement in s47(3) of the Immigration Act.

[10] On 26 November 2008, the appellant lodged his second application for refugee status with the RSB. The application was declined in a decision dated 11 June 2009 on the basis that the RSB did not have jurisdiction to hear the claim. It

is from that decline decision that the appellant now appeals to this Authority.

[11] The notice of appeal from the RSB decision was received by the Authority on 9 June 2009. The Authority initially proceeded to determine the claim on the papers pursuant to ss129P(5)(a) and 129P(5)(b) of the Immigration Act 1987 (“the Act”), whereby in certain proscribed circumstances the Authority has a discretion as to whether to offer the appellant the opportunity to attend an interview. The Authority’s general jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[12] On 31 July 2009, the Authority, through its Secretariat, wrote to the appellant advising that the Authority’s preliminary view of the appellant’s appeal was that it was *prima facie* ‘manifestly unfounded or clearly abusive’ because even if his claim was credible it did not meet the statutory threshold for subsequent claims. It advised that a second or subsequent claim for refugee status may only be considered if, since the determination of the preceding claim, circumstances in the appellant’s home country have changed to such an extent that the further claim is based on significantly different grounds from the previous claim.

[13] It also advised that the Authority has the jurisdiction to determine an appeal on the papers, without offering an interview pursuant to s129P(5) of the Act, in circumstances which, on a preliminary view, applied in the appellant’s case. The appellant was provided with an opportunity to present submissions and/or evidence to support his claim, by 14 August 2009. Notice was given that, unless the Authority was persuaded otherwise by such submissions and evidence, it could consider and determine the appeal without giving the appellant an opportunity of attending a further interview.

[14] The appellant wrote to the Authority on 12 August 2009 advising that he was seeking a new lawyer and asking for extra time to provide the information sought by the Authority. On 13 August 2009, the appellant was granted an extension until Friday 4 September to provide his submissions. The appellant wrote again on 4 September 2009 informing the Authority that he had failed to get a lawyer but that he wished to explain his circumstances in person because his oral English skills were more advanced than his writing skills.

[15] In an abundance of fairness to the appellant, the Authority set the matter down for an oral interview on 28 September 2009.

[16] The appellant has had partial legal representation during the processing of this second claim. At the RSB he was represented by Mr Inderjeet Singh at Avondale Law. He was not represented at the time the notice of appeal was filed

(19 June 2009) but submitted an Authority to Act in favour of Mr Heval Hylan of Hylan Law on 1 July 2009. By way of facsimile letter of 16 July 2009, Mr Hylan withdrew as counsel. On 11 March 2010, after the appeal hearing and the submission of all evidence relating thereto, Mr Hylan gave notice that he had been instructed again and enclosed an Authority to Act signed by the appellant. Mr Hylan has not provided any submissions or further material in respect of the appeal.

[17] Because this is the second time the appellant has lodged a refugee appeal the Authority must consider:

- (a) whether the appellant meets the jurisdictional threshold of establishing that circumstances in Chad have changed to such an extent that his second claim is based on significantly different grounds to his first claim; and only if so
- (b) whether the facts as found on the second claim establish that the appellant has a well-founded fear of being persecuted for a Convention reason.

[18] It is necessary to consider the question of jurisdiction first.

JURISDICTION OF THE AUTHORITY TO HEAR THE SECOND CLAIM TO REFUGEE STATUS

[19] While the Immigration Act 1987 permits a second (or subsequent) application for refugee status to be made after the first one is declined, that application can only be considered in limited circumstances. Those circumstances are prescribed by s129J which provides:

"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.
- (2) In any such subsequent claim, the claimant may not challenge any finding of credibility or fact made in relation to a previous claim, and the officer may rely on any such finding."

[20] The Authority's jurisdiction to hear and determine an appeal from the decisions of a refugee status officer is found in s129O(1) of the Act which provides:

"129O Appeals to Refugee Status Appeals Authority

- (1) A person whose claim or subsequent claim has been declined by a

refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[21] In determining whether there is jurisdiction to consider a second claim to refugee status, regard is had to the Authority's decision in *Refugee Appeal No 75139* (18 November 2004) in which the issue of the second time jurisdiction was reviewed. The relevant principles are set out between [54] and [57] which are reproduced here:

[54] In any appeal involving a subsequent claim under s 129O(1), the issues are not "at large". Rather, there are three distinct aspects to the appeal.

[55] First, irrespective of the finding made by the refugee status officer at first instance, the claimant must satisfy the Authority that it has jurisdiction to hear the appeal. That is, the claimant must establish that, since the determination of the previous claim, 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. As to this:

- (a) The change of circumstances must occur *in* the claimant's home country. It is not open to the claimant to circumvent the jurisdictional bar by submitting that at the hearing of the previous claim the refugee status officer or the Authority misunderstood the facts.
- (b) A "reinterpretation" of a claimant's case is neither a change of circumstances, nor is it a change of circumstances *in* the claimant's home country.
- (c) The claimant cannot invite the Authority to sit as if it were an appellate authority in relation to the decision of the first panel and to rehear the matter. The Authority has no jurisdiction to rehear an appeal after a full hearing and decision.
- (d) A second appeal cannot be used as a pretext to revisit adverse credibility findings made in the course of the prior appeal.
- (e) Jurisdiction under ss 129J(1) and 129O(1) is determined by comparing the previous claim to refugee status against the subsequent claim. This requires the refugee status officer and the Authority to compare the claims as asserted by the refugee claimant, not the facts subsequently found by that officer or the Authority.
- (f) Proper recognition must be given to the statutory language which requires not only that the grounds be different, but that they be **significantly different**.
- (g) The Authority does not possess what might be called a "miscarriage of justice" jurisdiction.

[56] Second, in any appeal involving a subsequent claim, s 129P(9) expressly prohibits a claimant from challenging any finding of credibility or fact made by the Authority in relation to a previous claim. While the Authority has a discretion whether to rely on any such finding, that discretion only comes alive once the jurisdictional threshold for subsequent claims set by ss 129J(1) and 129O(1) has been successfully crossed.

[57] Third, where jurisdiction to hear the appeal is established, the merits of the further claim to refugee status will be heard by the Authority. That hearing may be restricted by the findings of credibility or of fact made by the Authority in relation to

the previous claim, or “at large”, depending on the manner in which the discretion under s 129P(9) is exercised by the Authority.”

[22] This Authority adopts those broad principles and it is in consideration of them that it now assesses the particulars of the appellant’s first and second refugee claims to determine whether the jurisdictional threshold is crossed.

THE APPELLANT’S FIRST REFUGEE CLAIM

[23] The account which follows is a brief summary of the claim which was made to the Authority (differently constituted) at the time of the first appeal. The account is recorded in more detail in *Refugee Appeal No 76408* (20 November 2007).

[24] The appellant was born in 1990 and was therefore 17 years of age at the time of the (first) Authority hearing. He is the eldest of four children born to his father, a merchant in N’Djamena. His father travelled throughout Chad and neighbouring countries as part of his trading.

[25] The appellant attended school and his life between 1990 and 2003 was unremarkable.

[26] In about 2003 the appellant’s father asked him to send emails for him. The appellant wrote the messages on his computer, copied them onto discs and then sent them from an Internet café. The father warned him not to keep any evidence of the messages on his computer but he did keep copies. Although the appellant did not understand the detail of the emails because they used code language, it was clear they were related to his father’s political opposition to the Chadian government. The appellant was aware in a general sense that his father was involved in political organisations who opposed the Chadian government but he (the appellant) did not know the details of the involvement.

[27] In November 2005 his father left home and never returned. The appellant has had no news of his father since then.

[28] In April 2006 various opposition political groups mounted an armed attack on N’Djamena. The appellant and his family sheltered safely at home until the government forces eventually defeated the attackers.

[29] Approximately a week after the attack, the family home was broken into while the family were out visiting a friend (BB). Neighbours told them that the Authorities had been there in search of the father. The appellant’s computer, a television and a tape recorder were missing.

[30] The family were very concerned about the consequences of the raid,

particularly for the appellant, and immediately went and stayed with BB. On direction of his mother the appellant left Chad the next day with BB who took him across the border to Sudan. In Sudan the appellant was introduced to a people smuggler who arranged a false Chadian passport which contained the biographical details of someone else with the appellant's photograph in it. The appellant travelled from Khartoum to New Zealand via Dubai and Singapore.

[31] Once in New Zealand the appellant had no contact with his family. He did contact with the leader of the National Alliance Party based in France (of which his father was a member) on a number of occasions. The leader provided the appellant with a letter stating that the appellant's father was a member of the armed opposition in Eastern Chad and the authorities in Chad were looking for the appellant. The leader also tried to contact the appellant's family but was unsuccessful. The appellant tried to contact his parent's respective families in Chad but was unable to. The appellant also contacted a friend in Sudan, AA (who he had seen there prior to coming to New Zealand) and asked the friend to contact BB. AA did not make those enquiries.

[32] The appellant stated that he could not go back to Chad because:

- i. he was wanted by Chadian authorities because of his involvement with his father's political activities;
- ii. as a member of the *Gorane* tribe, he would be forcibly conscripted by the army to fight against other *Gorane* opposition groups;
- iii. as a returning asylum seeker, he would be detained on arrival and persecuted; and
- iv. the Saudi Arabian and Chadian governments would share information about the Chadian passport with a Saudi residence permit on which he travelled to New Zealand and he would be at risk as a result.

Findings of the Authority on the first appeal

[33] The detailed decision of the first panel of the Authority delivered on 20 November 2007 rejected the appellant's claim. After a comprehensive analysis of factors which caused the Authority to disbelieve all aspects of the appellant's claim except that he is a national of Chad the Authority found that he was the same person as that named in the Chadian visa on which he travelled to New Zealand for the purposes of studying English. The Authority concluded that the evidence did not establish a real chance of the appellant being persecuted in Chad (or in Saudi Arabia).

THE APPELLANT'S SECOND CLAIM

[34] What follows is a summary of the appellant's evidence given in his second appeal.

[35] The appellant's first refugee claim was fabricated as to his age, identity and the reasons he sought refugee status. The assessment made by the first panel of the Authority was accurate as to the appellant's genuine situation as a Chadian national who had always lived in Saudi Arabia and travelled to New Zealand to study English.

[36] The appellant is the oldest of four children born to Chadian parents resident in Saudi Arabia. The appellant has never lived in Chad.

[37] His father moved to Saudi Arabia approximately 40 years ago because of political difficulties he had in Chad. The appellant has never discussed these difficulties in any detail with his father and cannot describe them. He is aware that his father continued to take an interest in political affairs once living in Saudi Arabia and there were visitors to the family home who were members of the Chadian opposition. They discussed politics with his father and, as a group, arranged for financial support for the members fighting the Chadian forces.

[38] In 2003 the appellant began studying computer engineering at a university in Sudan. He was a student there until early 2005 when he returned to Saudi Arabia to renew his exit visa.

[39] Until early 2005 his father held a resident's permit for Saudi Arabia which included his wife (the appellant's mother) and their four children, including the appellant. During the appellant's visit to the family in early 2005, his father's Saudi residence permit expired and could not be renewed. Many Chadians living there at the time had not been able to renew their residence visas. Because the appellant could not leave Saudi Arabia legally, he could not return to Sudan to complete his study. Thereafter he found employment even though he had no legal immigration status.

[40] In May 2005, his sister was diagnosed with stomach cancer but was unable to access medical treatment because the father did not have a residence permit.

[41] In February 2006, the Dubai branch of Immigration New Zealand (INZ) received an application for a student visa from the appellant. In May 2006, the visa was issued and in June 2006 the appellant travelled to New Zealand via the Sudan. He used a false Sudanese passport to depart Saudi Arabia (so that he was not detected as not having had a residence permit) but made the rest of the

journey on his own genuine Chadian passport.

[42] He arrived in New Zealand on 8 June 2006 and lodged an application for refugee status the next day. The appellant remained in frequent telephone contact with his parents.

[43] In October 2006, the appellant's father was one of the founding members of the Saudi Arabian branch of the Chadian political organisation, the United Forces for Democracy and Development ("UFDD"). The UFDD opposes the ruling Chadian President and has fighting forces as well as civilian political members. Later, a public announcement about the organisation was released. The UFDD was formed in October 2006 under the leadership of Mahamat Nouri.

[44] In March 2007, the appellant's sister died from her illness. Also in 2007, the appellant's brother needed medical attention for a tumour which was growing on his forehead. This increased the pressure on the appellant to send money home to pay for the medical expenses.

[45] In 2008, another Chadian, who had unsuccessfully applied for refugee status in New Zealand and returned to Chad, sent an email to a friend in New Zealand purporting to describe his treatment on return to Chad. In essence, the email stated that he was detained, beaten and not given adequate food, water, or washing and toileting facilities. He stated that he eventually escaped detention.

[46] The appellant's second claim to refugee status is made on the following grounds:

- i. He cannot return to Saudi Arabia and has no right to live there. He left on a false Sudanese passport and his fingerprints were recorded in connection with that passport so he risks being prosecuted for immigration or document fraud. As a result, on arrival he would be detained by immigration authorities and then, as a person not lawfully in Saudi Arabia, he would be deported to Chad;
- ii. The country conditions in Chad have worsened recently;
- iii. His father and various other relatives have long been associated with the political opposition in Chad. On arrival in Chad the authorities will immediately associate him with those relatives and he will be targeted for serious harm, possibly death, as a result;
- iv. At the time of his first claim, his fear of returning to Chad and the mistreatment he was likely to receive was based on the opinions of others whereas now, on the basis of an email from another Chadian

returned to Chad, there is a greater degree of certainty about what will happen.

DOCUMENTS PRODUCED

[47] The Authority and the appellant have been provided with the files of the Refugee Status Branch, including copies of all documents submitted by the appellant at first instance. Two written requests from the appellant regarding procedural matters were received by the Authority on 12 August and 4 September 2009 respectively.

[48] On 28 September 2009, the Authority received a bundle of documents from the appellant pertaining to country conditions in Chad and in particular the internal conflict between the Chadian government and armed opposition groups. He also submitted a copy of an email exchange between himself and a Mr Jebren Issa of the UFDD. On 20 October 2009, the appellant submitted two news articles about the attack on N'djamena by opposition forces in February 2008.

[49] The Authority has also received a letter from the appellant (dated 1 December 2009) and from his counsel (dated 11 March 2010) requesting information as to the determination of the appeal.

[50] All of the material submitted has been considered in the determination of the appeal.

IS THE JURISDICTIONAL THRESHOLD MET?

[51] For ease of reference, the relevant section is repeated here:

“1290 Appeals to Refugee Status Appeals Authority

(1) A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision.”

[52] The section above contains what are essentially two interdependent parts both of which must exist before a subsequent claim can be heard: (1) circumstances have changed in the appellant's home country and (2) circumstances have changed to such an extent that the grounds of the subsequent claim can be said to be “significantly different” from the previous claim. Absent one of them, the jurisdictional threshold is not reached.

[53] As noted in the above discussion of *Refugee Appeal No 75139* at [21], the

approach required by the relevant provisions of the Immigration Act is to compare the claims as asserted by the appellant in determining whether there is jurisdiction to hear the subsequent appeal. In accordance with this, the Authority has not considered the credibility of this appellant in reaching its finding on jurisdiction.

[54] At the time of the first determination on 20 November 2007, the appellant's claimed predicament resulted from his own and his father's political profile with the Chadian authorities, his membership of the Gorane clan, his use of a false travel document and his situation as a returning failed asylum seeker.

[55] In essence, the claimed grounds of the second claim are that his father's political involvement in organisations opposing the Chadian regime, including the UFDD since 2006, will lead to the appellant being identified as the son of a political dissident by the Chadian authorities. He says his predicament is exacerbated because his uncles are also involved in the political opposition, some as civilian supporters and some as fighters in Eastern Chad. It is for those reasons that the appellant fears being persecuted if he returns to Chad.

[56] The difficulty faced by the appellant is that his claimed personal circumstances in Chad have not changed since the determination of his first claim in November 2007. He concedes his father was a member of the UFDD then and he is now. His uncles were fighting in opposition groups against the Chadian army and they continue to do so. The only difference is that the appellant has now disclosed these circumstances to support his refugee claim rather than relying on the untrue account he advanced in his first claim.

[57] The appellant has not established or even asserted that there are circumstances relating to his father or other relatives' political activities which have changed since the determination of his first appeal in November 2007. Nor is there any other feature of the appellant's personal characteristics or profile in Chad which has changed since November 2007.

[58] As noted in *Refugee Appeal No 76192* (13 January 2009) at [28], for the purposes of a subsequent claim an assessment of circumstances in the appellant's home country also requires consideration of the country conditions. The Authority is satisfied that the country conditions in Chad relevant to the particular profile and characteristics of this appellant have not changed such that it could be said that the second claim is based on significantly different grounds.

[59] Country information establishes that Chad's post-independence period (1960 until now) has been marked by instability and civil conflict – largely relating to tensions between the mainly Arab-Muslim north and the Christian and animist

dominated south; see *BBC News* “Country Profile: Chad”. It is not intended to recite here a comprehensive history of Chad’s political history and civil conflict. A chronology of key events compiled by the BBC (news.bbc.co.uk), representative of other country information sources, discloses the following incidents of relevance since 1998.

[60] In 1998, the Movement for Democracy and Justice (MDJT) led by President Idriss Deby's former Defence Minister, Mr Youssouf Togoimi, initiated an armed rebellion against the government. In January 2002, the government and the MDJT signed a peace agreement intended to end the civil conflict.

[61] In May 2002, fighting between MDJT forces and the government erupted in the north where 64 people were killed. When another peace deal was signed between them in 2003, some MDJ hard-liners rejected the deal. The fragile situation in Chad was exacerbated by the arrival, in early 2004, of tens of thousands of Sudanese refugees escaping the fighting in the Darfur region of western Sudan. In mid-2004, government troops clash with pro-Sudanese government militia as the Sudanese conflict extends into Chad. Throughout 2004 and 2005 there were numerous skirmishes between rebel groups (some of whom sheltered in Sudan) and government forces. The situation reached a critical point in December 2005 when a rebel attack in Adre, on the eastern border caused the Chadian government to announce it was in “a state of war” with Sudan.

[62] In April 2006, rebel forces attacked government forces in N’Djamena in an attempt to oust the President but they were easily resisted. Hundreds of people were killed. Also in 2006, ethnic based violence became more pronounced in the eastern area with reports that the Arab Janjaweed from Darfur was penetrating into Chad and attacking non-Arab populations. As a result, in late 2006 the government imposed a state of emergency in eastern Chad and continued to accuse the Sudanese government of supporting rebellion forces.

[63] In February 2008, rebel forces (an alliance of three groups who joined forces in late 2007) launched another assault on N’Djamena briefly seizing control of large parts of the city before being repelled. Reports indicate that hundreds were killed and many thousands of people were temporarily displaced. Many of the displaced have now returned.

[64] In March 2008, the Presidents of Sudan and Chad signed an accord in an attempt to end hostilities between the two countries – an accord swiftly broken in May 2008 when violence between Chadian and Sudanese militia reignited. In a further attempt to mend relations, the presidents of Chad and Sudan met in

February 2010 and agreed to deploy a joint force to monitor the situation along their border. The UN peacekeeping force which has been in Chad since 2009 (taking over from a EU peacekeepers force) have been asked to stay on in Chad until mid-2010.

[65] The short point to be made from the country information is that Chad has suffered civil instability, armed political rebellions and ethnic-based violence for many years. This reality has not changed since the determination of the appellant's first claim in November 2007. It is not disputed by the Authority that since then there have been further incidents of civil conflict, most notably in February 2008 in N'Djamena. But those incidents are simply further events within an ongoing situation of intermittent civil unrest. They do not amount to a "change in circumstances" for the purposes of the subsequent claim jurisdiction.

[66] Beyond his broad contention that the human rights and humanitarian situation in Chad has deteriorated since late 2007 (a contention not supported by the country information), the appellant has not asserted in any specific way that country conditions have changed for someone with his particular characteristics. Nor has he provided persuasive evidence or country information which would support such an assertion that an individual with his characteristics would be returning to significantly changed circumstances.

[67] The only material change which has occurred between the final determination of the appellant's first claim and the hearing of this appeal is that the appellant has conceded that the first claim was untrue. All of the factors that he now asserts would put him at risk of serious harm in Chad existed at the time of his first claim but he chose not to present them. It is not sufficient for an appellant to rely upon a failure to properly disclose his true grounds for a refugee claim in order to later claim that there has been a change of circumstances sufficient to enable him to advance a subsequent claim for refugee status. For this appellant, there has been no change of circumstances in Chad such that his second appeal is based on significantly different grounds.

[68] Consideration has also been given to the assertion that the email from another Chadian regarding his treatment on return to Chad amounts to a change in circumstances. The Authority finds that it does not. In his first claim the appellant asserted that as a returnee and failed asylum seeker he would be mistreated by security officials and police on return to Chad. The email simply describes the sort of treatment which the appellant had previously asserted would be visited upon him. It is further evidence brought in support of the same claim and does not amount to a change in circumstances.

ADDITIONAL FINDINGS

[69] Although it is not strictly necessary given the findings in [65]-[67] above, for the sake of completeness the Authority notes that, even if the Authority were to accept jurisdiction to hear the present appeal (and that proposition is expressly rejected for the reasons above), the appellants' second claim is undermined by the following credibility concerns.

[70] At the second appeal hearing the appellant repeatedly emphasised that his primary fear of returning to Chad relates to his father's political activities and in particular his father's membership of the UFDD since 2006. However, this evidence is undermined in significant ways.

[71] First, his written statement submitted to the RSB in support of his second claim (consisting of six type-written pages and 55 paragraphs) omits any mention his father's membership of the UFDD. The statement refers in general terms to the political activities of other paternal relatives and asserts that his father was politically active in Chad before he (the father) departed more than 30-40 years before. In the context of such a long and detailed statement, the omission of what he now claims is the primary ground of his claim (his father's UFDD political activity) is striking.

[72] When asked to explain the omission, the appellant was not able to give a sensible explanation. He simply said that he forgot and he may not have been asked about it. When reminded that he wrote the statement himself and included other detailed information, he stated that he could not remember why he omitted the information. When the Authority put to him the possibility that he had fabricated the account about his father and the UFDD after he wrote the statement, the appellant denied the possibility, suggesting instead that he may have tried to be brief in his statement. He repeated his assertion that he could not remember why the information was left out. The Authority does not accept his explanation. It is implausible that had the appellant genuinely feared returning to Chad because of his father's current membership of the UFDD, he would have failed to mention it in both his comprehensive written statement and his Confirmation of Claim form.

[73] Other concerns which undermine the credibility of the appellant's account are as follows.

[74] The appellant has no specific knowledge about the problems his father had

with Chadian authorities or what caused his father to leave Chad. This is despite have based two refugee claims on his father's political activities (current and historical) and being in regular telephone contact with his father since arriving in New Zealand. It defies belief that if the father really had had political difficulties in Chad the past the appellant would not have sought a detailed account of them. That he did not so is indicative of a fabricated claim.

[75] The appellant has also given inconsistent information about his father's previous activities and profile with Chadian authorities. When asked why he had not sought more details from his father about the father's activities and difficulties in Chad, the appellant changed his account and suggested that general religious issues (as opposed to political activities and being targeted by the authorities) were the main reason for his father's departure from Chad. This assertion contradicts his written statements to both the RSB and the Removal Review Authority. For example his RSB statement states in paragraph [46] at p987 "That is why my father left Chad in the first place because of his political activities and the family is well-known in Chad". In paragraph [51] of the same statement he says: "My father was a wanted man when he left Chad because of his political history".

[76] At another point in the appeal hearing he further resiled from his written statement that his father had been targeted by Chadian authorities and said that he did not know if his father had had any particular problems prior to leaving Chad. The mobility of his evidence as to the problems his father did or did not have further strengthens the view that the evidence is untrue.

[77] The appellant told the Authority that he knew of his father's UFDD membership before he (the appellant) left Saudi Arabia in June 2006. This is inconsistent with the evidence of the appellant and country information that the UFDD was not established until October 2006.

[78] In support of the claim that his father is a member of the UFDD the appellant produced (to the RSB) what purports to be a letter of confirmation of the father's UFDD membership from a Mr Brahim Djidda, Foreign Affairs Commissioner, of the UFDD ("the UFDD letter"). However, the UFDD letter was dated 6 July 2007, more than a year before the appellant requested it (some time after the appellant made his second claim for refugee status in late 2008). When asked to explain the inconsistent date the appellant stated that it was the result of human error. After the appeal hearing, the appellant submitted a copy of an email that purported to be from a Mr Jebren Issa, Opposition Leader in the Middle East Region, explaining that the UFDD letter was a genuine document but contained a

date error. The email explained the careful process that correspondence issued from the UFDD goes through but did not explain how, given such a process, the error could have occurred. Mr Issa's email also confirmed that the appellant's father was a member of the UFDD. However, in light of the other credibility concerns about the appellant's account outlined herein and in the absence of an opportunity to examine Mr Issa, the Authority declines to give his email, and the UFDD letter, any weight. In doing so the Authority also notes that despite a request by it during the appeal hearing to see the original email which accompanied the UFDD letter (which was sent to the appellant as an email attachment) and the appellant's agreement to provide it, that email has not been produced. The lack of contextual information surrounding the letter strengthens the view that neither it, nor Mr Issa's email should be given any weight.

[79] For all the reasons in [70]-[78] above, the Authority finds that the account of his father's political difficulties provided by the appellant in support of his second refugee claim is not credible. Considering his false first claim and his untrue account of his father's political activity in his second appeal, the Authority also rejects the appellant's claim that other relatives are involved in the political opposition and that he will suffer harm as a result. There is no credible or corroborative evidence before the Authority which links the appellant to the individuals he claims are his uncles or which establishes that he will be at risk of harm because of his association with them.

[80] All of the other aspects of his second claim were considered by the Authority in his first refugee appeal and were found not to provide sufficient basis on which he could be recognised as a refugee.

CONCLUSION

[81] For all the reasons above the Authority finds that the jurisdictional threshold set out in s129O of the Immigration Act 1987 has not been met. There is no jurisdiction for the Authority to consider the appellant's subsequent claim. The appeal is dismissed.

"B A Dingle"
B A Dingle
Member