

H-TW-V3

Heard at Field House

SY (Kurd-No Political Profile)
Syria CG [2005] UKIAT 00039

On 4 January 2005

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

15 February 2005

Before:

Mr D K Allen - Vice President
Mr A L McGeachy - Vice President
Mrs R Faux JP

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the Appellant: Mr B Bedford for Sultan Lloyd Solicitors
For the Respondent: Miss J Sigley, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, who is a national of Syria of Kurdish origin, appeals with permission against the determination of an Adjudicator, Mrs C M Hawden-Beal, in which she dismissed his appeal against the Secretary of State's decision of 26 May 2004 to issue directions for his removal from the United Kingdom, asylum having been refused.
2. The hearing before us took place on 4 January 2005. Mr B Bedford for Sultan Lloyd Solicitors appeared on behalf of the Appellant, and Miss J Sigley appeared on behalf of the Secretary of State.

3. The Appellant claimed to fear persecution on account of his work for, and involvement with, the Al-Amal association and with the press and other non-governmental organisations as well on account of his Kurdish ethnicity. He claimed to have been turned off a course at the High Institute for Applied Science and Technology because he received a negative security clearance from the Intelligence Services and presumed that this was because of his family's political history, his ethnicity and the fact that he did not belong to the Ba'ath party. Subsequently he attended Damascus University studying civil engineering but dropped out fairly soon.
4. Thereafter he claimed to have become involved with non-governmental organisations and the press, training to be a journalist. He joined the Iraqi Al-Amal organisation and the Human Rights Association of Syria and helped to edit reports in Kurdish magazines and also illegal Communist newspapers.
5. He claimed that in 2001 he was offered the opportunity to go to Egypt to take part in a workshop with the Iraqi Al-Amal organisation, which was organised by the United Nations. He said that he applied for a passport and was told to go to the Intelligence Department to get their approval. He claimed to have been detained by that department for twelve days and interrogated and tortured and beaten. He was questioned about his family's political history and why he was not a member of the Ba'ath party. After eight days he managed to bribe the guard to contact his father and tell him where he was and after a further four days he was released after those in authority intervened. His father was a doctor and he treated the injuries he had suffered to his knees, back, leg and arms during the two month period in which he recovered before resuming his work.
6. He claimed to have become more and more involved with the Kurdish political parties and was arrested as a consequence of helping to organise two demonstrations at Damascus University. He said that he was released without charge. He claimed to have been in Qamlishi when the violence of 12 and 13 March 2004 occurred. He claimed to have distributed leaflets during the curfew on 13 March 2004. He said that the security forces began to round up suspects on 14 March and, fearing that they would arrest him next, he stayed at his friend's house rather than his parents which was apparently raided by the security forces on three occasions. He fled to his aunt's on the Turkish border where he was visited by his father who brought with him an agent who accompanied him to Turkey and thereafter he came to the United Kingdom on 30 March 2004. He claims that the authorities were still looking for him and had even questioned his ex-flat mate in Damascus.

7. The Adjudicator gave consideration to the Appellant's claim. She set out in some detail the representatives' submissions and the objective evidence, and at paragraphs 48 to 60 of her determination assessed the claim.
8. A number of matters caused her to doubt credibility and these are set out in particular at paragraphs 48 to 59 of the determination. These matters led her to conclude as she stated at paragraph 59 that she was not satisfied to the lower standard of proof that any of that which the Appellant claimed to have happened to him did so happen.
9. Leaving aside for a moment the quality of the Adjudicator's credibility findings, it is important to move thereafter to paragraph 60. There the Adjudicator considered the human rights claim. She stated the following:

“Despite the number of detentions and interrogations which the Appellant claims to have undergone, he has produced no evidence of death threats to himself. I have already said that I do not accept that the Appellant was as badly treated during his detention as he claims and so I do not accept that he was ill-treated in any of the frequent detentions thereafter.”
10. It can readily be seen that there is a contradiction between the findings at that paragraph and those at paragraph 59 where the Adjudicator found the Appellant in effect entirely to lack credibility whereas it would seem from paragraph 60 that, on the face of it, she accepted a level of ill-treatment and perhaps detentions also.
11. In submissions before us Mr Bedford challenged the Adjudicator's adverse credibility findings, going into some detail on the various matters that caused her to doubt credibility and also pointing to the contrast between paragraphs 60 and 59.
12. Miss Sigley defended the Adjudicator's adverse credibility findings but accepted that if the Tribunal was not with her then remittal would be necessary.
13. We do not consider that the contrasting findings at paragraphs 59 and 60 can be resolved by us. On the one hand the Adjudicator appeared to disbelieve the account given, on the other hand she appeared to believe aspects of it. Those findings are in our view essentially contradictory, and as a consequence we cannot be clear as to what it is precisely that the Adjudicator accepted and what she did not accept of the Appellant's account. On that basis the appeal would have to be remitted for consideration afresh by a different Adjudicator.

14. There is however a further issue. This was also a matter of detailed submissions before us. That is the issue of whether the Appellant would be at risk on return to Syria even if the Adjudicator's adverse credibility findings insofar as they were adverse credibility findings could be sustained. On this basis he would return to Syria as a Kurd with no history of political involvement or political association but simply a Kurd who had left Syria as it may be without permission (and this was an issue on which Miss Sigley in particular addressed us) and who might be regarded as a person who had sought to apply for asylum while in the United Kingdom. If we found that he was at risk on this account then remittal would not be necessary, whereas if we did not find risk on that account then it is clearly of particular importance especially in the light of the more recent evidence that has been produced, for the matter to be considered on a fresh hearing since the evidence, if credible, indicates the kind of political profile that arguably might place the Appellant at risk.
15. We have had the benefit of considering various Tribunal authorities, in particular **ZB and AK [2004] UKIAT 00217** and **RS [2004] UKIAT 00257**. We also have the decision of the Court of Appeal in **Hariri [2003] EWCA Civ 807**.
16. In **ZB and AK** the Tribunal had before it two appeals involving Claimants in relation to both of whom there was some past family political association accepted in Syria, and in the case of **AK** a more direct political involvement on his part in Syria had also been accepted. Otherwise aspects of credibility were challenged. However, the Presenting Officer in those cases conceded the appeals and therefore the Tribunal did not have the opportunity to give detailed consideration to the evidence other than noting the characteristics to which we have referred above, and making reference to aspects of the objective evidence concerning risk on return to Syria.
17. In **RS** the Claimant, who was also Syrian, had a current valid passport in his own name regularly issued by his own government which on his own account bore a proper exit stamp on the occasion when he came to the United Kingdom and it was clearly open to him to return on that document without it needing to become known to the Syrian authorities that he had claimed asylum abroad.
18. **Hariri** is concerned with a challenge to a determination of the Tribunal which upheld the determination of an Adjudicator concerning risk on return to Syria and in particular focusing on the relevant test as to the level of ill-treatment required for a claim to be made out under the Refugee Convention.

19. Mr Bedford took us to page 122 of his bundle which is an update by the Immigration and Refugee Board of Canada concerning the Syrian government's attitude to its citizens who have sought asylum. The report is dated 16 September 2003. Among other things it is stated that any Syrian national who departs the country illegally faces judicial consequences that may in principle result in up to three months' imprisonment. It is said that generally speaking the same treatment for unsuccessful Syrian asylum seekers who have departed the country illegally may be expected. The response of the Syrian authorities is said to be very much dependent upon the nature of the departure and the profile and background of the individual. If it becomes known that they have applied for asylum, the consequences may be severe. However, if the individual's claim for asylum remains confidential then he or she may avoid further complications of the local law enforcement agencies and judicial authorities. It is said that of course the maintenance of confidentiality will depend in part on the manner in which the individual is returned to the country of origin. Mr Bedford also referred us to the Syrian Human Rights Committee Report at page 131 of the bundle, in particular at page 134 concerning the real risk to people who are accompanied on return. He referred us also to the report of Dr Rebwar Fatah who stated no more than that people with a profile were at risk on return. The Amnesty International Report of 2004 on Syria contained examples of returnees who had been arrested on return.
20. Miss Sigley argued that in the light of the Adjudicator's adverse credibility finding it was plausible that the Appellant had not even left Syria illegally. If he had left illegally then there was the concession in **ZB and AK** but there were the references there to a political profile. The actual cases cited, for example, at paragraphs 7 and 8 in **RS** concern people who had clear profiles. The Canadian document at page 122 of the Appellant's bundle did not show that an illegal departure could be equated to risk on return. Miss Sigley also referred to aspects of Dr Rebwar Fatah's report on the various profiles, but argued that these essentially concerned Syrian exiles returning from abroad and people who were suspected of having links with the Muslim Brotherhood and Al Qaida. She also informed us that a person such as the Appellant would not be escorted back to Syria without a specific reason and this as such would not be the usual practice. A document would be issued which would be a Syrian travel document and it would be necessary to approach the Syrian authorities for this though it would not be disclosed that he was a failed asylum seeker. It would be speculative to suggest that an inference would be drawn. In any event the Appellant had the option to depart voluntarily, though again he would need documentation for this. As regards the question of being a Kurd, it had been mentioned in **ZB and AK** as an exacerbating factor but there was no evidence in

the case of any of the particular returnees referred to in the examples that it was a factor of significance.

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

22. We do not consider that it can properly be said that there is a real risk of an inference of this kind being drawn. The Appellant, on the Adjudicator's adverse credibility findings, is a person who has no political profile in Syria. Any check of Syrian records that might be made by the authorities as a consequence of an application being made for travel documents would reveal nothing to his discredit. It is in our view purely speculative and indeed fanciful to suggest that nevertheless there would be inferred to him an attitude adverse to the interests of the Syrian state by the fact that he was in the United Kingdom and needed travel documentation in order to return. It may be that it would come to light that he had left the country illegally in which case he would face up to three months' imprisonment, but on the one hand that would involve prosecution and on the other hand would not to our mind, given that it is unclear whether such a person would be sentenced at all, quite apart from how long within the three months maximum they might be in prison, be such as to give rise to a real risk of breach of Article 3 rights. As Miss Sigley has pointed out, the examples given, for example in the Amnesty International Report at pages 141 to 142 of the bundle of Syrians arrested and detained on return were mainly people suspected of having links with the Muslim Brotherhood and were people who were returning from exile. The same point can be made with regard to the examples given by Dr Rebwar Fatah concerning a number of Syrians held and ill-treated who again appear to be people who had returned to Syria from exile and all appear to have been regarded as

people who were or at least were believed to have links with the Muslim Brotherhood or other organisations regarded with extreme suspicion by the Syrian government. Accordingly we do not consider that the specific examples in the evidence support the contention that a person without political profile returning to Syria having left without authorisation and therefore returning without documentation which would enable them to enter the country without question is a person who faces a real risk of persecution or breach of their human rights.

23. There remains therefore the question of whether on the basis of the evidence concerning the claimed political activities rejected by the Adjudicator the claim can be sustained before a different Adjudicator. That is of course very much a matter for him or her, though no doubt they will be assisted by the further evidence that has now been put in, in enabling them to come to a conclusion on this matter. We conclude, therefore, that there is no real risk for a person with a profile as found by the Adjudicator at least at paragraph 59 of her determination of not being credible as regards the claimed political profile, detention and ill-treatment, but that the appeal must be remitted given the conflict between paragraphs 59 and 60 of the determination for consideration afresh by an Adjudicator other than Mrs Hawden-Beal.

**D K ALLEN
VICE PRESIDENT**