

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76274

AT CHRISTCHURCH

Before: A R Mackey (Chairman)
C M Treadwell (Member)

Counsel for the Appellant: E Parsons

Appearing for the Department of Labour: V N Wells

Date of Hearing: 17 November 2008

Date of Decision: 22 December 2008

DECISION

INTRODUCTION

[1] This is an appeal by a 25 year-old Sudanese man against the decision of a refugee status officer (RSO) made under s129L(1)(b) of the Immigration Act 1987 ("the Act"), ceasing to recognise the grant of refugee status to him because that recognition of him may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereafter referred to collectively as "fraud").

[2] The nub of the present proceedings arises from the fact that, since the appellant was granted refugee status in New Zealand in June 2003, he has, using his Sudanese passport, returned to Sudan on two occasions in 2007/2008. The Refugee Status Branch (RSB) did not accept the credibility of the appellant's explanations for those journeys. The RSB has concluded that, as he has returned without any credible censure by the Sudanese authorities, it strongly suggests that he never had any difficulties with the Sudanese authorities, to the extent that he

had previously claimed.

[3] These circumstances led to the RSB instigating cancellation proceedings. A cancellation notice was issued on 5 March 2008 and served on the appellant on 26 March 2008. The RSB then conducted an interview with the appellant, in Christchurch, on 3 April 2008. On 27 June 2008, the RSB gave formal notice cancelling the appellant's refugee status. The appellant then appealed to this Authority on 11 July 2008.

[4] As a preliminary matter, it is important to record that the appellant was served with the Notice of Intended Determination Concerning Loss of Refugee Status on 26 March 2008. He advised, at the hearing before us, that very shortly thereafter he was informed by an RSO that she would be ready to conduct an interview with him in seven days in Christchurch, on 3 April 2008. The appellant, in order to be compliant and constructive, as he put it, accepted the interview date. It then took him two or three days to get an opportunity to instruct his counsel. Mr Parsons was thus left with two or three days only to prepare for the RSB interview. The appellant, in particular, explained that this was the reason why he had been unable to provide documentation to support his case. Some of the documentation was ultimately passed up to us at the beginning of the appeal hearing. The appellant also claimed a further problem in that he never had the opportunity to check over the interview report from the RSB which was sent to his representative on 9 May 2008. It is apparent that between the appellant and his representative somehow there was a failure to pass the draft of the interview report to the appellant. Thus the appellant and his representative never reviewed and corrected that document. The appellant therefore, during the hearing, expressed disagreement with a number of items in the interview report stating that in the circumstances he had not had an earlier opportunity to comment on the contents of the report.

[5] The appellant agrees that he went to Sudan in January/February 2007 and again in December 2007, returning in January 2008. He maintains the first of these trips was to secure the release of his father, who was held in detention. The second visit was to allow his father to be able to leave Sudan by the device of surrendering himself to the authorities and stating his preparedness to complete his military service.

THE 'CANCELLATION' JURISDICTION

[6] Section 129L(1)(b) of the Act provides that the functions of refugee status officers include:

“...determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information and determining to cease to recognise the person as a refugee in such a case if appropriate.”

[7] Thus, a refugee status officer has a duty to determine whether to cease to recognise a person as a refugee if it appears that the original grant of refugee status by the Refugee Status Branch may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.

[8] Where a refugee status officer ceases to recognise a person's refugee status, that person may appeal to the Authority against that decision. See s129O(2) of the Act, which provides:

“A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision.”

[9] There are thus two elements to the enquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud. This is recognised by the Authority to be a low threshold; see *Refugee Appeal No 75563* (2 Jun 2006). If so, it must then determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority's usual forward-looking enquiry as to whether, on current circumstances, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the enquiry is engaged, however, only if the first element – that the grant of refugee status may have been procured by fraud – is established.

[10] To contextualise the present appeal, it is necessary to record:

- (a) the appellant's refugee claim;
- (b) the granting of refugee status;
- (c) the subsequent 'notice of intended determination concerning loss of refugee status'; and
- (d) the cancellation jurisdiction of the Refugee Status Branch and the Authority.

THE APPELLANT'S REFUGEE CLAIM

[11] We set out below a summary of the evidence given by the appellant to the RSB in 2002 and 2003, upon which refugee status was granted.

[12] The appellant was born in Riyadh, Saudi Arabia to Sudanese parents. He has a younger brother and two younger sisters. His parents moved to Saudi Arabia in the early 1980s before he was born in 1983. Although born in Saudi Arabia, he was not entitled to Saudi Arabian citizenship and nor was his father. His father maintained his presence in Saudi Arabia by sponsorship from a Saudi employer. His father held master's level qualifications in accounting and finance and thus was able to find employment in Saudi Arabia.

[13] His parents are from the Messaleit tribe in Darfur, Western Sudan. The appellant and his family held Sunni Muslim religious beliefs. The appellant had no problems or issues during his childhood and schooling up until the age of approximately 17. He had travelled to Sudan on a few occasions with his family on family visits. He had been able to obtain a Sudanese passport from approximately 1995.

[14] After completing secondary school in 2000, the appellant wished to continue his education at university level but was not allowed to attend a Saudi university because of his foreign status. He therefore decided that he would study in Sudan. He made an application from Riyadh to a university in Khartoum and travelled there not long before his 18th birthday. Although his father wanted him to stay in Saudi Arabia, he could not find him a suitable sponsor. Also, the appellant did not wish to be beholden to a Saudi Arabian employer.

[15] In August 2000, after the appellant arrived in Sudan, he went to a science and technology university in Khartoum to submit his application. The officials at the university asked him whether he had completed his military service and told him it was a requirement of all young men in Sudan before they could begin their university studies.

[16] The appellant was unaware of this requirement but decided that he would report for military service in Khartoum as soon as possible. He was put into a group of new recruits divided into teams based roughly on where they came from in Sudan and their ethnicity. Most of those in the appellant's group were from the west of Sudan. Some of them were also from the Messaleit tribe. They were put

through a rigorous training regime which included significant fitness training and being forced to stand for several hours at a time as part of military discipline. He considered that the largely Messaleit group, in which he was involved, were given the worst treatment and made to stand for longer times and carry out far more fatigues than others. After dinner, recruits were shown movies about *jihad* (holy war) in the south of Sudan in an attempt to brainwash them to fight for their religion. As the war was predominantly between Sudanese of Arab Muslim background and those from the south, who were black Christian tribes, the appellant did not want to support the war.

[17] At the end of four weeks' training, when the appellant thought he would be able to leave and start his university course, he, and the team he was with, were told that they would have a short break and then would be sent to southern Sudan to join the military operations there for another two years. They would be involved in fighting southern tribes opposed to the government.

[18] The appellant was opposed to being involved in the war. He did not want to go to the south of Sudan or kill his fellow human beings. When he was given the two-week break from training, he went to his uncle's home and explained the situation. His uncle telephoned his father in Saudi Arabia and between them they made arrangements for the appellant to depart illegally from Sudan by obtaining a false military identity card which set out that his military service had been deferred. It was a requirement in Sudan to obtain such a card (with the deferral in it), or to have completed military service, in order to obtain a passport and finally an exit visa. It was also necessary to complete a departure card, noting the deferral.

[19] His uncle also made arrangements for the departure card through a person he knew at the Sudanese passport office. The departure card obtained was actually an expired one and so when the appellant came to leave through Khartoum airport, using his genuine Sudanese passport, his uncle, who was accompanying him, bribed the official to overlook that the departure card was expired. The appellant then departed for Saudi Arabia where he was able to return because of his father's sponsorship still being available.

[20] On return to Riyadh, it became apparent that he would not be able to stay legally in Saudi Arabia for much longer without finding a sponsor to enable him to live legally in that country. He decided therefore to leave Saudi Arabia and study overseas. He was able to obtain a student visa to come to New Zealand to study. He left Riyadh at the end of January 2001 and travelled to New Zealand without

incident. On arrival, he obtained a four-month student permit and commenced studying English.

[21] In April 2001, he applied for refugee status. While in New Zealand, he had sent his Sudanese passport to his father in Saudi Arabia to be renewed. Ultimately, a second Sudanese passport arrived, which his father had obtained for him after the payment of bribes to Sudanese officials in Riyadh. On 5 October 2001, the appellant withdrew his first claim for refugee status, stating that he wished to return to Saudi Arabia as his father had told him he would be able to obtain residency for him in Saudi Arabia if he returned. The appellant therefore decided to go on the basis that he understood his father could secure a permanent status for him in Saudi Arabia. He left New Zealand and returned to Saudi Arabia in November 2001.

[22] Once he got to his home, however, and talked matters through with his parents, he ascertained that any status that his father could obtain for him was only of a temporary nature. His father also told him that he had recently received an anonymous telephone call telling him that his son was required to return to Sudan and to join the military operations in the south "or results are not guaranteed". The appellant's father did not know who this was from but believed it was the Sudanese Embassy in Saudi Arabia where the father had to go on a regular basis to renew documentation. His father therefore asked him to go to Sudan and take the pressure off other family members who could face problems with the Sudanese authorities, even in Saudi Arabia, because of the appellant's refusal to return to the Sudanese military. The appellant refused to go back to Sudan and ultimately, after discussions and getting his father's support, returned to New Zealand in early February 2002. He was able to get another student visa to return.

[23] In July 2002, he applied again for refugee status at the RSB, explaining the reasons for his delay. After having problems in obtaining representation, he was interviewed by the RSB in January 2003.

GRANT OF REFUGEE STATUS

[24] After the appellant was interviewed, the RSB concluded that he had presented as a credible witness and there were no outstanding credibility concerns about his claim. The situation of Messaleit in Sudan and military service for a

person with the appellant's profile was then considered and found to be consistent with country information. The decision stated:

"Furthermore [the appellant's] claims that members of the Messaleit tribe, along with other ethnic minorities, are at a higher risk of being taken to training camps for a period of six to ten weeks before being sent to southern Sudan, has been confirmed by a Danish fact-finding mission undertaken in August and November 2001."

[25] His illegal departure from Sudan was also noted and accepted, as was his nationality. His claim, based on a prediction of being persecuted on return because he would be sent to a war zone where he could be involved in committing war crimes against innocent civilians, and was a deserter, who would face differential treatment because of his Messaleit tribal background, was also taken into account. Based upon the appellant's personal circumstances and a detailed review of the country information and jurisprudence, it was concluded that if he returned, he would immediately come to the attention of the Sudanese authorities on arrival and would be subjected to maltreatment. Thus there was a real chance of being persecuted on return for a Refugee Convention reason, namely his ethnicity. For these reasons, the appellant was found to be a refugee within the meaning of Article 1(A)2 of the Refugee Convention.

[26] The appellant has apparently later obtained permanent residence but has not yet obtained citizenship or a New Zealand passport.

[27] Notice of intention concerning the loss of refugee status was served upon him some three months short of five years since refugee status was granted in June 2003.

NOTICE OF INTENDED DETERMINATION CONCERNING LOSS OF REFUGEE STATUS

[28] In brief, the notice advised the appellant that the refugee status officer intended making a determination which would result in the loss of his refugee status. The grounds relied on were that the appellant had given unsatisfactory explanations of his two returns to Sudan. It was considered that his claim to have been of interest to the Sudanese authorities in the past was belied by his actions. The RSB concluded that his credibility was not accepted beyond his being Sudanese of Messaleit ethnicity and of a military service age. The problems of the appellant and his father were found to be a fabrication and accordingly, his returns

had posed no problems for the appellant.

[29] A review of the appellant's current predicament was then undertaken and it was concluded that there was not a real chance the appellant would be persecuted if he returned to Sudan at this time.

THE APPELLANT'S CASE ON APPEAL

[30] The account which follows is a summary of the evidence given by the appellant, at the appeal hearing. It is assessed later.

[31] The appellant maintains the account he gave, in respect of his original claim to refugee status, was truthful and he rejects any suggestion that his claim was in any way fraudulent. He was taken through the details of his original application by the Authority and confirmed all the evidence that had been provided at that time as being the truthful basis for his claim. He agrees that he returned to Sudan on two occasions but states that these facts do not establish in any way that his refugee status "may have been procured" by fraud. He stated he was readily able to explain the reasons why he returned and all of the circumstances surrounding those returns, including the steps taken to secure the release of his father and his own ability to enter and depart from Sudan.

[32] The appellant's father and the rest of his family returned to Sudan in late 2005 because his father was in fear of losing his job in Saudi Arabia. At that time, the Saudis were replacing foreign workers with Saudi nationals and so his father was at constant risk of being terminated in his employment. Additionally, his father had started a political party of expatriate Sudanese in Saudi Arabia. His father had reached conclusions, based on discussions and attitudes from senior Sudanese officials he had met with, that it was the right time to return to Sudan and lead the party that he had established.

[33] The party was named the XX Party. Together with a group of influential Darfurian expatriates in Saudi Arabia, his father had established this party in 2003. The appellant explained that he had not mentioned it in his claim of refugee status as it post-dated the RSB interview of February 2003. He explained that, prior to that, he had knowledge of his father's political interests but he actually had no specific details of how his father was involved in a specific party until approximately 2004 or 2005. He had returned to Riyadh himself, not long before

his family moved back to Sudan, to see them before they departed.

[34] Previously, his father had been involved in the Umma Party, which was led by a former Prime Minister of Sudan. The appellant did not know the full details of this because he had been young at the time. He only knew his father had been involved in a lot of discussions about Sudan with friends and expatriates. He agreed that, in his original claim, he had stated that his family did not have any involvement in politics, but explained that he did not know much about his father's politics because of his own relative youth. He was unaware of any positions his father held, until 2004/2005. He agreed that his father had been involved in fairly regular meetings with other expatriates in Saudi Arabia but, at that time, he was unaware of his father having any actual position within a party. He agreed that the original information he provided was not totally accurate.

[35] Over the period since 2004/2005, he had discussions with his father in relation to the XX, where his father explained that he did not agree with the genocide and the civil conflict taking place in Sudan and that it could not be solved by war and the approaches being taken by the government. For this reason, he and a group of educated friends in Saudi Arabia wished to do everything they could to promote peaceful dialogue and peaceful negotiation. The members of this expatriate group were predominantly Messaleit but there were others involved. The XX was critical of the Sudanese government in their approach to the civil war, demanded the release of political detainees and supported the role of the international peace-keepers in Sudan.

[36] In support of this information about his father, the appellant stated that he had been able to source a number of documents from the Internet which included references to the XX and an article written by his father. These documents, which were provided with English translations. (Unfortunately, the translations lacked accuracy and assurance as the appellant stated they were only computer-generated translations from the original Arabic). The documents were submitted as documents "A" to "H". He explained that these articles were published on two Sudanese websites and both of these were of a political nature. He was unsure whether one of them was actually also a newspaper but stated that one of the articles provided was also from a Sudanese newspaper.

[37] These documents had not been provided previously and more detail relating to his father's involvement in politics was not given during the interview with the RSB in April 2008 as the appellant had not been able to source these

documents in time.

[38] The appellant explained that his father became heavily involved with the XX when he returned to Sudan and this had ultimately led to his father being detained. Whilst his father knew that there was a risk in his returning to Sudan, at the time he went back, there was significant movements towards ceasefire agreements and the XX movement was working co-operatively with the Justice and Equality Movement (JEM). The JEM were, soon after, identified by the government as terrorists, but in fact they were more of a rebel group in Darfur, with opposing views to the government. His father was not publicly linked to the JEM in the past but decided that the XX should work with such groups.

[39] The appellant thought that the XX had a membership of approximately 20 people; he was not a member himself, but would have liked to join, if he had returned to Sudan. He was unsure whether his brother was a member and had not enquired in depth because, while he was away from Sudan, he tried to keep out of Sudanese politics.

[40] His father was detained by the Sudanese government authorities in late 2006, less than one year after he had returned. His arrest had come about after a journalist, sympathetic to the government, had been kidnapped and killed in September 2006. This sparked a number of arrests of opposition advocates and officials by the government. These included people from the JEM and others who were associated with it, including the XX. They were accused of planning a coup to overthrow the government and involvement in the murder of the journalist, Mohammed Tahar. Tahar was an Islamist extremist who had been critical of Darfurian peace movements. When asked why he did not appear to have mentioned this to the RSB, the appellant said that he could not recall if he was asked about it and could not be 100% sure whether or not he did mention it.

[41] His father was detained for a period of some three months and released in January 2007, after he confessed to helping the appellant avoid military service. The Sudanese authorities had tried to get his father to confess to a number of far more serious crimes, including murder. There was no trial, just a number of accusations made by the government. The family developed a plan to have his father agree that he had been involved in assisting the appellant to evade military service as part of a trade off whereby other charges against his father were dropped. To achieve this, however, the appellant had to return to Sudan and surrender himself to the military authorities. When his father was ultimately

released, he had to step down from the leadership of the XX and was told to dismantle the party.

[42] The appellant was unaware of any prior arrests of his father, although he knew he had been detained at the airport in 2004 when he returned. At that time, he had been questioned about his political opinions and the articles that he had written.

[43] Turning specifically to the reasons for his own return on the first occasion in 2007, the appellant said that he was advised that his father was being tortured and ultimately had confessed to assisting with the appellant's evasion of military service and escape from Sudan. Therefore the family strongly requested the appellant return in order to obtain the release of his father. This scheme was put together by his father and his uncle. The appellant said he knew there was a risk that he would be arrested and maltreated on his return but had assurances from his uncle that everything possible would be done to bribe or otherwise secure the appellant's quick departure from Sudan after his father obtained his release.

[44] The appellant explained that, in early to mid-2006, a peace agreement had been signed between the Sudanese government and the Sudanese Liberation Movement (SLM) and, as a result of this, the leader of the SLM became a consultant to the Sudanese President. The leader of the SLM was MM, a previous faction leader. An arrangement, devised by the appellant's uncle, with MM's secretary, AA, after payment of a substantial bribe, was for AA to arrange a plan for the appellant to leave Sudan soon after the father's release. The plan was for the appellant to be added to a small group of three other persons, who were travelling to Tripoli to take part in preliminary discussions and planning for a peace conference to be held later in Tripoli. AA arranged for the appellant to be put on a list of four persons who were to organise the plan of action for the conference and points of action that had to be undertaken.

[45] After the appellant arrived in Sudan and his passport presented to the authorities by AA, the appellant's father had been released. The appellant then joined with the three other men and was able to depart from Khartoum on a flight to Dubai from where they were meant to travel on to Tripoli. The other three members of the delegation did travel to Tripoli, but the appellant went on to Thailand, using a ticket already secured in advance for him. The appellant explained that there was an element of good luck in that he was able to obtain a flight from Dubai to Thailand that had not been previously confirmed. His uncle

advised him to use Dubai as the transit point as that was the most likely place he could get onward flights quickly.

[46] As the appellant understood it, the arrangements for the appellant's return and then ultimate departure from Sudan, after his father had been released from detention, was already in planning by AA before the appellant actually left New Zealand. He stated that he had originally been booked to depart from Khartoum on 24 February 2007, but actually when the arrangements were put together, he was able to leave on 6 February 2007.

[47] When asked why it appeared that the actual peace conference in Tripoli did not take place until six months after the appellant left the country, he explained that the peace negotiations were with the government but the small group that he had been attached to was to organise the demands of all the factions in the peace negotiations, including expatriates who could not return to Sudan. The work that the small group he was attached to was a necessary preliminary to the ultimate conference.

[48] After the appellant's father had been released, and the appellant had returned to New Zealand the first time in 2007, it then became apparent that the appellant's father would not be able to work in his previous business as an accountant in Sudan and would not be able to look after the family. He was also prohibited from carrying out activities for the XX. His father therefore made enquiries to see if he could take up his old job in Saudi Arabia. His father was able to secure re-employment, but then had the problem of departing from Sudan. After family discussions, and again the involvement of AA, another scheme was devised whereby the appellant would have to return to Sudan for a second time. This time he would actually start on his military service, as this seemed to be the only basis upon which the authorities would then allow the appellant's father to depart from the country.

[49] The appellant explained the detail of his father's situation when, in July 2007, the appellant's father's financial position worsened; his office equipment had been confiscated when he had been arrested, and his accountant's licence was suspended. The appellant's father attempted to leave Sudan at that time, but was stopped at the Khartoum airport and informed that he could not leave as he was considered to be a threat to the security of Sudan and would need to obtain the consent of the Ministry of Finance and the Ministry of Defence. His father was able to get the clearance from the Ministry of Finance, but could not obtain it from

the Ministry of Defence. Additionally, when the appellant's brother tried to leave Sudan through the airport, he was also prevented and, soon after, refused surgery that he needed to have, due to his political opinion. His father thought that the only way that he and his family could depart Sudan and return to Saudi Arabia was for the appellant to return again to Sudan and hand himself over to the National Service Department and then ultimately escape again from Sudan.

[50] After arranging the necessary documentation, which took some time, the appellant ultimately left New Zealand for Sudan, for the second time, on 7 December 2007. On arrival, he was met by AA and his uncle. AA took his passport and arranged for it to be stamped in a manner that the appellant did not have to go through normal immigration channels. The appellant was then taken straight to his uncle's house. Arrangements were in train for his father to leave Sudan approximately 10 days thereafter. His mother and sisters would then follow two weeks later, and ultimately his brother would leave in mid-January 2008, to work in the UAE.

[51] The appellant's uncle advised him that he would have to report to the military and sign the necessary papers and find out where he was going to be posted to. These papers would show that he had handed himself in and thus the harassment of his father would stop.

[52] In late December 2007, AA returned to his uncle's house and gave the appellant his passport which had been taken to the National Service Department. The appellant was then told that they were working on getting him out of Sudan. He had to provide a passport photograph, for which he used his Massey University identification card. AA returned in mid-January 2008 with a military deferment card and an exit visa that had been obtained illegally. The appellant was thus in a position where he was ready to depart.

[53] On 19 January 2008, the appellant went with AA to the National Service Department where he underwent a medical check and signed all the necessary papers. He was told he had to report to a city in south Darfur. His head was shaved, he was given a military uniform and told to report to the city in south Darfur within 45 days.

[54] Three days later, his uncle took him to the airport where AA was waiting and took the appellant's passport. He returned, and then accompanied the appellant to the departure gate where he handed over the departure card. The

appellant then showed his NSD card and deferment card and was allowed to leave the country, ultimately returning to New Zealand on 24 January 2008.

[55] Mr Wells took the appellant through the eight documents he had provided in support of the position of his father and his past political activities. Several of these documents showed references to the appellant's father by name, to the subsequent leader of the XX and to conventions that had taken place in Riyadh with Sudanese Presidential advisors and the XX in Riyadh in 2005, at the time when his father was no longer the leader but in Sudan.

[56] The Authority and Mr Wells were given details on his military deferment card that he had provided and were able to obtain the explanations of dates and Arabic terms within the cards he had used at the time of his departure.

[57] In re-examination by Mr Parsons, the appellant was asked what effect his most recent visits, and the devices he had gone through to evade military service and obtain the release and ultimate departure of his father, would have on the Sudanese authorities if he returned at this time. The appellant considered that the Sudanese authorities would be furious that they had been tricked and that, on return, he would definitely be drafted into the army or, even before that, thrown into jail and then, after that, placed on some other military duties that would involve gross breaches of human rights.

[58] Additionally, he considered that because he was the eldest son of his father, who was a well-known figure, the risks to him would be even higher. Accordingly, noting the country information still applicable which showed violations of human rights against Messaleit people and, in particular, draft evaders, he would be at a real risk of being persecuted on return because of his ethnicity and the political views of his father, which would also be attributed to him.

DOCUMENTS AND SUBMISSIONS

[59] In addition to the documents "A" to "H", the appellant stated that he expected to receive, imminently, at the offices of Mr Parsons, additional material from his father, including a letter of support from AA. It was submitted that these would further support his credibility and the reasons for his two returns to Sudan. The Authority, after discussions with counsel, agreed that the appellant should be given a short period of 14 days to supply this documentation, along with translations into English, where necessary. That documentation, along with final

submissions from Mr Parsons, would then be provided to the Authority and to the respondent. Mr Wells would then have until 12 December 2008 to present his final submissions.

[60] The additional documentation however, when supplied, with a letter from counsel of 26 November 2008, was in Arabic, with no translation attached. Thus it was not possible to give any weight to this material.

[61] The first submissions, dated 18 November 2008, and final submissions of 15 December 2008, from Mr Wells, have been noted by the Authority, along with the opening submissions presented by Mr Parsons, set out in a letter dated 3 November 2008, and his final submissions of 26 November 2008.

ASSESSMENT

WHETHER RECOGNITION AS A REFUGEE MAY HAVE BEEN PROCURED BY FRAUD

[62] The first issue is whether the refugee status of the appellant may have been procured by fraud, and we note it is the responsibility of the DOL to present the evidence in their possession by which it can responsibly be said that the grant of refugee status (in this case, the RSB decision in 2003) may have been procured by fraud.

[63] We also remind ourselves of the observation made in *Refugee Appeal No 75563* (2 June 2006) at [20] that:

“... the term “may have been” signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise.”

[64] It will be recalled that the circumstances which gave rise to the issue of a “Notice of Intended Determination Concerning Loss of Refugee Status” and the subsequent cancellation following an interview with the appellant, were based on the two returns to Sudan in 2007/2008 by the appellant and conclusions of the RSB on lack of credibility in the explanations for those visits by the RSO.

[65] Mr Wells, in his final submissions, stated that there were numerous inconsistencies in the appellant’s evidence to the Authority which suggested his refugee status may have been procured by fraud. The areas of inconsistency

were firstly in relation to his father's political activities and secondly in respect of the appellant's two returns to Sudan. It was submitted that the appellant was not credible in his explanations, at the hearing, that his father was the leader of the XX in Saudi Arabia, as this had not been mentioned in the interview with the RSB in January 2003 and again, when the appellant was interviewed in April 2008, he made no mention of the XX and his father being a leader of that party. At that time, he had only indicated that his father was being detained to put pressure on the appellant to return to Sudan, rather than his being the leader of a political party critical of the regime.

[66] Mr Wells also submitted that the appellant had not provided any corroborative evidence to date, from his father, to demonstrate his leadership of the XX. It was submitted that the appellant had been given ample opportunity, at two RSB interviews, to provide evidence relating to his father's political opinion. It was therefore submitted that his father's political opinion was minor or non-existent.

[67] In respect of the returns to Sudan, Mr Wells submitted that the appellant's claim that he had been able to leave Sudan in February 2007 through bribery and a scheme which involved him being part of a negotiating team for the SLM, lacked credibility because the peace talks, the appellant referred to, actually took place eight months after the appellant departed Sudan. He submitted that the explanation that the appellant was part of an advance negotiation team was not credible and there was no known country information to support this.

[68] Mr Wells also submitted that the appellant's explanation, relating to providing his passport and tickets to a spokesman who arranged his departure, lacked credibility as this appeared to be a different story from that which he told to the RSB.

[69] The Authority has carried out a *de novo* assessment of the appeal and reached its own conclusions. We found no significant inconsistencies or implausibilities in the appellant's explanations, after careful examination by counsel and the Authority and a detailed consideration of the relevant country information. We also consider the documents, A to H, supported the appellant's case and added credibility. The Authority finds therefore the appellant is generally credible and the explanations for the two return visits to Sudan are accepted. Whilst possibly on the face of them, the two visits were concerning (and it was correct for the RSB to make inquiries of the appellant), we are satisfied they were

carried out for the reasons the appellant has now given. We do consider the appellant has possibly made these trips with a somewhat reckless regard for his own safety, but that does not establish fraud.

[70] We consider that it was somewhat unfortunate that the RSB interview with the appellant took place a mere seven days after the appellant received the notice of intended cancellation of status. We accept the appellant's explanation as to why he was unable to present documentation or a fully reasoned response to the allegations set out in the notice. He was unable to instruct his counsel until some two to three days before the hearing and clearly was unable to obtain information from his father in Sudan within such a short space of time. This set of circumstances also explains a number of the *prima facie* credibility concerns that were raised by Mr Wells. However, set against the very short timeframe, it was entirely logical that the appellant and his counsel were not able to prepare and present a full case in answer to the notice of intended cancellation.

[71] After noting Mr Wells' submissions on this point, the only area of credibility concern that we had was in regard to the appellant's failure to state, at an earlier time, the political background and activities of his father. His explanations in this regard, however, were convincing. He was obviously quite young; he had just left secondary school when he departed from Saudi Arabia to come to New Zealand. The only face to face discussions he had with his father took place in 2004/2005 and it appears his father's active involvement and leadership of the XX did not commence or flourish until well after the appellant had left Saudi Arabia, and indeed, after his interview with the RSB in relation to his claim for refugee status in 2002/2003.

[72] The appellant was quite frank in stating that possibly he should have made more mention of the political discussions that took place in their home in Saudi Arabia between his father and other well-educated Sudanese expatriates. We do not consider this to be a fatal flaw to his credibility and, on the basis of the remainder of his evidence being generally credible, we extend to him the benefit of the doubt in this regard.

[73] The submissions put up by the respondent that the appellant had fabricated the story relating to his method of departure from Sudan in February 2008 by stating that he had been part of a negotiating team for the SLM and related information to that claim not being consistent with country information, we do not consider sustainable. As stated, the appellant was generally credible in his

evidence and explained how he had been added to a small group of three people going to Tripoli for preliminary discussions and the planning of the peace conference. We do not find anything implausible in the explanation put up by the appellant. The country information does indicate that, at a later time, a peace conference did take place in Tripoli. Clearly that would have taken some prior negotiations and arrangements to set up. His involvement in it, given his overall general credibility and the details set out in the letters A to H, which we had no reason to dispute, do not point to serious inconsistencies or implausibility in that part of his evidence.

[74] Before reaching our final conclusions, it is of course necessary for us to go back to the original refugee claim made by this appellant and examine the claim he put forward and the reasoning given for its acceptance. The challenge, as now put forward by the respondent, after assessment of the appellant's credibility and re-examination of his original claim, give very few indications of possible fraud in the original applications and its assessment.

[75] We are satisfied, from acceptance of the appellant's credibility set out above, that any potential linkage to possible fraud in his original application is not established in this case to even a remote level of proof. Accordingly, we do not consider that the appellant's grant of refugee status in 2003 "may have been" procured by fraud. While some of the information and evidence we relied upon may not have been before the RSB, plausible explanations for that have been provided. We are, therefore, satisfied that the required threshold has not been met on the particular facts as found in this case.

CONCLUSION

[76] In view of the foregoing, the following determinations are made:

- (a) The evidence does not establish that the grant of refugee status to the appellant may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information;
- (b) The appellant continues to be a refugee.

[77] Consequent upon these findings, the Authority continues to recognise the appellant as a refugee. The appeal is allowed.

"A R Mackey"
A R Mackey
Chairman