

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76165

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Counsel for the Appellant:</u>	C Curtis
<u>Appearing for the Department of Labour:</u>	No appearance
<u>Dates of Hearing:</u>	14 & 15 February 2008
<u>Date of Decision:</u>	30 June 2008

DECISION

[1] The appellant is a national of Chad. He appeals against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining his application for refugee status. He claims that if he were to return to Chad he would be seriously harmed for reason of his race/ethnicity and because he would be forced to perform military service.

[2] The appeal turns in part upon the appellant's credibility, which is assessed following the summary of his account which is outlined below.

THE APPELLANT'S CASE

[3] The appellant was born in Chad in a small village approximately 200 kilometres north of the capital, N'Djamena. After the death of his father in a tribal conflict during the early 1990s, the appellant and his three siblings were taken out of Chad by their mother. They settled in Medina in Saudi Arabia, where the mother obtained work as a domestic help for a wealthy family. The family were

provided with an old house in which they were able to live, but they were poor and lived in difficult circumstances.

[4] The appellant's mother became terminally ill when he was about seven or eight. She was not entitled to receive free medical treatment as a foreign national in Saudi Arabia and could not afford to be treated privately. She died when the appellant was aged about 10. The appellant's older brother left school prematurely to support the family. Out of charity the family which had employed the mother allowed the appellant and his siblings to continue to live in the same house.

[5] The appellant attended school in Saudi Arabia for several years, but this came to an end when he was aged about 13 or 14 as the family's residential status was inadvertently allowed to lapse after the mother died. Once the appellant was forced to leave school, he simply spent time at home or in the company of friends.

[6] From time to time, the Saudi immigration police undertook initiatives aimed at identifying and expelling foreign nationals. While the appellant was alive to the possibility of these initiatives, on one occasion he was unfortunate enough to be caught. He was detained in a prison facility for four months, during which time he was the victim of serious abuse by other detainees. Eventually he was provided with a travel document by the Saudi authorities and placed on an aircraft back to Chad in the company of several dozen other deportees. His siblings remained in Saudi Arabia.

[7] Upon his arrival at the airport in Chad, the appellant was allowed to leave the airport without any difficulty. He said that the return of expelled illegal immigrants from Saudi was commonplace in Chad at that time and no particular attention was paid to individuals upon their arrival at the airport.

[8] The appellant found himself in a country where he knew no-one and was unfamiliar with the way of life. He managed to rent a room and then obtained work as a labourer in N'Djamena. The difficult physical requirements of the role took its toll upon the appellant and after seven or eight months he moved to a different area and obtained different work selling food at a market stall. He filled that role for a further four to five months before he fell ill.

[9] After being at home for about a week, the appellant was visited by five men

who told him that they were from his village. They wanted him to accompany them and he felt compelled to do so. The five men drove him to his village where he remained for about three years.

[10] Not long after he arrived at the village, the appellant became unwell. He believes that he had contracted malaria. He received no western medical treatment, but was occasionally provided with local remedies. He did not recover properly for about 18 months.

[11] Life in the village was rudimentary. The appellant was provided with a hut in which he lived alone, although meals were shared communally. The village was remote and unsophisticated, it had no electricity and, apart from a type of mobile telephone apparently available to the chief of the tribe, no telecommunications.

[12] The members of his tribe were uneducated. Their existence comprised daily subsistence living and their preoccupations concerned historic grievances with the rival Kouka tribe (whose village was some distance away). There were clashes involving his village and the Kouka from time to time while the appellant lived in the village.

[13] The appellant was told something of his family history by the villagers. He was informed that his father had been an important person within the community, second only to the sheikh. He had been a person of courage and determination and had killed many people from the Kouka. The appellant's father had been killed in one such battle. The appellant had never heard this before.

[14] The appellant also learned that to protect tribal pride he was expected to avenge the death of his father. The appellant expressed his opposition to killing but was informed that according to tribal custom he had no choice in the matter. He was told that it would be a matter of grave shame to the tribe if his father's death was not avenged.

[15] Around mid-2006, the appellant was told that the tribe intended to conduct a raid during which he would be expected to kill members of the Kouka. This excursion was planned for the following month. The appellant did not wish to have any part of this and decided to leave the village. He walked for two hours to the nearest transport village, where he was able to negotiate a ride back to the capital, N'Djamena.

[16] The appellant obtained a room in a different part of the city from that where

he had previously lived. He obtained work but had to go into hiding after hearing that the chief of his tribe had given orders that he be found and killed.

[17] The appellant made contact with his brother in Saudi Arabia. His brother borrowed money and forwarded it to the appellant. He paid an agent to obtain a genuine Chadian passport and then made his way back to Saudi Arabia in late 2006, approximately six months after he had returned to N'Djamena. The appellant experienced no difficulty in returning to Saudi Arabia. He then obtained work so he could save money in order to leave the country.

[18] The appellant left Saudi Arabia using someone else's passport and arrived in New Zealand in August 2007. He sought refugee status on arrival at the airport.

[19] After interviewing the appellant in September 2007, a refugee status officer of the RSB issued a decision dated 19 November 2007, declining the appellant's application for refugee status. He appeals against that decision.

[20] The appellant claims that if he were to return to Chad, he would be killed. He says that members of his local tribe are looking for him and that they will be able to locate him sooner or later, even if he is in N'Djamena. He does not believe that there is anywhere in Chad he could safely remain.

[21] The appellant claims further that he is at risk of being persecuted because of the risk of being forcibly conscripted into the Chadian military service, and of being "forced to take part in the violence by the military".

Material provided

[22] Counsel provided country information under cover of a memorandum dated 11 February 2008 and additional country information on the second day of the hearing; Friday, 15 February 2008. Further submissions and country information were provided under cover of letters dated 27 February, 20 March, 4 April and 23 June 2008.

THE ISSUES

[23] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion,

nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[24] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[25] Before addressing the principal issues, it is necessary to determine whether the appellant is a credible witness. For the reasons set out below, the Authority finds that his core account is implausible.

[26] The Authority's findings are based on the combination of several remarkable coincidences which are a feature of the appellant's account, together with the lack of substance in connection with his account. The appellant was unable to provide detail consistent with a factual account. In effect, his testimony with regard to all but the broad outline of his evidence was consistent with an artificial construct rather than truthful recollection.

[27] Chad has a population of approximately 10 million; United States Department of State *Country Reports on Human Rights Practices for 2007; Chad* (March 2008). The appellant claimed that the village of his birth is small and remotely situated within a desert area about 200kms to the north of the capital, N'Djamena. It is accessed via roads so poor that the vehicular journey was said to take some 10 to 12 hours. According to the appellant's testimony the 1,000 to 1,500 inhabitants of the village are an unsophisticated and inward-looking people. Most had never been outside the village and their everyday life is centred upon it. They have no access to electricity or telecommunications.

[28] Despite this, the villagers learnt of the return of the then teenaged appellant to Chad, after a decade. They were able to locate him in a capital city with a

population of around a million inhabitants. The appellant does not know how the villagers found him. He did not ask.

[29] He was then told for the first time of the significant position his father occupied within the village. His mother had never told him that.

[30] Nor had she told him that his father had died in tribal conflict. He learned that, too, from the villagers.

[31] The appellant also learned for the first time of the village tradition which required him to avenge his father's death. He was to do this by killing at least three members of the tribe responsible.

[32] Despite the need to avenge his father's death no concrete plans made for giving effect to his obligation for nearly three years.

[33] The plan, when it was finally revealed to him, entailed him riding on horseback to enemy territory. The ride would have taken three to four hours' ride in each direction. Until his arrival at the village, the appellant had never ridden a horse. By the time this plan was hatched, he had still never spent more than an hour at one time on a horse.

[34] After riding for three or four hours the appellant was expected to kill his victims with a knife in hand-to-hand combat.

[35] The villagers must have been aware of the fact that the appellant had lived an urban life and that he was not accustomed to tribal practices. Despite this, he was given no practical instruction or training in fighting or killing. When asked by the Authority, the appellant said that he was only given basic verbal instructions. While he stated under re-examination by counsel that his job in a fish market in N'Djamena involved the use of a knife, he did not suggest that this figured in the mind of the villagers when they formulated their plan.

[36] Faced with the looming deadline, the appellant simply left the village. He was able to walk out of the village and made his way back to N'Djamena.

[37] Once there he learned, by further remarkable coincidence, that his tribe had been instructed to find and kill the appellant in retaliation for his refusal to exact revenge in the tribal manner. He heard this through a friend, who heard from a former customer, who remembered the appellant from his time in N'Djamena three

years earlier.

[38] Great care is required before finding an account to be implausible. However, after taking into account all of the evidence available and having had the benefit of hearing from the appellant in person, the Authority is satisfied that the appellant's account is not credible.

[39] The Authority finds that when the remarkable events he described are considered in the context of the appellant's inability to provide spontaneous detail about rudimentary aspects of his account, his evidence is contrived and not credible.

[40] For example, the appellant did not know why his mother had left Chad when he was a child or why his mother had not returned to Chad. He did not know whether anyone else from the village had left Chad at the same time. The appellant had not asked the villagers where his father had died. He did not know the identity of family members of any other people from the village involved in the attack in which his father was killed; whether other people from the village were killed at the same time as his father or whether others had survived the attack. He did not know whether family members of any of the other deceased had also been required to exact revenge and, if so required, how they had gone about it.

[41] The Authority does not accept that the appellant would have such a paucity of knowledge about relatively straightforward matters, given that he claimed to have been living in the village for three years.

[42] Counsel submitted that the appellant's inability to provide detailed information is unsurprising, given that he had contracted malaria. She also submitted that the appellant did not speak his native tongue well when he first arrived in the village, and that this might explain why he did not understand everything said to him in the village.

[43] However, the appellant told the Authority that he was taken to the village when he was 15 or 16 (sometime around 2002 or 2003) and that he remained there until mid-2006. Even if the appellant had been afflicted by malaria for large parts of his time in the village, this does not explain his lack of knowledge.

[44] Likewise, whatever difficulties in communication the appellant supposedly experienced, he claimed that he learnt much about his background and about the antipathy between his village and the Kouka. There is no apparent reason why he

would not have been able to obtain the rudimentary information which he so clearly lacked.

[45] The Authority has not overlooked the submissions made by counsel with respect to the appellant's credibility, nor the material to which she has referred by way of explanation for some of the credibility concerns. However, the Authority's findings are not predicated upon individual discrepancies or aspects of the appellant's account considered in isolation. It is based upon an assessment of his overall account, and of all of the evidence available.

[46] Given the Authority's findings no weight can be given to any part of the appellant's account save that it is accepted that he is a national of Chad in his early twenties. His claim will be assessed on that basis.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Chad?

[47] For the purposes of refugee determination, "being persecuted" has been described as the sustained or systemic violation of basic or core human rights, such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996).

[48] The Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring.

[49] In her written submissions dated 27 February 2008, counsel summarised the grounds for the appellant's appeal on the following basis:

"The appellant is ... at risk of brutal detention and persecution while in custody if returned to Saudi Arabia and from Saudi Arabia he would be returned to Chad where he then faces a three-fold risk of:

- (1) having to join the army because he is the age of full compulsory conscription;
- (2) being found by tribal elders from [his village] and either punished by death for refusing to fight or made to fight against the [rival tribe] as part of the intertribal feuding;
- (3) suffering debilitating severe health issues with Malaria (which is so prevalent in Chad) to a level that he can no longer care for himself and another attack could be fatal."

[50] This is read in conjunction with her written submissions lodged on 11 February 2008, in which counsel submitted that Chad is in a perennial state of conflict, and that the appellant, as a young male, will be forced to take part in the violence by the military in Chad.

Saudi Arabia

[51] It is not clear why counsel has made any reference to Saudi Arabia. The appellant's country of nationality is Chad. The appellant is not a national of Saudi Arabia and he has no automatic right to return there.

Military service

[52] The appellant claims that he would be at risk of being arrested upon his return to the airport in Chad and that he would be forced to perform compulsory service.

[53] According to country information provided by counsel males in Chad over the age of twenty are liable to conscription for three years of military service; www.indexmundi.com/chad/military_profile.htm.

[54] It is accepted that there may be sporadic forcible recruitment exercises from time to time. For example one article from 2006 provided on behalf of the appellant reports the rounding up of youths in N'Djamena to serve in the military. The article suggests that raids and arrests to that end occur "whenever a rebellion heats up" "CHAD: Minister denies forced recruitment into army" *IRIN News* (6 January 2006).

[55] However counsel has not provided any evidence (and the Authority has not found any through its own research) that compulsory military service is routinely or systematically enforced, or which indicates that returnees to Chad are at risk of being identified as eligible for military service at the airport.

[56] Indeed, at the time he arrived in New Zealand the appellant was not even aware that there was a compulsory service obligation in Chad. On the contrary he stated in his confirmation of claim form that he was not subject to any military service requirement, and he made no mention of any such concern in the written statement he provided prior to his interview with the RSB in September 2007.

[57] There are apparently more than 1.5 million males available for military

service nationwide, and in excess of 90,000 more becoming eligible annually; www.indexmundi.com/chad/military_profile.htm. In all of the circumstances the Authority finds that there is no evidence that the appellant (as a male Chadian in his mid-twenties) is at any more than a remote or speculative risk of being forcibly subjected to compulsory military service.

[58] Counsel also provided information in connection with the unstable and volatile political environment in Chad and the “ongoing violence” that is occurring there. She submits that this has led to a general evacuation of foreigners, including nurses from New Zealand, in February of this year. She has also provided articles outlining forays by the Chadian Army into neighbouring states; “Central African Republic: Chadian army attacks, burns border villages” *Human Rights Watch* (20 March 2008), the arrest of individuals suspected of participating in a coup attempt against the incumbent President, and the abuses committed by state security forces while conducting searches; “Chad: Charge or release political detainees” *Human Rights Watch* (21 March 2008); the abuse by the government in evicting house owners in the capital, N’Djamena; “Chad: Thousands left homeless by forced evictions” *Human Rights Watch* (4 April 2008); and conflict several hundred kilometres to the East of the capital, N’Djamena; “Chad rebels say they capture another eastern town” *Reuters* (16 June 2008) and “Chad accuses Sudan of attack, Khartoum denies” *Reuters* (17 June 2008).

[59] However, individuals facing even generalised violence such as might arise in domestic unrest are not entitled to refugee status on that basis alone. As Professor Hathaway states in *The Law of Refugee Status* (Butterworths, Toronto, 1991) p93, refugee law is concerned only with protection from serious harm tied to a claimant’s civil or political status. In short, the Refugee Convention requires an appellant to demonstrate both a well-founded fear of being persecuted and to demonstrate that the anticipated serious harm is “for reason of” one of the five Convention grounds.

[60] The information submitted in connection with the conflict within Chad does not establish that the appellant faces any more than a remote or speculative risk of harm. Nor is there any evidence that the incidence of forcible recruitment to the military is increased such that the risk to the appellant is more than remote or speculative.

[61] Finally in this context, the appellant also referred to a national of Chad who had been declined refugee status in France and who had disappeared after being

returned to Chad. Even if the purely anecdotal reference to this incident is true, it does not support the claim that the appellant would be similarly at risk.

[62] The appellant possesses a genuine, current passport which he would use to enter Chad. There is no reason why the authorities in Chad would learn that the appellant was a failed asylum seeker unless he told them so himself. Nor is there any evidence that the appellant would be liable to anything more than routine questioning at the airport upon his return

Risk from his tribe

[63] The Authority has rejected the appellant's account with respect to the tribe in Chad. Accordingly it is not necessary to address further the appellant's claim in this regard.

Malaria

[64] There is no evidence before the Authority about the incidence of Malaria in Chad, or the risk to the appellant of contracting malaria, or the risk of suffering a relapse if he has contracted it in the past as he claimed.

[65] In any event refugee law is concerned with protection from serious harm tied to a claimant's civil or political status; J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1991) p 93. The type of harm referred to by counsel is not the type of harm upon which the Refugee Convention is focussed. Nor is there any evidence that any risk of contracting Malaria would be contributed to for a Convention reason, or that the appellant would be denied treatment for a Convention reason.

[66] In short, counsel's submission in this respect is both entirely speculative and irrelevant to the question of whether the appellant has a well-founded fear of being persecuted if he returns to Chad

Summary

[67] In her decision *A v Chief Executive of the Department of Labour* (CIV 2004-404-6314, Auckland High Court, 19 October 2005) Winkelmann J found that when conducting its forward looking assessment of whether an appellant faces a real chance of being persecuted, the Authority must consider "whether an individual

having all of [the appellant's] characteristics" would face a real chance of serious harm for a Convention reason (para 38).

[68] The appellant is a young male from Chad with a genuine and current passport. Taking into account all of the appellant's characteristics and his personal circumstances, and considering their cumulative effect, the Authority finds that there is no real, as opposed to remote or speculative, chance of the appellant being seriously harmed for a Convention reason if he were to return to Chad.

CONCLUSION

[69] Turning to the first principal issue the Authority finds that objectively, on the facts as found, there is no real chance of the appellant being persecuted if returned to Chad. That being the case, the second principal issue does not fall for consideration.

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

"A N Molloy"
A N Molloy
Member