

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76098

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairperson) B A Dingle (Member)
<u>Counsel for the Appellant:</u>	I Uca
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	11 & 12 September 2007
<u>Date of Decision:</u>	21 November 2007

DECISION DELIVERED BY B A DINGLE

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

INTRODUCTION

[2] The appellant arrived in New Zealand on 13 April 2007. He claimed refugee status at the airport and, after being interviewed by an immigration officer, a decision was made to detain him pursuant to s128 of the Immigration Act 1987 ("the Act") because he had neither appropriate documents for immigration purposes nor any appropriate identity documents.

[3] On 16 April 2007, the RSB received the appellant's confirmation of claim form, dated 14 April 2007. The appellant was interviewed by a refugee status officer on 14 May 2007 and a decision declining the grant of refugee status was published on 29 June 2007. It is against that decision that the appellant now

appeals to this Authority.

[4] The appellant is a married man in his early 20s who holds Chadian nationality, but was born and has lived his whole life in Saudi Arabia. His wife, who is also Chadian, and his young child remain living in Saudi Arabia. His wife lives with her parents who are also the appellant's maternal aunt and uncle. The appellant claims that he cannot return to Saudi Arabia because he does not have valid residence status and, furthermore, that because he assaulted an official at the Chadian embassy in Saudi Arabia, he will be arrested and given unduly harsh treatment on his return there.

[5] The appellant also claims that he cannot be sent to Chad for the following reasons:

- (a) he has never lived in Chad before and has no support network there;
- (b) if he returns to his father's tribe to seek support, he will be required to revenge his father's death;
- (c) he is from the *Gorane* tribe who are oppressed by the ruling *Zaghawa* tribe;
- (d) he may be forcibly conscripted into the Chadian army;
- (e) he will be entering as an undocumented national; and
- (f) Chadian officials will arrest him because he assaulted a Chadian official in Saudi Arabia.

[6] This decision determines issues of both credibility and well-foundedness.

THE APPELLANT'S CASE

[7] What follows is a summary of the evidence presented by the appellant in support of his appeal. Its credibility will be assessed later in the decision.

[8] The appellant was born in 1984 in Medina, Saudi Arabia. Both his mother and father are Chadian nationals. They met in Saudi Arabia, having both travelled there with family members on an *Umrah* pilgrimage. At the time of the appellant's birth, neither of his parents had any legal immigration status in Saudi Arabia.

When he was approximately one year old, his father was arrested and deported to Chad because of his status as an illegal overstayer in Saudi Arabia.

[9] Approximately one year after his deportation to Chad, the appellant's father was killed during inter-tribal fighting. The appellant is not aware of the details of the incident.

[10] After his father's departure from Saudi Arabia, the appellant moved with his mother to Riyadh, where his mother's sister and her husband ("the aunt" and "the uncle") lived. From that time on, the appellant's mother undertook various jobs including selling small goods and working as household help. She continued to have unregulated immigration status.

[11] When the appellant reached school age, his mother secured him a false birth certificate and residence permit using his own name so that he could attend school.

[12] In approximately 1997, the appellant's mother started working for a Saudi Arabian citizen, AA. While she lived at AA's house, the appellant continued to live with the aunt and uncle because their house was located close to his school.

[13] In 2000, the appellant stopped attending school because his false residence permit expired. At around the same time, the Saudi Arabian government established a policy whereby illegal immigrants could regularise their status. In order to do this, the appellant needed to obtain a genuine Chadian passport. However, when the appellant visited the Chadian embassy to apply, he was told that he needed to produce genuine identity documents to prove who he was. He returned to the embassy with his mother's passport, but was told that this was not satisfactory and he needed to produce a witness who could verify his father's identity. Later that year, when he returned to the embassy to make further enquiries, he was informed that there were no further passport blanks and therefore no further passports were being issued. His mother had obtained a Chadian passport from the same embassy in 1998 but had not included the appellant in her passport as a child (as he then was).

[14] In 2001, the appellant was arrested as an illegal overstayer in a routine immigration check. He was detained for five days and then released because AA paid a bribe to the officials.

[15] Later in 2001, the appellant began working for AA although he still did not have a work or residence permit. AA treated the appellant badly, paying him erratically and occasionally beating him and threatening to have him deported. Both the appellant and his mother continued to work and live at AA's house until 2004.

[16] In late 2004, the appellant's mother died of natural causes. Her death was registered with the Chadian embassy who asked that her passport be returned. No official documents recording her death were issued.

[17] In late 2005, the appellant married his aunt's eldest daughter, MM. MM had a residence permit which she obtained through her father and which had to be renewed periodically. Due to the appellant's illegal immigration status, he remained unregistered with the Saudi authorities and did not therefore obtain a marriage certificate.

[18] Throughout 2006, the appellant continued to make enquiries at the Chadian embassy in relation to obtaining a passport. In early 2006, the appellant's uncle gave him contact details for someone who worked at the embassy. The appellant contacted this person, JJ, and paid him 1,000 Saudi Arabian rials (SAR) to help facilitate his passport application. The sum was substantially more than the usual passport fee of SAR450. However, for unexplained reasons, JJ was unable to secure the appellant a passport. The appellant approached JJ several times at the embassy to try and retrieve his SAR1,000 payment. After a while, he became known at the embassy and the guard at the entrance would not allow him to enter. One day, however, the appellant managed to sneak into the embassy and went to JJ's office. When he approached JJ, a physical altercation ensued, during which the appellant picked up a picture of the Chadian president and threw it at JJ, breaking it. The incident was witnessed by other embassy staff but the appellant was able to escape the building.

[19] He returned to the embassy the next day, hoping that he might still be able to secure a passport, at which time the guard told him that the embassy might write a report about his behaviour and send it to Chad. The appellant does not know whether such a report was written.

[20] In late 2006, the Chadian embassy stopped issuing passports altogether because of a corruption scandal concerning passport processing.

[21] In early 2007, the appellant resolved to obtain a false passport so that he could leave Saudi Arabia. He obtained the name of an agent and paid him SAR8,000 to obtain a Saudi Arabian passport. In order to finance the false passport and his subsequent travels, the appellant sold jewellery which had belonged to his mother and used funds he had saved from his employment.

[22] A little over a month later, the agent provided the appellant with a Saudi Arabian passport which contained the appellant's photograph, but a different name and date of birth. When the agent gave him the passport, he said "This passport will take you to New Zealand."

[23] In mid-April 2007, the appellant departed Saudi Arabia on his false passport, taking with him school certificates so that he could prove his real identity if required. He flew to Dubai where he paid cash for an onward ticket to New Zealand.

[24] The appellant arrived in New Zealand on 13 April 2007 and claimed refugee status at the airport.

[25] Since his arrival in New Zealand, the appellant has maintained contact with his wife. She gave birth to their first child in June 2007. She has not provided him with any news or information that is relevant to his claim.

OTHER MATERIAL RECEIVED IN SUPPORT OF THE CLAIM

[26] Prior to the hearing, under cover of a letter of 7 September 2007, the Authority received counsel's submissions and a schedule of documents. Included in that bundle were the following:

- i. supplementary statement of the appellant, dated 1 September 2007;
- ii. a collection of the appellant's school records from Saudi Arabia;
- iii. a copy of the appellant's mother's Chadian identity card and passport; and
- iv. country information relating to the Arab concept of revenge, Chadian politics and security, and the situation of children in armed conflict in Chad.

[27] During the hearing, counsel made opening and closing submissions on the appellant's behalf. On 26 September 2007, counsel filed further country information relating to both Saudi Arabia and Chad.

[28] These materials have been considered and, where appropriate, are referred to in the decision below.

THE ISSUES

[29] 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."

[30] 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

[31] Before determining the abovementioned two issues, the Authority must make an assessment of the appellant's credibility.

[32] For the purposes of this decision, the Authority accepts the appellant's credibility as to his nationality (Chadian) and his account that he has lived in Saudi Arabia since birth. Although he was unable to produce any genuine identity documents for himself, he did provide school certificates in his own name (from Saudi Arabia) and copies of his mother's identity documents (including an embassy card and an expired Chadian passport). He also gave an account of his life in Saudi Arabia which was consistent with those documents and with the account he gave at the RSB interview. The Authority does have some concerns about the appellant's evidence as to why he found it so difficult to obtain a Chadian passport between 2000-2004, a time during which many Chadian nationals were issued with passports. However, for the purposes of this decision, the Authority extends to the appellant the benefit of the doubt in this regard and accepts that he applied for but was repeatedly refused a Chadian passport.

[33] However, the Authority does not accept that the appellant was in an altercation with JJ at the embassy or that he returned to the embassy the next day. The appellant's evidence that he got into a fight with JJ, threw a picture of the Chadian President (which smashed) and verbally abused the President in front of other embassy staff and yet was able to leave the embassy is implausible. Had the incident genuinely occurred, the Authority is in no doubt that the appellant would have been detained by embassy security staff or, if he had managed to escape the embassy building, vigorously pursued. Neither of these things occurred.

[34] The appellant's account is further undermined in this respect by his claim to have returned to the embassy the next day. The appellant's evidence in this respect too was implausible. His evidence was that when he left the embassy he felt concerned about his safety and thought that the embassy might try to have him arrested. It is implausible that, if he were genuinely worried for his safety and in fear of arrest, he would return to the location of the incident and make himself known to the embassy guard. When asked to explain why he did so, the appellant said that he still hoped he might be able to get his passport and that the guard of the embassy was not from the ruling tribe of Chad. The Authority does not accept

that either of these reasons can satisfactorily explain why the appellant would put himself in harm's way immediately after the incident.

[35] Further strengthening this view, the Authority notes that the appellant continued to live and work at the same address for approximately a year after this incident without any attempts by either the embassy staff or Saudi Arabian authorities to locate him. Given his claim to have been introduced to JJ through his uncle, and that the uncle held a valid residence permit which would give his address, it is reasonable to assume that had the incident occurred, and the authorities had any interest in the appellant as a result, they could have easily made enquiries via the uncle. The fact that no enquiries are said to have been made in the year following the claimed incident suggests that it did not happen and the authorities had no interest whatsoever in the appellant. The Authority finds that the appellant has fabricated this part of his account to bolster the claim that he has a profile with the authorities both in Saudi Arabia and Chad. It is rejected. The Authority finds that the appellant has no profile in Saudi Arabia or in Chad.

Conclusion on credibility

[36] In summary, the Authority accepts that the appellant is a national of Chad, has lived all his life in Saudi Arabia as an undocumented migrant. He travelled to New Zealand on a false Saudi Arabian passport and therefore has no right of return to Saudi Arabia. His evidence as to his schooling, employment and family relationships is also accepted as is his father's return to Chad and his death there. The Authority accepts that the appellant does not hold a valid Chadian passport but does not accept that the appellant has any sort of profile with the Chadian or Saudi Arabian authorities.

[37] On the basis of the above credibility findings, we now turn to consider whether the appellant has a well-founded fear of being persecuted in Chad or Saudi Arabia.

Assessment of Well-foundedness

Risk on return to Chad

[38] The appropriate question to be considered is whether considering the totality of the evidence, an individual, having all of the appellant's characteristics, would face a real chance of serious harm for a Convention reason if he were sent to Chad. See *A v RSAA* (CIV 2004-4-4-6314, 19 October 2005, HC, Auckland, Winkelmann J) at [38].

[39] It will be recalled that the characteristics of the appellant that are accepted are that he is a young male Chadian from the *Gorane* tribe who travelled to New Zealand using a false Saudi Arabian passport and who has never lived in Chad. For the purposes of this decision, the Authority also accepts any entry by him to Chad would be as an undocumented national. On the basis of those characteristics, we turn to assess whether the appellant has a well-founded fear of being persecuted in Chad for the following reasons:

- (a) he has never lived in Chad before and has no support network there;
- (b) if he returns to his father's tribe to seek support, he will be required to revenge his father's death;
- (c) he is from the *Gorane* tribe who are oppressed by the ruling *Zagawa* tribe;
- (d) he may be forcibly conscripted into the Chadian army; and
- (e) he will be entering Chad as an undocumented national.

[40] The Authority has no evidence before it to establish that a young Chadian male with the appellant's characteristics is at risk of serious harm for a Convention reason in Chad because he has never lived there before. While counsel has provided some information about difficult living conditions which prevail in Chad, this falls well short of establishing a real chance of serious harm to the appellant or that any difficulties experienced would be for a Convention reason. The Authority observes that the appellant has also experienced difficult living conditions in Saudi Arabia but has been able to access nine years of schooling and, subsequently, employment through which he was able to save money to partially finance his travel. It is reasonable to assume that the same resourcefulness will be shown by him on return to Chad where he has the option of settling in the capital city of N'Djaména, with a population in excess of 800,000, and an economy which, while still underdeveloped, is nevertheless experiencing growth due to the oil trade. The assertion at (a) must therefore be rejected.

[41] Similarly with regards to claim (b), the appellant has presented no evidence to establish that he would be required by his tribe (or a sub-group thereof) to revenge his father's death. The appellant concedes that he no desire or intention to seek out his father's sub-tribe group if he returned to Chad. Therefore, it is remote and speculative to suggest that the appellant would ever be identified and/or located by members of his father's sub-tribe. Even in the highly improbable event that he was identified by the relevant kin-group, the evidence before the Authority establishes nothing more than that the appellant's father's death "had to do with tribal issues" (appellant's statement, dated 5 May 2007). The appellant could provide no detailed evidence about the nature of the issues which related to his father's death, where it occurred, what group within his sub-tribe were involved or what the ongoing consequences of the incident have been. While the Authority acknowledges that "blood feuds" within family and tribal groups may, in particular circumstances, survive generations, the information that the appellant has about the specific circumstances of his father's death and any potential current impacts on him is so negligible that it cannot be the basis for any objective finding of risk to the appellant.

[42] The Authority also observes that this component of the appellant's claim to be at risk in Chad was mentioned neither in his Confirmation of Claim form nor in his four page statement submitted to the RSB. Had the appellant genuinely been concerned for his safety in Chad on account of his father's death, it is reasonable to assume that he would have included details of it in his statement. He did not.

[43] The appellant's claim (c), that his tribal affiliations (*Gorane*) put him at risk of serious harm from the *Zaghawa* tribe (the tribe of the current Chadian President Idriss Deby) is also rejected. No evidence has been provided (and nor has the Authority found any) that affiliation with the *Gorane* tribe, in the absence of a significant political or other profile, creates a risk for an individual in Chad. The appellant has no such profile.

[44] As to claim (d), there is no evidence before the Authority which establishes that there is a real chance that the appellant (as a male Chadian in his mid-twenties) would be forcibly recruited to the Chadian army. Counsel has submitted country information which records that in response to a politically motivated armed attack in December 2005 in Adre (a town on the eastern border with Sudan) the government instigated a wave of arrests of youth in N'Djaména which resulted in those arrested being forcibly recruited into the Chadian army (*Writenet, Chad:*

Politics and Security (March 2007) p20). There are also reports that in January 2006, 300 persons were rounded up from the streets of N'Djaména but here is no confirmation that they were recruited to the army. (*Chad: Whether the government of Chad conducted forced recruitment in 2005 for the purpose of sending individuals to fight in the conflict between the eastern and northern regions of Chad; if so the profile of persons recruited; and whether a military training centre exists at Kaindoul* (2005-2006) UNHCR (26 October 2006). The same report records that no further instances of forced recruitment in 2005 have been found.

[45] The information available does not establish that there is anything more than a remote or speculative chance of the appellant being forcibly recruited. It does not rise to the real chance level.

[46] As observed by counsel in closing submissions, there is some contradiction in the country information about the formal legal status of compulsory military service in Chad (as distinct from *ad hoc* forced recruitment addressed in [44] above). However, the recent available information records that, in practise, there is no programme of routine compulsory military service in Chad. (See for example: *Chad: Information on the military recruitment process, including the age of recruitment, length of service, recognition of conscience objections, exemption, penalties for refusal, targeted groups and on whether there is discipline among personnel* UNHCR (1 November 1997)). The Authority finds that there is no real chance that the appellant will be required to complete compulsory military training on his return to Chad and therefore consideration of whether or not he would be at risk of serious harm on that basis does not arise.

[47] The appellant's assertion that, because of his profile as an undocumented returnee, he will be arrested on arrival in Chad and will suffer serious harm in the form of interrogation and detention must also fail. First, the appellant has provided no persuasive reason why he could not obtain a Chadian passport through an Embassy of Chad before his departure from New Zealand. Second, even if he were to return to Chad without a passport and be identified as a *Gorane*, there is no material before the Authority to support his assertion that he would suffer serious harm as a result. In the absence of relevant country information, Counsel has urged the Authority to accept the assertions of the appellant on this point. The Authority declines to do so because the appellant concedes that he has never been to Chad and has no real knowledge of the situation there. Undocumented returnees to Chad may well be questioned by the appropriate authorities on arrival

– such procedures are routine in many countries. Beyond such routine questions however, there is no indication that ordinary undocumented returnees suffer any form of serious harm.

[48] The Authority finds that, having regard to all the characteristics of the appellant and assessing the cumulative situation he faces on return, there is nothing which gives rise to a well-founded fear of being persecuted in Chad.

Risk in Saudi Arabia

[49] The Authority has already found that the appellant is not a Saudi citizen and the Saudi passport on which he travelled is not his legal travel document. He has no right of return to Saudi Arabia and therefore cannot be returned there and so does not face any chance of being persecuted in Saudi Arabia. For the sake of completeness the Authority finds that even if he were to somehow effect a return to Saudi Arabia, there is no evidence to establish that he would face a risk of being persecuted there to the real chance level.

Summary of findings

[50] In summary, the Authority finds that the appellant is a national of Chad who has lived his whole life in Saudi Arabia as an illegal migrant. He travelled to New Zealand on a false Saudi Arabian passport. The appellant has no well-founded fear of being persecuted in Chad for any of the reasons he has advanced. He has no real prospect of being able to return to Saudi Arabia but, in the unlikely event that he does, there is no basis on which he can be found to have a well-founded fear of being persecuted in Saudi Arabia.

[51] Therefore, the first issue framed for consideration is answered in the negative and the second issue as framed does not arise for consideration.

CONCLUSION

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

"B A Dingle"
B A Dingle
Member