

AT AUCKLAND

Appellants:	AC (Saudi Arabia)
Before:	B A Dingle (Member)
Counsel for the appellants:	C Curtis
Counsel for the respondent:	No appearance
Date of hearing:	4 & 5 July 2011
Date of decision:	30 November 2011

DECISION

INTRODUCTION

[1] This is an appeal under section 194(1) of the Immigration Act 2009 (“the Act”) against a decision of a refugee and protection officer of the Refugee Status Branch (RSB) of the Department of Labour declining to grant either refugee status or protection to the appellants, nationals of Saudi Arabia.

[2] The appellants are a family comprising the husband ([2011] NZIPT 800119), the wife ([2011] NZIPT 800004), the older daughter ([2011] NZIPT 800117), the son ([2011] NZIPT 800121) and the younger daughter ([2011] NZIPT 800120). In this decision they will be referred to as the husband, the wife, the daughter, the younger daughter and the son respectively. Because the younger daughter and son are minors, the wife acted as their responsible adult at the hearing, pursuant to section 375 of the Act.

[3] Each of the appellants’ claims is materially different from that of other family members in that there are facets of their individual circumstances which are not shared by other members of the family. However, the appellants all claim that

because of threats against the husband by his brother, AA, and allegations made to Saudi authorities that the husband and wife have claimed refugee status in New Zealand, they are all at risk of serious harm in Saudi Arabia.

[4] Additionally, the wife and the two daughters claim that the treatment of women in Saudi Arabia amounts to a violation of their fundamental human rights. For the son, it is claimed that he is at risk of harm because of general lawlessness in Saudi Arabia. The appellants also claim that the various risks they face will be exacerbated because they are ethnic Palestinians.

[5] The issues to be determined in these appeals are whether each of the claims is credible and whether the claim for each appellant is objectively well-founded.

[6] The appeals were heard jointly, the evidence of the husband, wife, older daughter and son being considered in respect of each of the appellants' appeals. Given that the same account is relied upon in respect of both the refugee and protected person appeals for each appellant, it is appropriate to record their evidence first.

THE APPELLANTS' CASE

[7] What follows is a summary of the evidence given in the hearing. An assessment of the evidence follows.

Evidence of the Wife

[8] The wife was born in Egypt to which her parents had fled from Palestine. The wife and her family obtained the right to remain in Egypt as Palestinian refugees but they were not entitled to obtain Egyptian citizenship. Her mother and two siblings continue to reside in Egypt on that basis. For reasons unrelated to this appeal, the wife's father no longer lives there.

[9] In the late 1980s, the wife and husband met in Egypt. She accepted his marriage proposal and agreed to move with him to Saudi Arabia. At the time she agreed to move, she imagined she would be able to work and live much as she had in Egypt. However, once in Saudi Arabia she was shocked by the restricted life she was expected to endure. She sought employment but was unsuccessful both because she was racially discriminated against and because employment opportunities for women were very limited.

[10] After the birth of her two eldest children, the wife gave up all attempts to seek employment. She had five children in total and undertook the childcare and running of the household for the remainder of her time in Saudi Arabia.

[11] In 1995, the wife obtained Saudi citizenship.

[12] The husband and wife lived in a portion of a three storey building owned by the husband's family. The husband's mother lived on the second storey, the appellants lived on the first storey and the ground floor was occupied by shops. Also on the second storey was a small flat, separated from the appellants' home by an internal door. AA occupied the flat on an occasional basis when he visited Jeddah during his army leave.

[13] In the late 1990s, the husband and wife began having problems with AA. During his periods of army leave, AA would leave his wife and children in Riyadh while he used the flat as a place to take drugs, entertain women and drink alcohol. The internal door between the appellants' house and the flat was closed but the appellants could hear the activities and smell the hashish smoke, which exacerbated the wife's asthma.

[14] Although the husband pleaded with AA to cease his activities, the behaviour continued until the appellants' departure from Saudi Arabia. At times the husband threatened to inform the police if AA would not stop, but on the insistence of the husband's mother ("the mother"), the threat was never carried out. The husband and wife were fearful that AA's behaviour would affect the whole family's reputation and that if the police became aware of the drug use, they too would be implicated.

[15] By the mid-2000s, the situation had deteriorated to such an extent that the husband and AA no longer spoke to each other, even at family occasions. Although all of the husband's siblings disapproved of AA's behaviour, some of them maintained communication with him, as did the mother.

[16] The wife's experience of life in a highly gender segregated and restricted environment, including within her own extended family, had lasting psychological and emotional effects. She abhorred wearing an *abaya* and *niqab* (the full face veil) to the extent that she became anxious when she knew she had to put them on to leave the house. For the first few months she lived in Saudi Arabia, she refused to wear a *niqab*, preferring instead to wear a traditional Islamic headscarf. However, after being the subject of negative attention she relented and adopted

the *niqab* as standard public dress. Even so, there were still occasions when she was physically attacked by the religious “morality” police (*mutaween*) because part of her face was inadvertently uncovered, often because she had lifted her veil to drink water or use her asthma inhaler. She estimates this happened approximately eight to ten times in total.

[17] The wife felt like she was a prisoner in her own home, forced to comply with the socially conservative role of a woman whose activities were restricted entirely to the private, domestic sphere. And even within that sphere, she experienced the negative reaction of members of the husband’s family who thought that her desire to work outside the home and her attempts to wear less than the *niqab* in public indicated she was not of high moral standing.

[18] By the mid-2000s, the situation became increasingly difficult to tolerate and the wife’s mental health began to deteriorate noticeably. She became depressed and often withdrew from the husband and children.

[19] The wife was also subject to inappropriate and subtly threatening behaviour from AA when he stayed at the flat. After smoking hashish and drinking alcohol, he would often knock on the internal door and shout at the wife to open it. On occasions when she did open it, he would come into the house and talk to her in a way that she found lewd and inappropriate. At times, she worried that he would attempt to sexually assault her although often the presence of the children would cause him to leave. He also touched the wife inappropriately during family get-togethers, when they were alone together in the kitchen, or passing each other in a room. The wife became so concerned that she avoided all contact with AA and refused to open the internal door.

[20] In 2005, the wife was briefly abducted. One day, after a meeting at her daughter’s school, the wife decided to walk the short distance home rather than wait for the husband to collect her. As she walked, a van pulled up alongside and she was pulled inside. There were three men in the van, who tried to restrain the wife, remove her *abaya* and touch her. The wife screamed and struggled against them. She then managed to open the door of the van at which point the men pushed her out onto the road and drove off. A passing car with two women and their driver stopped to assist the wife and called the husband to collect her.

[21] The husband and wife decided not to report the abduction to the police or tell anyone else because they were sure that the wife would be blamed for the incident.

[22] After the incident, the husband refused to discuss what happened because he felt shamed by it. The effect on the wife however was marked and she became angry and then severely depressed as a result. She had felt unhappy about her predicament in Saudi Arabia previously but after the incident she felt vulnerable, powerless and miserable to the extent that she lost the motivation to engage in many day-to-day activities. She felt fearful about leaving the house and, as a result of depression, she lost interest in caring for the children or completing her usual household tasks. The wife continued in this depressed state for four years. At times her depression was so severe she would remain in bed for days.

[23] In late 2009, it was decided that the husband and two eldest sons (not included in these appeals) would travel to New Zealand so that the sons could study English. It was originally envisaged that the sons would stay here for six months to one year and the husband would remain only until they were settled. The wife did not wish to stay in Saudi Arabia without the protection of her husband and so she and the children travelled to be with her family in Egypt while the husband and one of the sons travelled to New Zealand.

[24] Once in Egypt, the wife could not bear the thought of returning to live in Saudi Arabia with its oppressive and restricted control of women's lives. With the encouragement of her father, she decided to travel to New Zealand with the children and try to find a way to remain here or settle in another western country. The husband had provided the wife with a substantial sum of money for her stay in Egypt. She used this to purchase airline tickets and she and the children travelled to New Zealand without her husband being aware of her plans. Once she had arrived, the wife called the husband from the airport. He was shocked at her arrival but has since supported her claim of refugee status in New Zealand.

[25] In New Zealand, the family lived together in a house arranged by the husband. They used savings from Saudi Arabia to support themselves, but the costs of the two older boys' study, along with the expenses of supporting the whole family here, soon depleted the savings.

[26] Because of the financial stress on the family, arguments arose between the husband and the two eldest sons ("the sons"), who made persistent requests for more money. In response, the father said that he could not provide more funds and that they should be contributing to household expenses with money they were earning from part-time jobs. The sons refused and the husband said he would no longer support them if they could not share their income. There was also some disagreement between the husband and the sons as to whether the mother and

they should be pursuing refugee claims in New Zealand. As a result of the argument, the sons moved out of the home and the father has refused contact with them since their departure. The wife is very upset by the rift and wishes to resume contact with them but is not permitted to do so by the husband.

[27] Soon after they moved out, one of the sons, BB, telephoned the husband's mother in Saudi Arabia and told her about the wife's refugee claim. AA also heard the conversation because he was in the mother's house and she uses a speaker phone. AA became very angry about the refugee claim and began making threats against the husband and wife. The husband spoke with his mother soon after AA's call and the mother relayed news of the brother's threats to the husband.

[28] Further details of the brother's threats have also been relayed by the husband's sister CC in telephone calls throughout mid-2010 and then during her visit to New Zealand in late 2010. It is apparent from CC and other family members in Saudi Arabia that the brother has moved into the appellants' home, removed many or all of their possessions and has done so against the wishes of the rest of the family. The brother has continued to make threats against the appellants, although he has never stated specifically whom in Saudi Arabia he has informed of their refugee claims.

[29] More recently, in 2011, the husband's niece, DD, has confirmed that the husband is on an official airport list in Saudi Arabia as someone of interest to the authorities. DD used friends who work as officials to make the confirmation.

[30] Since her departure from Saudi Arabia, the wife has begun to recover her psychological health although she still suffers from bouts of depression, particularly when she considers the possibility she may have to return to Saudi Arabia. She says she feels alive again living in a society in which she is able to be seen, to speak and to have some autonomy over how she lives, what she wears and her activities. For example, the wife finds it liberating to be able to attend English language classes four days a week at a community centre and says she would not be able to pursue such study in Saudi Arabia. She is also relieved to be living in a place where her children, especially her daughters, can enjoy the same freedoms. For the first time in many years she can envisage a fulfilling future for herself which involves further study and employment outside the home.

[31] The wife says that if she has to return to Saudi Arabia it would be a virtual death sentence. She says that her identity and life there is reduced to that of a non-person because she has no freedom or opportunity to make decisions about

her activities, her appearance or to have any independence. She also states that she is strongly opposed to her daughters having to return to Saudi Arabia and she does not wish them to grow up and live as women in a society which provides women with no independence or respect.

The Husband's Evidence

[32] The husband is an ethnic Palestinian who was born in Riyadh, Saudi Arabia, to parents who had fled there as refugees. Although he suffered some racial discrimination in Saudi Arabia, it did not interfere with his schooling. After completing his schooling the husband studied English abroad.

[33] From 1980, he was employed in various positions with shipping companies. In 1997, he became a self-employed stock broker and earned a good income. He combined that with salaried employment until approximately 2007 when he focused solely upon share trading.

[34] The husband corroborated the evidence of the wife as to the circumstances of their marriage, the nature of her life after marriage and the incidents in which she was harassed about her appearance by officials. He also corroborated her account of the abduction, her subsequent depression and general despair at what she considered to be the total repression of women's identity and freedom in Saudi Arabia.

[35] The core events which have led to the husband's claim for refugee and protected person status occurred after his arrival in New Zealand in 2010.

[36] The husband confirmed that his relationship with his brother, AA, has deteriorated over a long period of time, largely due to AA's drug and alcohol abuse and womanising. The husband also found AA's behaviour to be increasingly erratic and aggressive, especially when they argued about the use of the flat. The relationship breakdown was exacerbated by AA's inappropriate behaviour towards the wife (noted above).

[37] In late-2009, it was agreed that the husband and two older sons would travel to New Zealand, where the sons would study English. The husband suspended his business activities but had sufficient savings to maintain the family and had the option of resuming trading when he returned to Saudi Arabia.

[38] In January 2010, he travelled to New Zealand with one son, leaving another to chaperone the wife and remaining children in Egypt. In mid-February, the wife

and children arrived unexpectedly in New Zealand. The husband corroborated the wife's evidence as to the arguments between himself and the two eldest sons and their subsequent lack of contact. The husband says he will resume contact with them at some stage but makes no commitment as to when.

Arrival in New Zealand and subsequent events

[39] The husband also corroborated the wife's account of events in New Zealand which have led to his refugee and protected persons claim.

[40] He says that initially, he stayed in New Zealand to support his wife while she made her refugee claim. However, after AA began making threats, the husband feared for his safety on return to Saudi Arabia and applied for refugee status on his own account. Subsequently, when his sister, CC, visited New Zealand, she informed the husband that AA had said that he had given the husband's name to authorities, although CC was not able to provide more details.

[41] In 2011, DD informed the husband by telephone and then by way of email message to the eldest daughter that the husband's name is on a list at the airport as someone wanted by the authorities.

[42] The husband claims that the Saudi Arabian authorities are now aware that his wife has applied for refugee status in New Zealand and that they will perceive this to be a political act expressing opposition to the Saudi regime. The husband says he will be blamed for his wife's actions and will be arrested at the airport, detained and mistreated in custody. Further, he says his wife refuses to return to Saudi Arabia and resume the socially acceptable role as a house-bound wife and mother, and says she will not wear the *abaya* and *niqab*. This rebelliousness will lead to accusations that he cannot or will not control his wife and he will be arrested and mistreated as a result. He also claims his Palestinian ethnicity will exacerbate the mistreatment he can expect to receive.

Evidence of the Older Daughter

[43] The older daughter enjoys life in New Zealand and does not wish to return to the restrictions, fear and gender segregated world she remembers of Saudi Arabia. Although she thinks it is acceptable for women to dress according to Saudi Arabian rules if they wish to, she strongly objects to the mandatory regulations and she does not wish to adopt them for herself. She disliked having

to wear the *abaya* when she lived there and now that she has experienced life without it, she cannot imagine having to wear it again.

[44] The daughter wants to pursue tertiary education and employment in New Zealand so that she can live an independent life. She knows she will not be able to lead an independent life in Saudi Arabia and expressed disbelief that she could ever be made to return to that constrained way of life.

[45] The daughter recalls the deterioration of her mother's psychological health in Saudi Arabia and says that her mother was 'sick' for a very long time in Saudi Arabia.

[46] She confirmed that there have been long-standing issues between her parents and AA and that since their travel to New Zealand, the situation has worsened. She is aware that AA is now living in their old house and that their furniture and personal belongings have been disposed of. The mother told the older daughter that, since they have been in New Zealand, AA is causing problems for the husband with the Saudi Arabian authorities.

[47] Since moving to New Zealand, the older daughter has maintained contact with one of her cousins, DD, by way of email. DD has also spoken to the husband and wife on the telephone. From her parents' conversations the daughter understands that AA has not told the Saudi authorities that the husband and wife have applied for refugee status in New Zealand. However, DD told the husband by way of telephone that he is on an airport list and, some time later, informed the daughter by email that he was named on the list as a drug addict. When she got the email, the daughter informed her parents that the husband was listed as a drug addict. They were surprised to hear that was recorded on the airport list.

Evidence of the Son

[48] The son briefly appeared at the hearing to give evidence. He is 14 and attends secondary school in New Zealand. His evidence was not inconsistent with the evidence given by the remaining family members as to the general living arrangements of the family or the difficulties with AA using the flat next door. The son was not aware of the specific nature of the problems or of the developments since the family has been in New Zealand.

[49] As to his own situation, he believes there is more freedom for him in New Zealand and he feels safer. He experienced occasional verbal harassment at

school because he is Palestinian. He has established more friendships in New Zealand because people do not discriminate against him on account of his Palestinian origin. He would not be able to wear his hair long in Saudi Arabia as he does now.

Documents and Submissions

[50] The Tribunal has been provided with a copy of the RSB file, a copy of which has also been provided to the appellants.

[51] On 16 June, counsel sought and was granted an adjournment of the hearing until 4 and 5 July 2011. Under cover of a letter dated 4 July 2011 counsel filed documents relating to the medical condition of the wife. During the hearing on 4 July 2011, counsel provided a medical report relating to the husband's mother in Saudi Arabia.

[52] Counsel also made oral submissions in closing.

Credibility of the Evidence

[53] For the purposes of this decision the Tribunal finds that the wife's evidence in connection with her own claim is credible. The Tribunal accepts that she is intensely opposed to the societal restrictions on women in Saudi Arabia and that these contributed significantly to her suffering severe depression and anxiety.

[54] Over the two days of the appeal hearing, the Tribunal observed that, when giving evidence about her own life and aspects of women's treatment in Saudi Arabia more generally, the appellant became agitated and upset in a manner consistent with someone who had genuine feelings of trauma about such matters and who is sincerely opposed to gender segregated norms in Saudi Arabia. This behaviour did not appear to be affected and was particularly notable when she demonstrated the Saudi Arabian dress requirements.

[55] The Tribunal accepts her claim to be fundamentally opposed to the restrictions on and systemic discrimination against women in Saudi Arabia, including but not limited to the dress code, the guardianship of men over women and the severe restrictions on employment and other social opportunities.

[56] Likewise, her claim to have been the victim of abduction has been consistently presented since her arrival in New Zealand and is corroborated by the evidence of the husband and daughter.

[57] The Tribunal also accepts the credibility of the older daughter in relation to her objections to the gender inequality in Saudi Arabia and all the personal, social and legal consequences that flow from it.

[58] However, there are aspects of the husband's claim (dealt with more fully below) which are not credible. The wife and daughter have attempted to support his claim by giving false evidence in relation to those aspects. The Tribunal has carefully considered the extent to which the false evidence the wife and daughter have given in relation to the husband's claim, impugns the rest of their evidence. In doing so, the Tribunal reminds itself that accounts presented by appellants can contain a combination of truth and fabrication and that lies about one aspect of an account do not necessarily impugn all of their evidence. On balance, the Tribunal finds that the false evidence the wife and eldest daughter have given in support of the husband's claim can be excised from the other aspects of their claim.

[59] The Tribunal now turns to outline the credibility concerns with core aspects of the husband's account. A summary of the factual findings follows.

AA's threats against the husband

[60] The Tribunal rejects the husband's claim that he has been repeatedly threatened by AA since arriving in New Zealand. The evidence in that regard is undermined by inconsistencies, mobility and vagueness. The inconsistencies arise as between the witnesses and within the testimony of the husband. The Tribunal's core concerns are as follows.

[61] The husband told the RSB that he first learned of the threats by AA during a telephone conversation with his mother, on the same day she had been told by BB (the eldest son) of the wife's refugee claim. The husband told the RSB that on that day, the mother told him of the threats, indicated that they seemed serious and advised him not to come home until they could assess what action AA would take.

[62] In contrast, he told the Tribunal that he first heard of the threats from his sister CC after CC and AA had argued, some weeks after BB's telephone call in which the mother and AA first heard about the wife's refugee claim.

[63] Asked to explain the inconsistency, the husband maintained his evidence that he first heard of the threats from CC. He did not dispute his evidence at the RSB but said the "clear threats" were conveyed by CC, impliedly asserting that any threats he heard from his mother were not clear.

[64] This response cannot be reconciled with his RSB evidence which was that his mother's communication of the threats on the day of BB's phone call was clear and unequivocal. The RSB interview transcript records his evidence as being that he spoke to his mother on the day of BB's telephone call, she told him (the husband) about the threats and "advised me not to come until we see what kind of action your brother is taking".

[65] In contrast, the husband specifically told the RSB that CC was afraid to talk about the threats on the telephone from Saudi Arabia and did not talk openly about the threats until she arrived in New Zealand.

[66] There are further inconsistencies in the husband's evidence as to his mother's pleas for the family to return to Saudi Arabia. He told the Tribunal that in July 2010, on the same day that his mother received BB's telephone call and witnessed AA's threats, she changed her attitude and told the husband not to come home. In other words, before he applied for refugee status, his mother had already recognised the potential danger of his return and advised him to stay in New Zealand. This is inconsistent with the content of the husband's statement, dated 21 September 2010, some months after AA's threats, where he states:

"My mother is angry and cannot understand why we have not returned. She keeps crying and calling me.

I have now discovered that she has spoken to our elder children and they have told her what [the wife] did. She has learned from our sons that [the wife] applied here in New Zealand for Refugee Status and my mother is very angry and tearful and demanding that we return.

I love my mother and I have been a dutiful son all my life.

However, she has become very angry with me because this is really one of the few times in my life that I have ever disobeyed her and not returned to the family there.

...My mother has now said that my brother is threatening to tell the authorities that my wife has applied for Refugee Status and that this is why we are in New Zealand.

I was utterly appalled to hear this and I have been arguing now with my mother and trying to get her to intervene with my brother. She however is so angry at me for not returning and my wife for refusing to return with the children that she is asking me also how can I let my wife behave in this way?"

[67] When this clear contradiction as to his mother's attitude was put to him, the husband was unable to provide a credible explanation. In response, he repeated parts of his previous Tribunal evidence, but did not address the inconsistency. Pressed for further clarification, he stated that he does not remember the details of when his mother changed her attitude.

Husband's name on airport list

[68] The evidence about the husband's name being on an airport list is also inconsistent. The husband told the Tribunal that DD confirmed that his name was on an airport list of some sort but that she was not able to obtain any further information about which list (for example whether it was an immigration or police list), or whether the list recorded why the husband was of interest. The husband also confirmed that he heard this information from DD during a brief telephone call and then by way of an email to the daughter, which the husband read.

[69] This was contradicted by the daughter's evidence. She said that DD stated in the email that the father was described in the list as an alleged drug addict. The daughter also said that when she passed this information on to her parents, they had not previously known that the father was accused or alleged to be a drug addict and they were surprised.

[70] The husband could not explain this inconsistency. He claimed that the daughter must have confused the messages, although he did not explain why this would be so.

[71] The Tribunal does not accept that the daughter was genuinely confused about the email. Her evidence was clear and unambiguous and she claimed to recall telling her parents that her father was listed as a drug addict and their reaction of surprise to it. The Tribunal finds that the marked inconsistency has not been sensibly explained and finds that is the result of fabricated evidence rather than the daughter's inadvertent confusion about a real event.

[72] For the reasons given in [60]-[71] above, the Tribunal rejects the husband's claim (supported by the wife and the daughter's evidence) that AA has falsely informed on him to the Saudi Arabian authorities. The claim is untrue and has been invented to create a refugee claim for the husband.

Summary of Factual Findings

[73] In summary, the Tribunal makes the following findings:

- (a) The wife is a Saudi Arabian citizen, of Palestinian origin. She is fundamentally opposed to the discriminatory and restrictive legal and social rules imposed on women in Saudi Arabia, which she finds humiliating and degrading.

- (b) The older daughter is a Saudi Arabian citizen, of Palestinian origin, aged 18 years. She has almost completed her schooling. She objects strongly to the oppressive Saudi Arabian regime and does not wish to adopt the strict Islamic dress code or to fulfil the traditional role of wife and mother which is expected of her in Saudi Arabia.
- (c) The husband is a Saudi Arabian citizen, of Palestinian origin. He has completed his school education, worked as a skilled professional and run his own business successfully. He has no adverse profile with the Saudi Arabian authorities.
- (d) The son is a Saudi Arabian citizen, of Palestinian origin. He experienced some verbal harassment in Saudi Arabia from peers at school because of his Palestinian origin. He would not be able to wear his hair long if he returned to Saudi Arabia.
- (e) The younger daughter is a Saudi Arabian citizen, of Palestinian origin. She plays many sports in New Zealand, which she would not be permitted to do in Saudi Arabia. She would be required to wear an *abaya* if she returned to Saudi Arabia.

JURISDICTION

[74] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[75] Pursuant to section 198 of the Act, the Tribunal must determine whether to recognise each of the appellants as:

- (a) a refugee under the Refugee Convention (section 129); and/or
- (b) a protected person under the Convention Against Torture (section 130); and/or
- (c) a protected person under the International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

THE REFUGEE CONVENTION – THE ISSUES

[76] 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.”

[77] In terms of *Refugee Appeal No 70074* (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 APPELLANTS’ REFUGEE APPEALS

[78] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection; see *Refugee Appeal No 2039* (12 February 1996). Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[79] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective.

Assessment of the Claims of the Wife and the Daughters

Country information

[80] Before turning to consider the prospective predicament of the wife and eldest daughter on return to Saudi Arabia, it is necessary to review the country information.

[81] An abundance of country information establishes that women in Saudi Arabia are subject to what is appropriately characterised as systemic and sustained discrimination in almost every facet of their personal, legal and social lives. At the centre of this discriminatory system is the strict enforcement of gender separation and the requirement that adult women require a male guardian to take responsibility and make decisions for them in respect of almost every aspect of their lives. The system is described in a report by Human Rights Watch *Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia* (20 April 2008) (“the Human Rights Watch report”) which states:

“Throughout much of the world, it is taken for granted that the law empowers both men and women upon reaching the age of majority (typically 18) to make decisions for themselves. In Saudi Arabia, however, the government denies more than half of its citizens this fundamental right.

The Saudi government has instituted a system whereby every Saudi woman must have a male guardian, normally a father or husband, who is tasked with making a range of critical decisions on her behalf. This policy, grounded in the most restrictive interpretation of an ambiguous Quranic verse, is the most significant impediment to the realisation of women’s rights in the kingdom. The Saudi authorities essentially treat adult women like legal minors who are entitled to little authority over their own lives and well-being.

Every Saudi woman, regardless of her economic or social status, is affected by these guardianship policies and the deprivation of rights that their enforcement entails. Adult women generally must obtain permission from a guardian to work, travel, study, or marry. Saudi women are similarly denied the right to make even the most trivial decisions on behalf of their children.”

[82] The report goes on to state that while the government has taken some steps in recent years to limit the absolute power of guardians, in practice, little has changed. The principle that women and men should not socialise or intermingle leads to far-reaching consequences that violate the fundamental human rights of all adult women. For example, that principle was used in the first ever municipal elections in 2005 to prevent women voting because there were no separate voting booths available. Similarly, the need to provide separate office space and ablution facilities in workplaces means that employers prefer not to employ women. Likewise, educational institutions often relegate women to inferior or limited facilities and offer fewer academic opportunities.

[83] The same report describes the religious background and context for the predicament of women as follows:

“The religious character of Saudi Arabia, whereby the state is the guardian of religion and all that it requires in human conduct, has a direct bearing on women’s status in the kingdom. Saudi Arabia applies *Sharia* (Islamic law) as the law of the land. The first article of the kingdom’s Basic Law of Governance elevates the Quran and the Prophet’s traditions (*Sunna*) to the status of a constitution.

Consequently, the religious establishment plays a central role in the country's governance and has broad influence over many aspects of everyday life. It is largely in control of all levels of education in the kingdom and the all-male judiciary, as well as of the policing of "public morality" through the Commission for the Promotion of Virtue and the Prevention of Vice (the religious police, *al-hisba*).

Notwithstanding the diversity of its views in other areas, the religious establishment in Saudi Arabia has by and large opposed the empowerment of Saudi women."

[84] The United States Department of State *Country Reports on Human Rights Practices for 2010* (8 April 2011) paints a similarly grim picture as to the inferior status of women in Saudi Arabia. It records:

"Discrimination against women was a significant problem. After her 2008 visit, the UN special rapporteur on violence against women, while acknowledging progress in the status of women and particularly women's access to education, noted the lack of women's autonomy, freedom of movement, and economic independence; discriminatory practices surrounding divorce and child custody; the absence of a law criminalizing violence against women; and difficulties preventing women from escaping abusive environments.

Women continued to face discrimination under the law and remained uninformed about their rights. Although they may legally own property and are entitled to financial support from their guardian, women have few political or social rights, and society does not treat them as equal members.

...The guardianship system requires that every woman have a close male relative as her "guardian" with the authority to approve her travel...

Cultural norms restricted women in their use of public facilities. When unrelated men are present, women must sit in separate, specially designated family sections. They are not allowed to consume food in restaurants that do not have such sections. Women risk arrest for riding in a vehicle driven by a male who is not an employee or a close male relative..."

[85] The prevailing environment of gender inequality and sex segregation makes it difficult for women to access protection from violence, including sexual violence. The Human Rights Watch report, p23, notes that Saudi women express reluctance to walk into a police station or even call the police without a male guardian present. All police officers are male. Women's access to justice through the courts is equally constrained and will be difficult at best, without the presence of a male guardian who can speak on their behalf.

[86] As to women's rights within the family, those too are inferior. A woman's right to enter freely into marriage is restricted by the requirement that she have the permission of a male guardian to marry. Guardians also have the unilateral authority to dissolve marriages that they deem unfit: Human Rights Watch report, p30. The guardianship of children is also denied women during marriage and after divorce, except in exceptional cases where there is no male guardian available (*ibid* p32).

[87] The Tribunal has not overlooked information that recently Saudi Arabia's King Abdullah bin Abd al-Aziz has announced that women will be able to participate in municipal elections in 2015. As noted in one report, it is possible that the announcement may be an indication that the King is willing to take steps to eliminate at least some of the discrimination that Saudi women face in their daily lives. See: Human Rights Watch, *Getting the vote could herald real change for Saudi women* (29 September 201). However, any changes in the system are yet to be established in practice and will likely face strong opposition from those who believe the status quo is religiously decreed and should remain.

Application to the facts – the wife and older daughter

[88] The Tribunal finds that the cumulative effect of the breaches of fundamental human rights of the wife and older daughter is sufficiently grave to finding of persecution in the sense of a sustained or systemic violation of basic human rights. Put briefly, the harm is in the form of religious, legislative and social gender discrimination and the enforcement of gender-based norms against women as a group in Saudi Arabia. The rights violated include, among others, the right to freedom of movement (Article 12 ICCPR), the right to equality before the law and equal protection of the law (Articles 14 and 26 ICCPR), the right to vote and be elected to office (Article 25 ICCPR), the right not to be subject to arbitrary interference with privacy (Article 17 ICCPR) and the right to equality in marriage and family life (Article 23 ICCPR).

[89] As to the question of whether the wife and eldest daughter can access state protection, the short answer is “No”. The evidence establishes that the state itself has created and maintained the legislative framework which, to a large extent, is the source of the serious harm faced by them. There is no state protection available to them from either the legislative or social discrimination which they will face in Saudi Arabia.

Application to the facts – the younger daughter

[90] With regards to the younger daughter, the Tribunal finds that it has not been established that she is at risk of being persecuted to the real chance threshold on return to Saudi Arabia. While she will be required to wear the *abaya* on return to Saudi Arabia (or soon after), and she may not be able to play sport to the extent she can in New Zealand, it is not accepted that such a situation amounts to a sustained and system violation of her fundamental human rights.

[91] On return to Saudi Arabia she will be able to access schooling and will remain in the care of family members who will provide for her everyday needs, as they did previously. She is not currently near an age where she will wish to take up employment, tertiary education or live independently from her family. As to an assessment of what her personal circumstances will be years from now, and any future harm she may suffer in regards to breaches of her fundamental human rights, the Tribunal is unable to make findings on the evidence before it. Findings of that nature would be based on a degree of conjecture and speculation not appropriate in the determination of refugee status.

Assessment of the Husband's Claim

[92] The Tribunal has found that the husband is a Saudi national, of Palestinian ethnicity, who has no adverse profile with the Saudi Arabian authorities. The Tribunal rejects the claim that AA has informed against the husband to the Saudi authorities and, consequently, the claim that the husband's name is on an airport list is also wholly rejected.

[93] The husband has not been subjected to serious harm in Saudi Arabia in the past, and there is no credible basis on which to find that he would be at risk of serious harm, to the real chance threshold if he now returned there.

[94] In making this finding, the Tribunal has not overlooked the husband's claim that if his wife rejects the dress code for women in Saudi Arabia then he will be at risk of serious harm from authorities because he will be blamed for her disobedience. However, because the Tribunal recognises the wife as a refugee and, as a consequence she cannot be returned to Saudi Arabia, this aspect of the husband's claim no longer falls to be considered.

[95] The husband is not at risk of serious harm should he return to Saudi Arabia. He is not a refugee.

Assessment of the Son's Claim

[96] The son has previously been the victim of occasional verbal taunts from students at his school on the basis of his Palestinian ethnicity. This level of harassment may repeat itself on occasions in the future. The son may also find that it is difficult to make friends at school because of the negative attitudes to Palestinians. However, on return to Saudi Arabia he will be able to return to school and complete his schooling. He will be in the care of his family who have

always provided for his well-being in the past and will do so in the future. The son may have to wear his hair in a short haircut to avoid negative attention at school. There is no objective evidence to establish that he will be at risk of any forms of serious harm to the real chance level.

[97] Taking into account all the characteristics of the son and the predicament he will face on return to Saudi Arabia, the Tribunal finds that his claim of serious harm falls short of the “being persecuted” threshold.

Conclusion on Claims under the Refugee Convention

[98] For all the reasons given above, the Tribunal finds that the wife and older daughter both have a well-founded fear of being persecuted if returned to Saudi Arabia. The reason for their predicament is their membership of a particular social group which is severely marginalised on a religious, legislative and social level in Saudi Arabia. That particular social group is “women”. The wife and older are both refugees.

[99] The husband, son and younger daughter do not have a well-founded fear of being persecuted on return to Saudi Arabia and are not therefore refugees.

THE CONVENTION AGAINST TORTURE – THE ISSUES

[100] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

Assessment of the Claim under the Convention Against Torture

[101] Section 130(5) of the Act provides that torture has the same meaning as in the Convention against Torture, Article 1(1) of which states that torture is:

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Conclusion on Claim under Convention Against Torture

[102] The wife and older daughter have both been recognised as refugees (para [97] above). In accordance with New Zealand's obligations under the Refugee Convention, they cannot be deported from New Zealand, by virtue of section 129(2) of the Act (the exceptions to which do not apply). Accordingly, the question whether there are substantial grounds for believing that either of them would be in danger of being subjected to torture if deported from New Zealand does not arise. They are not persons requiring protection under the Convention Against Torture. They are not protected persons within the meaning of section 130(1) of the Act.

[103] As to the father, the son, and the younger daughter, they all rely on the same evidence in support of their respective claims under the Torture Convention as they did to support the claims under the Refugee Convention. The Tribunal has already found that the evidence does not establish that any of them, based on their particular individual circumstances, face a well-founded fear of being persecuted in Saudi Arabia. For the same reasons, on the basis of the evidence before it, the Tribunal is satisfied that the husband, son and the younger daughter have not established that there are substantial grounds for believing that any of them would be in danger of being subjected to torture if they now returned to Saudi Arabia.

[104] The husband, son and younger daughter are not entitled to be recognised as protected persons under section 130(1) of the Act.

THE ICCPR – THE ISSUES

[105] Section 131(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

Assessment of the Claim under the ICCPR

[106] Pursuant to section 131(6) of the Act, "cruel treatment" means cruel, inhuman or degrading treatment or punishment but, by virtue of section 131(5):

- (a) Treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the

sanctions are imposed in disregard of accepted international standards; and

- (b) The impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.

[107] For the reasons already given, the wife and older daughter cannot be deported from New Zealand. Accordingly, the question whether there are substantial grounds for believing that they would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand does not arise. The wife and older daughter are not people requiring protection under the ICCPR. Neither of them is a protected person within the meaning of section 131(1) of the Act.

[108] As to the husband, son and the younger daughter, each of them relies on the same evidence in support of their respective claims under the ICCPR as they did in support of their claims under the Refugee Convention. For the same reasons, the Tribunal finds, for each of them, that they have not established substantial grounds for believing that they would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if returned to Saudi Arabia.

[109] The Tribunal finds with respect to the husband, the son and the younger daughter, that they are not persons requiring protection under the ICCPR and that, for each of them, they are not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

[110] For the foregoing reasons, the Tribunal finds that the wife:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[111] The wife's appeal is allowed.

[112] For the foregoing reasons, the Tribunal finds that the older daughter:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[113] The older daughter's appeal is allowed.

[114] For the foregoing reasons, the Tribunal finds that the husband:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[115] The husband's appeal is dismissed.

[116] For the foregoing reasons, the Tribunal finds that the younger daughter:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[117] The younger daughter's appeal is dismissed.

[118] For the foregoing reasons, the Tribunal finds that the son:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and

- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[119] The son's appeal is dismissed.

"B.A. Dingle"

B A Dingle

Member

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