

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76168

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>	19 & 20 February, 14 March 2008
<u>Date of Decision:</u>	30 June 2008

DECISION

INTRODUCTION

[1] The appellant is a stateless Palestinian from Gaza. He appeals against the decision of a refugee status officer of Refugee Status Branch (RSB) of the Department of Labour (DOL) declining his application for refugee status. The Gaza Strip is a narrow piece of land which was occupied by Israel during the 1967 war. While Israel withdrew its troops from Gaza in 2005, it still exercises control over most of Gaza's land borders, as well as its territorial waters and airspace.

[2] This is the second time the appellant has applied for refugee status. A different panel of the Authority (the first Authority panel) declined the appellant's first appeal in *Refugee Appeal No 74512* (8 July 2004).

[3] Because this is his second appeal the Authority is required to determine, as a preliminary matter, whether it has jurisdiction to consider the merits of the second appeal.

[4] For reasons set out below, the Authority finds that it does have jurisdiction to consider the appeal, which therefore turns upon the appellant's credibility. This is also assessed below.

JURISDICTION TO DETERMINE SECOND CLAIMS FOR REFUGEE STATUS

[5] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined. Section 129J(1) of the Immigration Act 1987 ("the Act") sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status:

"129J. Limitation on subsequent claims for refugee status—

(1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim."

[6] Where the refugee status officer declines the subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority. Section 129O(1) of the Act provides:

"A person whose claim or subsequent claim has been declined by a Refugee Status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[7] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act is determined by comparing the previous claim to refugee status against the subsequent claim: *Refugee Appeal No 75139* (18 November 2004).

[8] Where jurisdiction is established, the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim under section 129P(9) of the Act. That section prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and the Authority has a discretion as to whether to rely on any such finding.

The appellant's first claim for refugee status

[9] The appellant claimed refugee status almost immediately after he arrived in New Zealand in late 2000. His first application was declined by the RSB. The first Authority panel dismissed his appeal in respect of his first application in *Refugee Appeal No 74512* (8 July 2004). A detailed outline of the account presented by the appellant in support of his first claim is set out in that decision.

[10] In summary, the appellant claimed that he was at risk of being persecuted in Gaza because he had been a paid informer for Israeli intelligence during the 1990s. Some of the people in respect of whom he had provided information to the Israelis had been mistreated and killed.

[11] His activities were discovered by Hamas, and in early 1998 a motor vehicle in which the appellant was travelling with other Israeli informers was fired upon. In fear for his safety, the appellant left Gaza for Egypt, where he remained until mid-1999. He then travelled to Australia and claimed refugee status. The appellant returned to Gaza six months later, before his claim for refugee status was determined, because he was homesick. He subsequently left Gaza and made his way to New Zealand in December 2000. The appellant has since married while in New Zealand.

[12] The appellant also claimed that he had been targeted by the Palestinian National Authority and that Hamas continued to approach his family in Gaza after he arrived in New Zealand.

The decision of the first Authority panel: *Refugee Appeal No 74512* (8 July) 2004

[13] The first Authority panel accepted that the appellant is a Palestinian Arab from Gaza, however it rejected the appellant's core account in its entirety. It did not believe that he had been an informant for the Israeli government, that he had gone into hiding in Egypt, or that he had been pursued by Hamas or the Palestinian National Authority.

[14] The first Authority panel found that the appellant's evidence was inconsistent and contradictory in key respects and found that various documents he had produced in support of his claim were fabricated. In reaching that conclusion, the first Authority panel relied upon various factors, including the following:

- a) the appellant remained in Gaza for more than a year after the risk supposedly arose;
- b) the appellant's claim to have been in hiding in Egypt from May 1998 until he left for New Zealand in 2000 was contradicted by numerous entries in his passport which demonstrate that the appellant returned to Gaza several times during that period;
- c) despite obtaining visas in June 1998 (a month after the appellant claimed that he began to fear for his life) which would have enabled him to enter any of five European countries, the appellant did not travel to any of those countries; and
- d) the appellant sought asylum in Australia in 1999 but returned to Gaza before his claim was determined, purportedly because of homesickness.

Appeal to the Removal Review Authority (RRA)

[15] After the appellant's appeal was declined by the first Authority panel, his permit to be in New Zealand expired. The DOL took steps to remove him from New Zealand. In response, the appellant applied to the Removal Review Authority (RRA) to overturn that decision in September 2004. The RRA declined the appellant's appeal in a decision delivered in April 2005.

Ministerial requests

[16] The appellant subsequently made two requests for special consideration of his case to the Ministers of Immigration respectively incumbent in July 2005 and in May 2006. Both requests were declined.

Judicial Review

[17] The appellant filed proceedings in the High Court at Auckland following the decision of the RRA. The INZ file does not contain a full set of the pleadings; however there are copies of a statement of claim dated 20 November 2006 and an amended statement of claim dated 14 December 2006. It appears that the appellant sought relief against the prospective exercise of the right to remove him from New Zealand. The claim appears to have been discontinued before the appellant lodged his second application for refugee status.

The appellant's second claim for refugee status

[18] The appellant lodged his second claim for refugee status on 19 June 2007. The RSB dismissed it in a decision dated 29 November 2007, on the basis that it had no jurisdiction to accept the appellant's second claim. The appellant appeals against that decision.

[19] The appellant claims that circumstances in Gaza have changed since the final determination of his first claim on 8 July 2004, such that his second claim is based upon significantly different grounds. At the beginning of the appeal interview, the appellant agreed that the grounds of his second appeal could be characterised under various broad headings:

- (a) that there has been a miscarriage of justice as a result of a fundamental misunderstanding of his evidence by the Authority when dealing with his first appeal;
- (b) that relevant authorities in Palestine have refused to issue him with a new passport because of his adverse political profile;
- (c) that he has converted to Christianity, no longer considers himself to be a Muslim and has become "westernised"; and
- (d) that Hamas has come into power and formed a government in Palestine and that conditions in Palestine have deteriorated to the point where fighting between Hamas and Fatah has led to the killing of innocent bystanders.

[20] While these grounds of appeal are set out in this manner for the sake of convenience, the Authority has assessed the appellant's appeal holistically and in its entirety.

FINDING WITH REGARD TO JURISDICTION

[21] The appellant's first claim was based upon his actions as an informer for the Israeli government. He claimed that this gave rise to a well-founded fear of being persecuted in Gaza for reason of his actual or imputed political opinion.

[22] The appellant's second claim is based in part upon his assertion that since the final determination of his first appeal by the Authority in July 2004 he has converted to Christianity. He says that this is known to people in Gaza as he has recently confided in his family members. According to the appellant, he would be seriously harmed if he returned to Gaza as a Christian convert.

[23] In the context of the appellant's claims as asserted, his claim to have converted to Christianity is a change in circumstances such that the appellant's further claim is based on significantly different grounds. Accordingly, the Authority finds that it has jurisdiction to hear this appeal.

THE APPELLANT'S SECOND CLAIM

[24] A summary of the appellant's second claim is outlined below. Its credibility is assessed later.

Miscarriage of Justice

[25] In order to understand the basis of the appellant's claim that he has been the victim of a miscarriage of justice it is necessary to refer to his first appeal. The appellant told the first Authority panel that after taking flight to Egypt in early 1998, he did not return to Gaza before 2000. Despite this his travel document (referred to for convenience as a passport) contains stamps which indicate that he had passed back and forward across that border on several occasions. According to the decision of the first Authority panel the appellant claimed in response that:

"... the Rafah border control was located within Egyptian territory, so the stamps did not evidence travel between Palestine and Egypt. He said that he did not enter Palestine after he left Gaza in May 1998. He advised that the stamps record his frequent travel *within* Egypt, between Cairo and Egyptian Rafah, where he would meet his father in a motel or hotel." *Refugee Appeal No 74512* (8 July 2004) p38.

[26] On its face the submission that a border control is not situated on (or even particularly close to) the border does not make sense. However, as a matter of fairness the Authority asked Immigration New Zealand (INZ) to make an enquiry

under s129P(4) of the Act, to find out whether there are one or two border controls on the Egyptian side of the border with Gaza. The Embassy of the Arab Republic of Egypt responded in writing on 5 June 2004. It confirmed that:

“...the Rafah border control is located on the border of Egypt and Gaza, rather than South of the Egypt/Gaza border, within the territory of Egypt as asserted by the appellant” *Refugee Appeal No 74512 (8 July 2004)* para 38.

[27] This appeared to contradict the appellant’s evidence. Accordingly on 16 June 2004 the first Authority panel forwarded a copy of that response to the lawyer then acting for the appellant, in order to give the appellant an opportunity to comment. In the absence of any reply by or on behalf of the appellant, the first Authority panel published its decision on 8 July 2004.

[28] The first Authority panel found that the entry and exit stamps in the appellant’s passports are evidence that the appellant travelled across the border between Egypt and Gaza on numerous occasions during the period in question. That finding, in conjunction with various other credibility concerns already outlined, led the first Authority panel to decline the appellant’s first appeal.

[29] The appellant claims that the letter from the Egyptian Embassy was never disclosed to him by his lawyer. He says that he did not even know it existed until a copy of the first Authority panel’s decision *Refugee Appeal No 74512 (8 July 2004)* was read to him at the office of his current lawyer in 2007.

[30] The appellant also claims that he had provided a written explanation which would have clarified this matter to the interpreter who was assisting him for the purposes of his first appeal to the Authority. He says that his interpreter never passed the document on.

[31] The appellant says that the fact that he was unable to respond to the letter from the Egyptian Embassy is a miscarriage of justice, as is the fact that his written explanation was not passed on by his interpreter. He claimed that he had an explanation that has not been taken into account, and says that, but for this miscarriage of justice, the first Authority panel may not have dismissed his first appeal.

Unsuccessful attempts to obtain a passport

[32] The appellant’s first Palestinian travel document (referred to for convenience as a passport) expired in 2001. It therefore became necessary for

him to obtain a new passport when INZ took steps to remove the appellant from New Zealand after the appellant's unsuccessful appeal to the RRA.

[33] The appellant claims that he has co-operated with INZ in attempting to obtain a new passport. He forwarded documents to the General Palestinian Delegation in Canberra, Australia, and then to Gaza. When the appellant's brother pursued the passport application in Gaza he was summoned to the Hamas security headquarters. The brother was told that the appellant would not be issued with a passport because of his status as an informer.

[34] The brother returned to the security headquarters at a later date accompanied by the appellant's father and by a local village dignitary. Their efforts to obtain any further insight into the difficulties led to the revelation that the appellant had been tried, convicted and sentenced *in absentia*, by the High Court in Gaza, presumably for providing information to the Israeli authorities.

[35] The appellant claims that he will never receive a new Palestinian passport and says that, if he attempts to return to Gaza, the existence of the convictions against him would lead to his inevitable detention and serious mistreatment or death.

Christian conversion

[36] Some time in 2005, members of a local Korean Christian church came to the home in which the appellant was then living, unsolicited. They visited the appellant again on three or four occasions before inviting him to be baptised. He agreed, and a ceremony of sorts was conducted at the appellant's home. The appellant attended a few services at their church but had not attended for more than 12 months prior to the interview with the Authority. He has lost contact with its members.

[37] The appellant's wife is a member of the Church of Jesus Christ of the Latter-day Saints, often referred to colloquially as Mormons. The appellant does not know much about that particular church nor has he ever attended any of its services, either alone or with his wife. He believes that his wife still attends Sunday services on occasion and said that she takes their daughter to those services.

[38] The appellant has not affiliated himself with any particular Christian denomination, nor does he regularly attend any church or belong to any church community. He claims that he is a Christian inside himself. He believes that his daughter (who is not yet of school age) will see this and that she will be a Christian as well because of his example.

[39] Approximately a month before his second appeal interview with the Authority, the appellant informed his father and his brother in Gaza that he had converted. They both took exception to this news. The appellant believes that his conversion will be known to others in Gaza and that he will be targeted for being an apostate.

Deterioration in country conditions

[40] Counsel provided country information which refers to the civil unrest in the Israeli occupied territories since Hamas forces took power in Gaza by force from the elected Fatah government in 2007. She also provided country information which indicates that individuals suspected of collaborating with Israel have been in the past and continue to be now targeted for abduction and torture; see for example an article by Human Rights Watch *Gaza: Investigate abduction, torture by Islamic Jihad* (3 June 2008).

[41] In her letter to the Authority dated 20 March 2008, counsel submitted that the appellant's absence from [Gaza] and his time spent living in the West "puts him at risk as a perceived supporter of the West."

Material received by the Authority

[42] Counsel forwarded a written memorandum of submissions to the Authority dated 15 February 2008 in advance of the appeal interview which was originally scheduled to commence in mid-February 2008. On 10 March 2008, counsel forwarded an affidavit sworn by the appellant the same day, and an unsworn and undated document typewritten in English and headed "Statement for appeal". It was prepared by the appellant for the purposes of his appeal interview.

[43] Counsel provided country information under cover of written submissions dated 13 February 2008, and the appellant submitted an affidavit sworn on 10 March 2008. Counsel forwarded additional country information and submissions under cover of letters dated 20 March 2008, 1 and 3 April and 10 June 2008.

THE ISSUES

[44] 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.”

[45] 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 or former habitual residence?
- (b) If the answer is yes, is there a Convention reason for that persecution?

[46] Where an appellant is stateless the principal issues are to be considered in relation to the appellant's “country of former habitual residence”. In the case of the appellant, that means the Israeli occupied territories, given that Gaza was occupied by Israel (along with the West Bank, Golan Heights and East Jerusalem) during the 1967 war; United States Department of State *Country Report on Human Rights Practices 2007: Israel and the occupied territories* (11 March 2008).

ASSESSMENT OF THE APPELLANT’S CASE

Assessment of the appellant’s credibility

[47] In order to address the principal issues identified it is necessary to determine whether the appellant is a credible witness. For reasons set out below, the Authority finds that he is not.

Whether the Authority should rely upon findings in *Refugee Appeal No 74512* (8 July 2004)

[48] Section 129P(9) of the Act provides that :

“In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding.”

[49] The first Authority panel clearly rejected the appellant’s credibility for a number of reasons which are outlined in *Refugee Appeal No 74512* (8 July 2004) paras 43-52. It found his evidence to be inconsistent, contradictory and supported by fabricated documents and referred to the fact that:

- a) he remained in Gaza for over a year after the risk supposedly arose;
- b) having obtained visas for various European countries immediately after the risk arose, he did not attempt to enter any of them; and
- c) having travelled to and sought asylum in Australia in 1999, he chose to return voluntarily to the country where his life was supposedly at risk because he was ‘homesick’.

[50] On any evaluation the credibility findings are robust, comprehensive and broad-based.

[51] For reasons which follow, having considered all of the evidence available in respect of the appellant’s second appeal, the Authority is satisfied that it is appropriate to rely upon the findings of credibility and fact made by the first Authority panel when considering the second appeal.

There was no miscarriage of justice

[52] It will be recalled that the first Authority panel relied upon entries in the appellant’s passport which demonstrate that the appellant repeatedly returned to Gaza from his place of ‘refuge’ in Egypt after the risk to his life arose. This contradicted his oral testimony that he had not returned to Gaza. It also undermined the appellant’s claim to be in fear of being persecuted in Gaza during that period. Ms Curtis submitted that the finding in respect of this evidence was pivotal to the decision of the Authority in *Refugee Appeal No 74512* (8 July 2004).

[53] The appellant now says that he has an explanation which should have been available to the Authority before it made that decision. He says that it was not made available due to the failure of his previous lawyer to provide him with a copy of the Authority’s letter dated 16 June 2004, and due to the failure of his interpreter.

[54] In her letter to the Authority dated 15 February 2008, Ms Curtis wrote:

“In our view, [the appellant] had a very strong chance of challenging [the Authority’s decision in *Refugee Appeal No 74512 (8 July 2008)*] ... even though we know that fact can not be challenged – there was an aspect that could be clarified and could be seen to be an error and this we felt would explain some of the unproven aspects of his previous claim and assist him in respect of credibility claims now before the Authority.

As a result of that meeting the writer had extensive information and needed to continue with more research to prove what the client stated was a fact. (The existence of Rafah in the Gaza Strip and in Egypt as two separate places but with a combined border system).”

[55] The Authority finds that this aspect of the appellant’s claim is simply without merit.

[56] It may be that the appellant ought to have had the opportunity to respond to the Authority’s letter 16 June 2004. It may also be that his previous lawyer or his interpreter failed him in some respect (although the appellant has not disclosed any attempt to put these allegations for comment to the lawyer who was acting for him at the relevant time or the interpreter in question).

[57] However, the Authority has no jurisdiction which would enable it to ‘cure’ a miscarriage of justice. Nor can it rehear an appeal already determined as if it were an appellate body; *Refugee Appeal No 75139 (18 November 2004)*, ([44]-[47], [55]); which is effectively what the appellant is asking it to do. The appellant’s remedy in such circumstances is to apply to the High Court for Judicial Review, as he did in a different context in 2006.

[58] Even if the Authority did have jurisdiction to intervene in the manner sought by the appellant, the Authority is satisfied that no miscarriage of justice arises on the facts of this appeal.

[59] When the appellant gave evidence before the Authority during his second appeal interview, he no longer claimed that the two checkpoints are both inside the territory of Egypt. On the contrary, he confirmed that the two checkpoints straddle the border between Gaza and Egypt.

[60] In short, having claimed that he did not return to Gaza between May 1998 and 2000 (because of the risk he would have faced) the appellant now admits that the entries in his passport accurately reflect the fact that he returned to Gaza from Egypt on a regular basis between 1998 and 2000.

[61] It is therefore clear that the findings made by the first Authority panel in connection with the appellant's first appeal were made upon the correct factual basis.

Christian conversion

[62] The Authority rejects the appellant's claim that he has converted to Christianity and his claim that he has disclosed the fact of his conversion to his relatives in Gaza. He demonstrated his capacity for giving self-serving testimony for the purposes of his first claim for refugee status, and the Authority is in no doubt that this claim is also fabricated.

[63] In a written statement lodged with the Authority shortly before his second appeal interview, the appellant claimed that he was raising his daughter (not yet of school age) as a Christian. On the evidence he gave during the appeal interview, however, it is apparent that the appellant has had little input (if any) into his child's spiritual education. It has amounted to no more than having taken her to church on occasions, none of which occurred within the 12 months prior to the appeal interview. On the contrary, it appears that the daughter attends, with the appellant's wife, a church to which the appellant has never been and in which he has eschewed any interest.

[64] On any analysis, the appellant's introduction to Christianity was entirely passive. It is quite clear that his "baptism" was no more than a meaningless ceremony for this particular appellant.

[65] The Authority also notes that the appellant has made no attempt to associate himself with any particular Christian church or organisation, and nor does he regularly attend any church or belong to any church community. He does not belong to any church groups, has never participated in any group meetings with church members, nor has he undergone any additional instruction in Christianity.

[66] While it is not suggested that a genuine conversion would necessarily need to be corroborated by an affiliation with a particular denomination, the appellant has demonstrated no commitment to, or interest in, developing any spiritual aspect of a Christian faith. The appellant's assertion that "Christianity is inside me" is an empty statement which he has made entirely out of convenience for the purposes

of his second refugee claim. The Authority is in no doubt that the appellant has not converted.

[67] The appellant's claim that his brother and father now know about his conversion and are antagonistic towards him as a result of that, is also rejected. The "confession" has been timed simply to coincide with his appeal interview. There appears to be no justification for making this statement (some years after he supposedly became interested in Christianity) other than to be able to tell the Authority that it has happened.

Unsuccessful attempts to obtain a passport

[68] After the RRA declined the appellant's appeal INZ took steps to remove the appellant from New Zealand. It then became necessary for him to obtain a new Palestinian travel document as his previous one had expired. The appellant claims that the Palestinian authorities have refused to issue him with a new passport because he had collaborated with Israel.

[69] In her letter to the Authority dated 20 March 2008, counsel submits that "[the appellant] has done all that is humanly possible to obtain a passport". She also submits (in her letter dated 3 April 2008) that INZ had tried unsuccessfully to obtain a passport for the appellant.

[70] The evidence does not support these submissions and the Authority rejects them. The Authority finds that, while INZ attempted to provide the appellant with some assistance in his efforts, the responsibility for obtaining a new passport has always been his.

[71] In that context the Authority refers to the content of a letter purportedly written by the appellant's wife (the wife's letter), forwarded under cover of counsel's letter to the Authority dated 20 March 2008. In her letter the wife refers to a meeting between the appellant and INZ and states that:

"... after an hour or so it was agreed that trying to obtain a Palestinian passport would be left up to us."

[72] According to the wife's letter the appellant then telephoned the Palestinian delegation in Canberra. The embassy forwarded an application form for a passport which was completed by the appellant and returned to the embassy along with the appropriate fee. Two or three weeks later, the embassy returned the form and instructed the appellant to forward it directly to the appropriate authorities in the occupied territories. Accordingly he sent it to his brother in Gaza.

[73] According to the wife's letter it took three months for the application to reach Palestine because "the borders were closed", presumably because of the deteriorating political situation in the Gaza and the West Bank at that time. The note states that the appellant's brother was then given an appointment to meet with the Palestinian security agency.

[74] According to the wife's letter the wife and the appellant then made further contact with INZ and an INZ officer "tried by himself". Her letter attaches an exchange of emails and she refers to an email from INZ to the Palestinian delegation in Canberra in October 2006.

[75] It is clear from these and other emails which are contained on the INZ file that in May 2007 INZ approached the International Organisation for Migration (IOM) in Australia, to ask whether it could assist INZ to collect a travel document to help the appellant return to Gaza.

[76] IOM responded by stating that it could not assist as it had no presence in Gaza. However it appears that in June 2007 IOM passed the enquiry on to UNHCR in Canberra to see whether they could provide any assistance in uplifting the appellant's travel documents from Gaza.

[77] UNHCR replied to INZ on 8 June 2007. It suggested that the UNHCR office in Jordan might be able to take the matter up once informed where the passport application was located and whether it was presently available to be collected.

[78] There then follows an exchange of emails between INZ and the appellant's lawyer, aimed at arranging a meeting at which this information could be provided to INZ. The proposed meeting did not take place because the appellant lodged his second claim for refugee status.

[79] In light of the available evidence the Authority finds that INZ attempted to provide practical assistance to the appellant with a view to uplifting a passport from Gaza. However there is no evidence that INZ tried unsuccessfully to obtain a passport on the appellant's behalf. On the contrary, the efforts made by INZ came to a halt because the appellant did not provide the information requested by UNHCR in its email dated 8 June 2007.

[80] Counsel also submits in her letter dated 3 April 2008, that "the Palestinian delegation also know about the concerns expressed in Gaza to the client's family". Again, however, the documents on the INZ file do not indicate that the appellant's position has been compromised in communications between INZ and the Palestinian authorities.

[81] INZ wrote to the Palestinian Minister of the Interior in April 2005, to indicate that the appellant was living in New Zealand "unlawfully" and that he needed to

obtain a new travel document. The letter does not elaborate upon why the appellant's presence in New Zealand is unlawful, and makes no reference to any claim for refugee status.

[82] Nor is there any such suggestion contained in a subsequent letter to the general Palestinian Delegation in Canberra, Australia, in May 2005. In that letter INZ referred to the alleged meeting between the appellant's brother and the Palestinian authorities in Gaza in respect of the appellant's passport application. The letter simply states that :

“[the appellant] advises that his family were later notified that a passport would not be issued until the new [Palestinian] government had been installed.”

[83] In a subsequent email in October 2006 the Palestinian Delegation confirmed that the previous ambassador had endorsed the appellant's application for a passport, and states that the remaining procedures are the responsibility of the authorities in Gaza and the appellant himself.

[84] The result is that there is no independent information which indicates that the Palestinian authorities in Gaza refused to issue a travel document to the appellant, nor that the Palestinian delegation would know about “concerns expressed in Gaza to the appellant's family”, as counsel suggests.

[85] The appellant claimed that his brother was summoned to the Hamas security headquarters, and that he later returned with the appellant's father and with a local dignitary. The brother was told during those two meetings that the appellant would not be issued with a passport because of his status as an informer. He was also supposedly told that the appellant was tried *in absentia* by the High Court in Gaza for an unknown offence, at an unknown date, and that he received an unknown sentence. The appellant's family were apparently unaware of the existence of any charges or about the trial until that meeting.

[86] The appellant submitted a document purporting to be a letter from the “Palestine Liberation Organisation” indicating that the appellant's brother was required to attend its Gaza Office on 11 April 2006 “for investigation regarding information that they hold”. However, in light of all of the credibility concerns in respect of the appellant, that document cannot be given any weight.

[87] Accordingly, the only evidence about the problems posed by the Palestinian authorities comes from the appellant himself. There is no corroborating evidence from the appellant's brother, his father or by the local Palestinian dignitary. The

appellant claims that they have washed their hands of him because they regard the appellant's actions as shameful. In effect the appellant says that he must be trusted and taken at his word.

[88] The Authority does not believe him. Once distilled, the appellant's self-serving evidence is that he will not be issued with a travel document because he was an informer for the Israelis. That is precisely the claim which he made during his first refugee claim. It was wholly disbelieved by the first Authority panel which rejected the appellant's credibility.

Summary of findings

[89] There is nothing before the Authority to convince it that the credibility findings made by the first Authority panel should not be relied upon. On the contrary, the appellant's propensity for false and self-serving testimony has again come to the fore in this appeal. This is demonstrated by his claim to have converted to Christianity, and in respect of his vacillating and contradictory claims with respect to the Rafah border.

[90] The Authority therefore relies on the findings of credibility and fact made by the first Authority panel; in particular the following:

"In summary, therefore, the Authority dismisses the appellant's evidence that he was an informant, that he was shot at, that he went into hiding in Egypt, and that he has been subsequently sought by Hamas and the Palestinian National Authority." *Refugee Appeal No 74512* (8 July 2004), para 52

[91] For the reasons already set out the Authority also rejects the appellant's claim that he has converted to Christianity and his claim that he has told his family in Gaza that he has converted. It also rejects his claim that the Palestinian authorities have refused to issue a passport for him.

[92] The Authority finds that the appellant is a stateless Palestinian Arab, born in Gaza, in his 30s; that he left Gaza to come to New Zealand towards the end of 2000; that he arrived on a genuine Palestinian travel document issued by the Palestinian Authority under the Palestinian self government agreement according to the Oslo Agreement signed in Washington on 13/9/93 (as recorded in his passport); and that his passport has since expired. The Authority finds further that that the Palestinian authorities in Gaza know that he has been in New Zealand unlawfully, but that there is no reliable evidence that the appellant is not eligible to be issued with a new Palestinian travel document and no reliable evidence that he

would not be able to return to Gaza. His second appeal is determined upon that basis.

[93] For the sake of completeness the Authority refers to the submission made by counsel that the appellant may be at risk because he has been away from Gaza for nearly ten years, and that the Palestinian authorities know he has been in the West. She submitted that this could give rise to a presumption that he may have sympathy with the west. The Authority finds that the appellant has not adduced any information to support the submission that the appellant would be at risk for this reason, either alone or in conjunction with the appellant's characteristics as a whole.

[94] In that context it is important to note that the appellant bears the responsibility for establishing his refugee claim pursuant to ss129P(1) and 129P(2) of the Act (as referred to in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA)).

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

[95] 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).

[96] 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.

[97] The appellant provided some country information in respect of the present situation in Palestine, and particularly in the Gaza strip. It relates in part to the ongoing incidence of violence against those suspected of collaborating with Israel; for example Human Rights Watch *Gaza: Investigate Abduction, Torture by Islamic Jihad* (30 May 2008). However, as the Authority has rejected the appellant's claim to be in such a position, that information is of little assistance in respect of this appellant.

[98] Another article concerned the murder of a convert to Christianity in July 2003. However, as the Authority has also rejected the appellant's claims to have converted to Christianity and to have held himself out to his family as having converted, this is also of little assistance.

[99] The basic country information provided on behalf of the appellant demonstrates that life is undoubtedly difficult in Palestine generally, and in Gaza specifically.

[100] According to "Profile: Gaza Strip" *BBC News* (21 January 2008), the Gaza Strip, a narrow piece of land about 40 kilometres long and ten wide, is home to approximately 1.4 million Palestinians, with Gaza City housing about 400,000. While Israel withdrew its troops from Gaza in 2005, it still exercises control over most of Gaza's land borders, as well as its territorial waters and airspace. This hampers exports and has led to shortages of basic humanitarian supplies; "Profile: Gaza Strip" *BBC News* (21 January 2008). Even before the withdrawal of troops, average Palestinian incomes had dropped by more than one third between 2000 and 2005. By 2005 a quarter of the workforce was unemployed and nearly half of all Palestinians lived below the poverty line. "Intifada toll 2000-2005" *BBC News* (8 February 2005).

[101] During that same period more than 3,200 Palestinians were killed by Israeli security forces and civilians in the West Bank, Gaza and Israel, and over 100 were killed by Palestinian civilians on suspicion of collaborating with Israel; "Intifada toll 2000-2005" *BBC News* (8 February 2005).

[102] The violence has not subsided since then. Palestinian militants have continued to attack Israeli interests from the Gaza Strip even after Israel withdrew in 2005. In response, Israel returns fire with shelling and missile attacks, killing large numbers of Gazans, including civilians. "Profile: Gaza Strip" *BBC News* (21 January 2008).

[103] The domestic political environment is also somewhat fraught. Hamas won parliamentary elections in January 2006, and 'routed' Fatah in Gaza in June 2007; "Profile: Gaza Strip" *BBC News* (21 January 2008). Subsequent talks between the parties have not resolved their differences; "Palestinian rivals' talks fail" *BBC News* (20 March 2008).

[104] It is understandable why any individual might be reluctant to return to an environment in which such economic paralysis is married to the possibility of falling victim to random acts of violence.

[105] However the protection offered by the Convention is narrowly focussed, and individuals facing generalised violence of this nature 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 with protection from serious harm tied to a claimant's civil or political status.

[106] 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. In *Refugee Appeal No 71462/99* [2000] INLR 332 (27 September 1999) the Authority commented, in respect of refugee claims in a civil war situation, that:

"The inquiry mandated by Art 1A(2) of the Refugee Convention in civil war situations is no different from that required in other situations. What must be borne in mind, however, is that the factual inquiry may be more complex and there is a need to ensure that what the refugee claimant faces is not generalised violence, but a specific risk of harm 'for reason of' one of the Convention reasons." (At [77])

[107] 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).

[108] The Authority finds that this appellant has failed to establish his refugee claim. The Authority is not aware of any country information, whether provided by the appellant or from its own research, which demonstrates that the risk of harm to the appellant, bearing in mind all of his characteristics, is any more than remote or speculative, or that it would be for reason of any of the five Convention reasons.

CONCLUSION

[109] 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 his country of former habitual residence. That being the case, the

second principal issue does not fall for consideration.

[110] 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