

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70159/96

RE MAF

AT CHRISTCHURCH

Before: R P G Haines (Chairman)
G J X McCoy

Counsel for the Appellant: A G James

Appearing for the NZIS: No appearance

Date of Hearing: 9 & 10 December 1996

Date of Decision: 26 March 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a citizen of the Republic of Yemen.

BACKGROUND

The appellant is a 23 year old man who was born in South Yemen (formerly the People's Democratic Republic of Yemen or PDRY). He claims to have left for Indonesia prior to the outbreak of civil war in the Republic of Yemen in May 1994.

After spending approximately twelve months in Indonesia, he arrived in New Zealand on 29 May 1995.

The application for refugee status was filed on 12 June 1995.

On 22 March 1996 at Christchurch the appellant married a citizen of Indonesia who appears to have visited New Zealand on more than one occasion. She most recently arrived in New Zealand on 28 June 1995 following the issue to her of a student visa by the New Zealand Embassy in Jakarta on 16 June 1995. Following her last re-entry to New Zealand on 20 January 1996 her student permit expired on 15 July 1996. A visitors permit was issued to 11 October 1996 but thereafter she became an overstayer. Subsequently her position was regularised by the issue of a further visitors permit on 7 November 1996.

Much of the appellant's case depends upon the Authority's acceptance of his claim that during the 1994 Yemen civil war his father was killed by north Yemeni forces and that the appellant himself is now at risk of persecution were he to return to the Republic of Yemen.

In order to understand the claims made by the appellant it will be necessary to refer briefly to background country information. The three reports on which we have drawn most heavily are Human Rights Watch, Yemen - Steps Towards Civil Society (November 1992); Human Rights Watch, Yemen - Human Rights in Yemen During and After the 1994 War (October 1994) and the Department of State Country Reports on Human Rights Practices for 1994: Yemen (February 1995) 1193.

According to the second of these reports (Yemen - Human Rights in Yemen During and After the 1994 War) at 4, during the Cold War, north Yemen (formerly the Yemen Arab Republic or YAR) and south Yemen (PDRY) were as different as west and east. The north remained a deeply religious Islamic society but leaned towards the West. The south was more secular and was the closest Soviet ally in the Arab world. Following three short wars in 1972, 1979 and 1988 agreement in principle was reached to unify the two countries. The unity negotiations accelerated rapidly between November 1989 and May 1990, when the accord was sealed. When the Republic of Yemen was officially declared on 22 May 1990, the new government included all ministers, parliamentarians, civil servants, and soldiers of both the YAR and the PDRY. But many issues regarding division of

power and setting of policy remained to be resolved through parliamentary elections set for late 1993.

The most salient of the unresolved issues was the merger of the two armies and security establishments. Instead of a merger, there was a partial exchange of army divisions. Five former PDRY brigades were stationed in the north while YAR brigades were positioned in the south.

Although the 10 million northerners far outnumbered the fewer than 3 million southerners, power was shared more or less equally during the 3-year transition period.

International monitors pronounced the parliamentary elections of 27 April 1993 "free and fair": *op cit* 5. The ruling party of the north won the plurality of Deputy's seats (123) while the Yemeni Socialist Party (YSP) won 56. The remainder of the seats were taken by a third major party and sundry smaller parties and independents. The YSP, disappointed at its poor electoral showing refused to accept a diminished role in government. Within two months after the elections the YSP leader and Yemen Vice-President al-Bayd left the capital (Sana'a) and never returned. The government traces the beginning of the crisis that led to the war to 18 August 1993, the date the Vice-President returned to Aden from a private trip to the United States. In that month the Vice-President issued eighteen points or conditions and refused to take his oath of office for the Presidential Council until they were met. Gradually some, but never all, key YSP figures joined him in Aden; *op cit* 6.

On 20 February 1994 both sides signed a Document of Accord and Agreement in Amman, Jordan, but neither side was prepared to implement the document as it would limit their control of budgetary resources and armed forces. On the night of 20 February 1994 former YAR northern and former PDRY southern divisions clashed in south Yemen. A series of skirmishes between the former YAR army and former PDRY divisions in the north in the week of 20 February and again in late March and April 1994, showed that military leaders on both sides were prepared to fight. On 27 April 1994 war was effectively declared as a major tank battle erupted in the northern city of Amran. On 4 May 1994 renewed fighting at Dhamar sparked off full-scale army to army war. The major battles of the 70-day war were fought at and south of the sprawling al-'Anad military base north of Aden. Heavy fighting occurred around the Aden airport. On the night of 6 July

1994 the separatist leadership escaped from Aden as the siege of Aden tightened. Aden itself fell on 7 July 1994 and at the United Nations, the government announced a general amnesty, which apparently had already been announced in Yemen on 23 May 1994; *op cit* 7.

According to the Department of State Country Reports on Human Rights Practices for 1994: Yemen (February 1995) at 1195 all persons who fought against the central government were pardoned and the amnesty extended to all military personnel and most of the leaders of the secessionist government, except for the sixteen most senior leaders who fled abroad. It reports that many thousands of Yemenis returned from abroad to take advantage of the amnesty. The Department of State Country Reports on Human Rights Practices for 1995: Yemen (April 1996) 1280 is in similar terms. It records:

"Approximately 100 to 200 military officers, suspected of having separatist sympathies, were imprisoned following the 1994 civil war. All but a dozen senior commanders have been released.

At the end of the civil war, the President pardoned nearly all who fought against the Central Government, including military personnel and most leaders of the unrecognised, secessionist Democratic Republic of Yemen (DRY). The government denied this amnesty to only the sixteen most senior leaders of the DRY, who fled abroad."

The same report at 1280 does note however that:

"The general human rights situation improved slightly in 1995, although continuing problems include arbitrary arrest and detention, especially of those regarded as "separatists" ..."

And at 1281:

"Security forces continue to arrest and detain citizens for varying periods of time without charge or notification to concerned families. Many detainees are associated with the YSP and accused of being "separatists". Most such disappearances are temporary, and detainees are released within months."

The appellant's claim is that while he himself had no political involvement, his father was a long term YSP member and activist who was killed by the northern forces during the civil war and that as a result he (the appellant) is now at risk of persecution were he to return to the Yemen. An amplified summary of the appellant's case follows.

THE APPELLANT'S CASE

Apart from submitting the standard refugee application form, the appellant has never presented a comprehensive written account of his claims. The Refugee Status Branch interview which took place on 7 May 1996 was conducted in a question and answer format. Subsequently, an interview report comprising four typed pages was compiled by the interviewing officer and sent to the appellant's then solicitor (Ann Worthington) for comment. She replied by way of a three page letter dated 27 May 1996. The interview report, when read together with this letter, comprises the most detailed presentation of the appellant's claims prior to the appeal hearing.

The hearing of the appeal itself occupied two full days. The appellant was the only witness. The Authority explored the appellant's case in some depth and it is not possible to set out at length the evidence given, nor would any purpose be served by repeating what the appellant said at the Refugee Status Branch interview. In the interests of economy, we will present an outline only of the more significant aspects of the appellant's case. In a separate section we will comment upon and make an assessment of the claims he has made.

The appellant was born in Dala' (also known as al-Zaleaa) in south Yemen. He is the eldest of six children comprising four brothers and two sisters. It is relevant to mention only the name of the second eldest brother, [S]. The appellant completed his education at secondary level at Dala'. He then moved to Aden where he commenced a three year course in marketing. However, after only one year he abandoned his studies in favour of working in an Aden based import/export business owned and operated by an uncle. The appellant's role was to travel overseas on buying trips. He claims that he commenced work for the company at fifteen years of age and said that it was not unusual to find boys as young as twelve travelling overseas on such trips. The company dealt mainly in clothing, footwear and occasionally, food. The appellant claims to have travelled extensively mentioning "all the Arab countries", India, Thailand, Hong Kong, Malaysia, Indonesia, and Italy.

Of his father, the appellant told the Refugee Status Branch at the 13 May 1996 interview that he was a long standing member of the YSP and held a position in Dala' akin to that of mayor. He was not sure what his father's responsibilities or duties were in the party because everything was confidential. At the appeal

hearing, however, the appellant enlarged upon this account. He said that not only was his father the man in charge of the YSP in Dala', he was also the leader of a local tribe. This fact, coupled with the father's political power, resulted in the domination of the father's tribe over the other local tribes. If there was any resistance, the father would arrange for the dissenters to be killed. The killings happened on a weekly basis. The appellant learnt these facts indirectly from others as his father always kept his activities secret from the family. He first learnt of the killings when he was some fifteen or sixteen years of age. He accepted that by the time he (the appellant) left Yemen for Indonesia in mid-1994, the number of his father's victims for the five-year period 1989 to 1994 would have alone totalled some 300 persons. He believes that his father was able to order killings on this scale with impunity because his actions were to protect the YSP and his father was in turn protected by persons higher up in the party. The killings led to a considerable degree of hostility to the appellant's father who had also become the second most wealthy individual in Dala'.

For his part, the appellant had no involvement whatsoever in political activities and knew nothing of the workings of the YSP or his father's activities within it.

By the beginning of 1994 the appellant had left Polytechnic and was living in Aden. While he spent time in the uncle's shop in Aden he also spent time with his parents and generally lazed around. In approximately March or April 1994 he went to Syria for two weeks on holiday then, according to his refugee application completed on 9 June 1995, he left Yemen at the end of May 1994 for Indonesia where he went to purchase clothing for his uncle's business. It was his first trip to Indonesia. After some twenty days in Indonesia he learnt that the civil war had started in Yemen but was unable to contact his parents for some two months because all telephone lines to Yemen had been cut.

Subsequently he was able to telephone neighbours in Dala' and was told by them that both his father and mother were dead. At the Refugee Status Branch interview he said he was told by the neighbours that his father had been killed by the north Yemen army, that his mother had been treated very badly by the army and as a result she had killed herself a little while later. Subsequent to the interview, through a letter dated 27 May 1996 from his then solicitor (Ann Worthington) the appellant added that he considered it a distinct possibility that his father had been killed while going about his own affairs and may well have been involved in an accident, staged as a means of removing him. The other

alternative was that soldiers had in fact required him to go to war and he may well have been killed during fighting in his home area. The mother's suicide was assumed to be due to her fear of molestation at the hands of the northern army.

At the appeal hearing, however, the appellant produced a letter from a friend in Dala' dated 19 June 1996 and bearing a Dala' post mark of 4 July 1996. According to the translation provided by the appellant the relevant paragraph of the letter states:

"All I know is that your father was murdered in his car in the Senah district, after trying to flee as the war began, around 25 May 1994. As for your mother, she had an accident 20 days after your father's death."

The letter advises the appellant never to return to Yemen as his life would be in danger. The author of the letter reports that the police were constantly enquiring about the appellant and were "monitoring" his brothers.

The appellant elected to remain in Indonesia where he found employment with a Yemen company whose owner lived in Saudi Arabia. There were three other Yemeni employees apart from the appellant. With the assistance of an agent through whom bribes were apparently paid, the appellant was able to obtain permission to live and work in Indonesia. His occupation on the various Indonesian documents tendered to the Authority is shown as cook. The appellant said that this was merely a ruse and that his true occupation was that of salesman.

He said that he travelled to Indonesia on a passport issued by the previous PDYR regime and that he was subsequently contacted by the Yemen Embassy in Jakarta with a request that he exchange this passport for one issued by the post-union Republic of Yemen government. He accepted that this requirement was part of a general drive by the Yemen authorities to encourage all nationals to travel on a so called unification passport. A fresh (unification) passport was issued to the appellant at Jakarta on 6 September 1994. The previous passport was not allegedly returned, with the result that there is no longer evidence of the appellant's movements prior to September 1994. The obtaining of the second passport appears to have been a relatively simple exercise, taking approximately three days and the appellant was neither required to fill out a form nor to pay the stipulated fee of US\$100. He was only required to submit a further passport photograph.

It would appear that there was some connection between the appellant's immigration status in Indonesia and the obtaining of his unification passport for the two documents were issued within a day of each other. That is, the passport was issued on 6 September 1994, the work permit on 7 September 1994.

The appellant also mentioned that an official of the Yemen Embassy occasionally visited the premises where the appellant worked and spoke informally to the Yemeni employees, including the appellant. On one occasion they were handed application forms for membership of the main political party of the north, the General People's Congress. However he accepted that the single sheet of A4 paper was not required to be completed immediately and some in due course handed in the form, others did not. For his part, he never completed the form and whenever he was asked by the Embassy official about the document, he would make up an excuse such as being too busy, or having forgotten to obtain a passport photograph. These excuses drew no adverse comment from the Embassy official.

The appellant's Indonesian work permit was current to 22 December 1995. Sometime in March or April 1995 the appellant made application to the Canadian Embassy in Jakarta for a visa to enter Canada. The application was declined, and in accordance with normal practice the Canadian Embassy endorsed the appellant's passport to that effect. The endorsement was inserted at the foot of page 47 of the passport. It was the appellant's view that the presence of this endorsement in his passport would prejudice his application for a New Zealand visa. He accordingly set about erasing the endorsement by various methods, including the use of petrol and the heavy application of an eraser. None of these methods worked. The appellant eventually obliterated the endorsement with ink and above the now very considerable blot endorsed unintelligible scribbles. He said that two or three weeks after being declined a Canadian visa, he applied for a New Zealand visa at the New Zealand Embassy in Jakarta. A copy of the application form shows that it was signed by the appellant on 11 April 1995 and filed on 12 April 1995. When the appellant attended for an interview he claims to have told the Embassy official that the blot in his passport was attributable to children who had spilt ink on the relevant page while the appellant was in the toilet. As corroboration of his account he pointed to the childlike scribbles immediately above the obliteration.

There is no mention of this explanation in the interview report sent by the Embassy to the New Zealand Immigration Service in Wellington. It records only:

"We also note that there is an ink stain on page 47 of the applicant's passport. This could cover an entry in his passport, but we cannot verify".

The interview report also noted that the appellant's Indonesian documents showed his occupation as cook whereas the appellant claimed to be a sales representative. The explanation offered by the appellant was recorded as being that the Indonesian authorities had made a mistake. In the result, notwithstanding this discrepancy and the obliteration in the passport, a New Zealand visa was issued to the appellant on 22 May 1995.

It should be mentioned that during his interview at the New Zealand Embassy, the appellant was asked to supply the name of his next of kin. In response he gave his father's name and the location as Yemen. He also supplied the name of an uncle said to be living in Jakarta.

The appellant arrived in New Zealand on 29 May 1995.

In approximately December 1995 or January 1996 the appellant's brother [S] left Yemen and arrived in Indonesia on an unspecified date. By letter dated 18 January 1996 the appellant notified the Immigration Service that his brother was very sick in hospital in Indonesia and sought assistance to bring him to New Zealand as a refugee. In a subsequent letter dated 26 January 1996 Ann Worthington (his solicitor) wrote seeking permission for the appellant to travel to Indonesia in order to visit his brother and to give him support and assistance. The Immigration Service was asked to determine the appellant's refugee status at an early date or alternatively, to permit the appellant to leave New Zealand and to then return. By letter dated 7 January 1996 the Immigration Service replied to the effect that as the appellant had claimed to have destroyed his unification passport, the appellant would have to apply to the Department of Internal Affairs for an emergency travel document or obtain a further Yemen passport. On the question of whether permission would be given by the Immigration Service for the appellant to leave New Zealand to visit his brother and to then return, the letter sought confirmation of the extent of the brother's illness via direct facsimile from the brother's doctor and the hospital in Jakarta. Upon receipt of this information an assessment of the appellant's application would be made. The appellant did not arrange for this information to be supplied to the Immigration Service. He told the

Authority this was because he became scared after Ms Worthington allegedly told him that once he left New Zealand he would not be allowed to return. The Authority sees nothing in the correspondence which could lead either the appellant or Ms Worthington to that view.

The appellant does not know that nature of his brother's illness apart from the fact that it is of a psychological kind. His brother fell ill 15 days after his arrival in Indonesia and the appellant's friends admitted him to hospital.

Questioned by the Authority as to his brother's circumstances, the appellant said that while at the Refugee Status Branch interview he had expressed fear that [S] would be recruited into the Yemen army, it later became clear to the appellant that a southern dissident group was trying to recruit people to fight against the north and [S] was scared on this account. In addition, subsequent to the death of the father, the tribes who had previously been repressed by the father had now taken the opportunity to take revenge against the appellant's family. While he believed from what he was told by friends in Indonesia (who had spoken to [S]) that [S] had not in fact joined any southern dissident group, the appellant had learnt that the family home had been confiscated along with the father's land, that water and power to the house had been cut off and that the appellant's remaining brothers had been prevented from attending school.

He said that he had spoken to his brother [S] once by telephone after [S]'s discharge from the Jakarta hospital. He had not given [S] his address in New Zealand or other means of contacting him (the appellant) as the appellant was scared that should his brother be deported to Yemen by the Indonesian authorities, his brother would be tortured in Yemen and the appellant's address revealed. In this telephone discussion [S] had asked for the appellant's help to come to New Zealand. The appellant had said that he was not in a position to assist. During the discussion the brother made no mention of having problems with the previously suppressed tribes in the Yemen, nor did the appellant ask how [S] had managed to get from Yemen to Indonesia. It would seem that the appellant has learnt most of his information concerning [S] from other Yemen acquaintances in Indonesia. He has produced in evidence a letter dated 18 August 1996 from one such acquaintance in which the author reports that he was soon to return to Saudi Arabia but wanted the appellant to know that the Yemen Embassy in Jakarta was "constantly enquiring" about the appellant trying to find

out his address and contact details. The appellant has been told that [S] was last heard of in the city of Surabaya.

The appellant's case for refugee status is based upon an imputed political opinion flowing from his father's activities within the YSP. That is, the appellant fears that while he himself was not involved in the YSP and while he was absent during the 1994 civil war, he is now at risk because of his father's activities. It was submitted that the government would perceive the appellant as having a political opinion associated with the YSP and the secessionist movement. Furthermore, having lived abroad since the civil war with other Yemenis who have been involved with the secessionist movement, there will be an added element of risk. He relies also on the risk that he faces from tribesmen previously persecuted by his father and in this regard it was submitted that the appropriate Convention ground was membership of a social group, namely the family of his father. He relies in particular on the evidence that inquiries are being made of family members in Yemen as to his whereabouts, the monitoring of the activities of his younger brothers still living in Yemen and the inquiries made in Indonesia by the Yemen Embassy as to the appellant's whereabouts. Counsel for the appellant in his full and detailed submissions took the Authority through the relevant country information and also analysed the decision of the Immigration Service highlighting a number of perceived weaknesses.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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 is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996) the principal issues are:

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

2. If the answer is Yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Before the identified issues can be addressed, an assessment must be made of the appellant's credibility.

The hearing of this appeal occupied two full days. The appellant was the only witness. The Authority paid close attention to the appellant's demeanor and has made allowance for the fact that he gave his evidence through an interpreter. The conclusion the Authority has come to is that he is not a credible witness and that he has not told the truth at any stage of his case. In arriving at this finding, the Authority has taken into account the following:

1. The appellant is an intelligent and quick witted individual. It was a feature of his evidence that he would not answer simple, direct questions and his responses were characterised by evasion and a lack of sincerity. His evidence lacked spontaneity and would either contain embellishment (if this was perceived as a way of strengthening his case) or obfuscation (if this was seen as tactically necessary in order to close off a line of enquiry which the appellant could not answer to his advantage). We have concluded that the appellant is a cunning and deceitful individual.
2. Central to the appellant's case is the claim that his father was a prominent figure in the Dala' area. At the Refugee Status Branch interview on 7 May 1996 the prominence was said to lie in his position in the YSP, although the appellant claimed to have no knowledge of the father's activities. Also at the interview the appellant said nothing more than that his father had been killed by the north Yemen army. Six months later the appellant dramatically improved upon these claims at the appeal hearing:
 - (a) He alleged for the first time that his father was also the defacto head of a tribe and had used his position within the YSP to oppress, if not persecute members of other tribes. For a large number of years the father had ordered the killing of a significant number of people. In the result, with the death of the father, the

family were now at risk at the hands of oppressed tribesmen seeking revenge.

(b) His father was murdered in his car in the Senah district, after trying to flee as the war began. This information is contained in the letter from the individual in Dala' who wrote the letter dated 19 June 1996. To this the appellant added at the hearing a claim that at the time of his death, his father was trying to organise resistance to the north Yemen army. By organising resistance, he meant that his father was relaying orders for the re-organisation of the southern troops. As this claim suggested some involvement with the military the appellant was asked whether his father had a position in the military. The appellant replied that he did not know but ventured the claim that it was possible. To lend credibility to this possibility he said that he would sometimes see soldiers listening to his father and taking orders from him. The soldiers were in uniform. About two months before war broke out he had also seen his father leave the house in the company of soldiers. From this the appellant assumed that not only was his father a member of the YSP, but also a member of "the political security".

The appellant was reminded that at the Refugee Status Branch interview he was specifically asked whether his father had had any involvement in the southern army. The record reveals the following question and answer:

"Q: Was your father involved in the south army?

A: No, he was involved in a pol group with the previous govt - most have now ran [sic] away"

Asked why he had not told the Refugee Status Branch what he was now telling the Authority, the appellant claimed that the question had not been put to him in the same way, namely whether his father had been controlling soldiers. This response is but one example of the appellant's agility when in a tight corner.

The appellant was also asked why he had made no mention at the Refugee Status Branch interview of his father's role in killing a large number of people over an extended period of years. The appellant said that he was fearful that the Refugee Status Branch might take a biased decision against

him based on his father's record. He said that he now felt that he had lost everything and no longer had a reason to hide any part of his case. He accepted that in his refugee application he had denied that his father had taken part in any violent activities. He claimed that at the time of completing the form he was fearful of being perceived as the son of a guilty person and not deserving of refugee status.

Put quite simply, we do not believe the appellant. Our assessment of the case is that this is not a situation in which a genuine claimant has progressively released information which he was earlier fearful of disclosing. Rather, the appellant has sought to embellish his case because he wishes to improve on a made up story.

3. The means by which the appellant learnt of the circumstances of his father's death are also problematical. He told the Refugee Status Branch that he first learnt of the death of his father and mother when, two months after his arrival in Indonesia, he telephoned a neighbour in Yemen. All he was told was that his father had been killed and that after the northern army had been to the family home, his mother had committed suicide. Yet he claimed in the same breath that he had been unable to make contact with any of his relatives in the Yemen (including those living in Aden) because subsequent to the civil war, the entire telephone network had changed and he no longer had their telephone numbers. Specifically, in relation to the relatives with whom the brothers and sisters still in the Yemen were living in Dala', he claimed that their telephone had been disconnected. It seemed rather fortuitous then that he had been able to speak to neighbours, but to no-one else, particularly family members and relatives.
4. The overall picture painted by the appellant was one in which telephone communication was difficult, if not impossible and that even communication by letter was fraught with danger. In this regard it is important that we set out in full the text of the English translation of the letter dated 19 June 1996 reporting the murder of the appellant's father in his motor vehicle:

"I am writing this letter to you in extreme fear. I was not able to obtain the documents which you asked for. The documents you asked for regarding the murder of your father and the death of your mother are not obtainable as everything here is monitored by the police and the security forces, and there is nothing I can do.

All I know is that your father was murdered in his case in the Senah district, after trying to flee as the war began, around 25 May 1994. As for your mother, she had an accident in 20 days after your father's death.

We live in fear and oppression, especially in our district. I advise you never return to Yemen, as your life would be in danger. The police are constantly enquiring about you and monitoring your brothers.

The important thing is to never return to Yemen and try to rescue your brothers or look for your brother [S].

[signed: ANAS]

PS. I apologise for hiding the letter between the photos. I did this because I was afraid that they would open it in the post."

It should be noted that the letter is a rather bulky document enclosing as it did the following documents:

- (a) The above letter.
- (b) A covering "personal" letter which the appellant cannot now find.
- (c) A photograph of three of the appellant's siblings (two brothers and a sister).
- (d) A passport size photograph of one of his sisters.
- (e) A further photograph of the same sister posing with the sister of the appellant's uncle.
- (f) A photograph of the son of the appellant's uncle. On the reverse side of this photograph is the following inscription:

"To my brother [appellant]. I give you the photo of your little brothers. Thank you. Your brother [ANAS]"

The envelope containing the two letters and the four photographs is endorsed with a return address in the following terms:

"[ANAS]
Dala' Dis
Yemen."

The postmark, as mentioned is 4 July 1996 at Dala'.

In these circumstances, the PS to the letter is somewhat inexplicable as it suggests that the author (who begins the letter with a statement that he is writing the letter in extreme fear) went to some lengths to conceal his report of the manner in which the appellant's father died. Were this a genuine document, we doubt very much whether the author would have provided his name and return address on the reverse side of the envelope and, for good measure would have also enclosed photographs of members of the appellant's family and of the author's family, one of which bears an inscription irrefutably identifying both the person shown in the photograph and that person's relationship to the author of the letter. In addition, the sheer bulk of the letter would have been sufficient to excite the attention of a postal surveillance system. In the circumstances, the PS to the letter is suggestive of false melodrama.

Furthermore, a safer means of delivery would have been to send the letter to a third party in the first instance in perhaps, Indonesia, for forwarding to the appellant. The author could also have perhaps withheld identifying information.

In the circumstances we have reached the conclusion that the letter was brought into existence not to report genuine information to the appellant but to lend spurious credibility to his claim to refugee status. We do not accept the truth of the contents of this letter.

5. As to the circumstances of the appellant's departure from Yemen, it is to be recalled that he claims to have left Yemen for Indonesia in the course of his employment to purchase clothing. The appellant told the Refugee Status Branch at the 7 May 1996 interview that he left Yemen 20 days before the civil war began. Asked whether he was in fear when he left Yemen, he replied that it was not at that time very clear that there was going to be a war, but "it was warming up" and he knew that something was not right. He said that he was not that frightened.

At the appeal hearing the appellant initially confirmed this evidence. He said that at the time he left for Indonesia there had been no fighting, to his knowledge. He was then questioned about the chronology of events found in the Human Rights Watch report Yemen - Human Rights in Yemen

During and After the 1994 War (October 1994) and which is summarized earlier in this decision under the heading "Background". He then conceded that prior to his departure southern divisions camped in northern Yemen had clashed with northern forces on 20 February 1994. He further conceded that he was aware that on 27 April 1994 a major tank battle had erupted in the northern city of Amran. He also conceded that prior to his departure for Indonesia he had heard of the 4 May 1994 fighting at Dhamar which sparked off full-scale army-to-army war. Asked how long after the outbreak of full-scale fighting he had left for Indonesia, he replied that he did not register the date and he had just carried on with what he was doing. The Authority was of the view that this response was clearly evasive. The appellant then said that all of the incidents referred to must have taken place about four months before he left Yemen by flying from Aden to Jordan and then Singapore and Indonesia. It was put to the appellant that it was unlikely that he would have been able to leave Aden airport on a scheduled flight during full-scale fighting. To this the appellant responded that the fierce fighting was in the countryside, not the cities and for that reason the airlines operated a normal schedule. The appellant was confronted with a Reuters' report "Yemen slips towards civil war" *NZ Herald Friday, May 6, 1994* which reported that on the previous day war planes from both sides attacked airports of the two main rival cities, Sana'a and Aden. The appellant claimed that this had occurred two to three weeks **after** he had left for Indonesia.

It can be seen that the appellant claimed to have been in Yemen on 4 May 1994 when renewed fighting at Dhamar sparked full-scale war but in Indonesia at the time of the virtually contemporaneous attacks on the airports in Sana'a and Aden. We are of the view, having seen and heard the appellant that the inconsistencies in his account are not due to an honest inability to remember precise dates but rather are due to his propensity to claim everything and yet nothing at the same time. That is, to deny that any fighting had occurred prior to his departure for Indonesia but to also claim to have been present in Yemen when such fighting had occurred. The appellant is an opportunist and consistently positioned his case in such a way that his evidence was always ambiguous. He could thus have the best of both worlds. He could admit that which suited his case and deny that which did not, and conveniently retreat behind an inability to remember dates or the precise sequence of events. His case

was thus both amorphous and plastic, adaptable to the requirements of the moment.

We are satisfied that we have not been given a true account of the circumstances or of the timing of the appellant's departure from Yemen.

6. It seems fortuitous that the appellant is no longer in possession (or at least so he claims) of the passport on which he left Yemen for Indonesia. It is not possible to cross-check his account against the actual record of his movements. He has also claimed to have destroyed his second (i.e. unification) passport. See for example his refugee application at page 45 of the file, a claim he repeated at the Refugee Status Branch interview. Yet when tackled on this issue at the appeal hearing, the appellant admitted that this claim was false and actually produced to the Authority the passport issued by the Yemen Embassy in Jakarta on 6 September 1994. He said that the claim to have destroyed this passport was advanced because he was scared that he might be deported and this, in turn, would cost him his life.

This calls for a close examination of the circumstances in which he claims to have been required to surrender his first (PDRY) passport. At the Refugee Status Branch Interview he claimed to have come under some considerable pressure from the Yemen Embassy in Jakarta. The interview report at page 113 is in the following terms:

"[The appellant] stated that he was "fine" living in Indonesia until he began receiving a hard time in 1994 from the Yemen embassy in Jakarta over the requirement to hand in his old South Yemen passport and receive a new Yemen (united) passport. Only the new Yemen passport was valid following the war. He was also hassled by the Embassy staff when he went to get necessary papers when applying for Indonesian residency. They asked him why he was applying for Indonesian residency. He finally got permanent Indonesian residency and stated that that residency would be valid for him to return and live in Indonesia. It was due to those hassles with the Yemen Embassy in Jakarta that he chose to leave Indonesia and come to New Zealand."

In the context of the appellant's claim to have been "hassled" by the Yemen Embassy in Jakarta it is relevant to set out the text of the English translation of a letter dated 18 August 1996 from a friend of the appellant in Indonesia:

"I miss you and look forward to seeing you again. I will be going back to Saudi Arabia, to live there. The Yemen Embassy are constantly enquiring about you and trying to find your address and contact details. I would therefore advise you not to contact the Yemen Embassy where you are, as it puts you and your life in danger.

I hope you will find security and happiness in New Zealand. Once I am back in Saudi Arabia I will contact you again and give you my new contact details, so that we can stay in touch."

Given the claims made at the Refugee Status Branch interview and the assertion made in the first paragraph of the letter just quoted, the Authority explored with the appellant the precise nature of the difficulties he had with the Yemen Embassy in Jakarta.

From his responses it emerged that the requirement that the old passport be swapped for a unification passport was nothing more than a routine administrative act. There was no sinister connotation. Indeed, the appellant was not even required to complete an application form or to pay the fee of US\$100. The entire process took little more than three days. All Yemeni nationals living in Indonesia were, to the appellant's knowledge, required to get new passports and there was nothing exceptional to the request made to the appellant. Furthermore, the handing to the appellant of a request to join the main party of the north was an inconsequential act. The form was distributed to all Yemeni nationals at the appellant's place of work. No pressure was brought to bear to complete and sign the single sheet of paper on an immediate basis and every latitude seems to have been given in this regard. The appellant's somewhat implausible excuses to the Embassy official as to not having had time to complete the form or having forgotten to obtain passport photographs appear to have been accepted without query. Indeed, it is significant that the new passport was issued one day prior to the issue of the Indonesian work permit. The facts suggest that the appellant's dealings with the Yemen Embassy in Jakarta were no more than routine.

7. Embellishment and prevarication also characterised that part of the appellant's case which related to his brother [S]. It is to be recalled that the appellant made a dramatic application to the Immigration Service based on the brother's alleged illness and hospitalisation in Indonesia. When the Immigration Service not unreasonably requested independent confirmation

of the nature and extent of the illness, the appellant abandoned the application. He attributes this to the advice allegedly given by his then solicitor that once the appellant left New Zealand, he would not be allowed back in. As already remarked, there is nothing in the correspondence to remotely suggest that that would be the case and we do not believe the appellant's assertions as to the advice given to him by his then solicitor. We would not in this context accept his uncorroborated assertion.

It is also strange that the appellant never asked his brother (when they spoke on the telephone) or his friends in Indonesia who were allegedly helping the brother, how [S] got from Yemen to Indonesia. It is significant that at the Refugee Status Branch interview the appellant said that [S] had never had problems with the authorities in the Yemen. The relevant passage from the interview report at page 113 of the file is in the following terms:

"His oldest brother ran away from home recently and was missing for 4 months before turning up in Indonesia. The applicant believes he ran away because he was 19 and at 20 the Government makes young men join the Army. [The appellant] stated that the brother never had any problems with the authorities but was emotionally and mentally disturbed over what has happened to their family. His other brothers are all under 19 and have also not had any problems from the authorities. [The appellant] has been told by his family that he should not return to Yemen because he is over 20 and would be taken into the Army."

When questioned about this evidence, the appellant agreed that the interview report accurately set out what he had said at the Refugee Status Branch interview, but added that that was before he came to know of his brother's problems in the Yemen. The appellant was asked what problems his brother had experienced. To this the appellant said that [S] had not faced any difficulties with the authorities but had had problems with the hostile tribes who lived in the Dala' area and with the municipal authorities in the district. Asked what problems [S] had experienced with the municipal authorities, the appellant said that he had no knowledge of any such problems. Asked what specific problems [S] had encountered from the tribes, he finally conceded that his brother had made no mention to anyone of encountering problems from the local tribes. It can be seen that the appellant will, if unchallenged, advance claims of a sweeping kind but when pressed for particulars, will ultimately concede that the claims have no substance whatsoever.

The appellant retreated behind a claim that most of his information concerning his brother had come via friends and acquaintances in Indonesia and there had been only one brief direct contact with [S] who had subsequently disappeared again. The nebulous line of communication with the brother in Indonesia very much resembled the nebulous line of communication with the Yemen. It seems that the appellant receives tiny, tantalising snippets of information which would suggest a broad picture of persecution, but the lines of communication then conveniently go dead, preventing any exploration or testing of the alleged information. As mentioned, this is all too convenient, fitting rather snugly into the amorphous nature of the appellant's case. We are of the view that these characteristics exist not because there has been any genuine communication difficulty either with Yemen or Indonesia, but because there is no substance to the appellant's claim to refugee status.

Occasionally bizarre inconsistencies do show up in the appellant's case. He said that he deliberately withheld his address from his brother (even though the brother was allegedly in poor mental condition and in dire straits in Indonesia) because there was a possibility that if the brother were deported back to Yemen from Indonesia, he would be tortured and the appellant's location thereby disclosed to the authorities. Yet in the same breath the appellant propounds as a genuine document the letter from [ANAS] dated 19 June 1996 in which the authorities have every opportunity to not only ascertain the appellant's present whereabouts, but also to locate and identify virtually each and every member of his family, whose photographs are kindly supplied by the thoughtful author who is writing the letter in "extreme fear" of identification.

8. As mentioned earlier, in his New Zealand visa application the appellant was asked to supply the name of his next of kin. His response was to provide two names. The first name given was his father's:

"[name deleted], Yemen"

Yet at the relevant time, the appellant knew that his father was deceased.

The appellant has given various responses in explanation for his actions:

(a) At the Refugee Status Branch interview on 7 May 1996, he denied giving his father as next of kin.

(b) By letter dated 27 May 1996 Ann Worthington (the appellant's then solicitor) said that the appellant acknowledged that he may have been misunderstood at the time of the interview for the visitors visa. The letter goes on to say that the appellant did not then know (i.e. at the time of the Jakarta interview at the New Zealand Embassy) that his father was dead.

(c) At the appeal hearing the appellant said that Ms Worthington must have misunderstood him as he made no such claim i.e. that at the time of the interview he did not know his father was dead. He told the Authority that he (the appellant) well knew that the expression "next of kin" implies that the person (kin) is alive. The appellant's new claim is that he deliberately gave his father's name as next of kin even though he knew his father was dead, because if he told the New Zealand Embassy official that his father was dead, there would be further questions and the official would sense the true purpose of the intended travel to New Zealand.

The changes in the appellant's account do not inspire confidence in the veracity of his claims, particularly his claim that his father is dead. We specifically do not accept this claim.

9. Upon his arrival in New Zealand, the appellant was found in possession of a number of documents which were photocopied at the airport and the originals returned to him.

Among the items in his possession was a Commonwealth Bank Keycard in the name of Mr Yongil Ou with an expiration date of 10/95. Asked who Yongil Ou was, the appellant said that he did not know. He was then confronted with the photocopy of the card. He accepted that he knew what the card was and claimed that he had obtained it from an Indonesian friend who once worked in Sydney, Australia. Because the two men (the appellant and his friend) had flatted together in Indonesia their documentation had become intermingled and the appellant did not even

know on his arrival in New Zealand that he had the credit card in his possession. There were perhaps other papers that he should not have had with him but he added that his departure for New Zealand was not organised and the travel plans were made in haste when he found it necessary to escape from the officials at the Yemen Embassy.

The appellant's claim to have left Indonesia in haste is not supported by the facts. First, he was already in possession of his second passport issued on 6 September 1994. Second, he had applied to the Canadian Embassy for a visa some few weeks before lodging his New Zealand visa application on 12 April 1995. In support of the New Zealand visa application he submitted an airline ticket issued on 11 April 1995 for travel from Jakarta to Singapore to Christchurch to Singapore to Jakarta. On 18 May 1995 the appellant purchased a second airline ticket for exactly the same route. The visa was issued on 22 May 1995 and the documentation shows that the appellant uplifted his passport with the visa the following day on 23 May 1995. He did not leave for New Zealand until 29 May 1995. It is also to be remembered that the appellant has admitted that he spent the seven days prior to his departure for New Zealand on holiday with his (then) fiancé.

Against this background we entirely reject the claim that the appellant left Indonesia in haste, just as we reject his claim to have left Indonesia to escape officials at the Yemen Embassy.

It follows that we reject his unbelievable claim that the credit card came into his possession accidentally.

10. It should be mentioned that the fiancé with whom the appellant holidayed in May 1995 just prior to his departure for New Zealand is not the same person he married in New Zealand on 22 March 1996.

Yet among the documents copied at the airport upon the appellant's arrival in New Zealand on 29 May 1995 was a card in the shape of a business card. On the left hand side is a photograph showing a small girl kissing a small boy dressed in a sailor's suit. On the right hand side is the following inscription:

"Mr & Mrs [name deleted]
Brooklyn NC

Store M. 530

PH: 212 789-4352
Brooklyn Street Stand
No. 2/10K NYC"

The appellant's explanation for being in possession of a card showing that he was married and living in New York city - or at least his initial explanation - was that some of his Arab friends in Indonesia intended travelling to the United States where the appellant has relatives. The appellant had cards made up so that he could give them to his friends. When they arrived in the United States they would be able to show the cards to the appellant's relatives as a means of identification as friends of the appellant. As to the address, the appellant did not know if the shop owned by his relatives in New York was at the address stated on the card. It was the only address that he had for them in his diary. Asked why the card carried the picture of the two children in the pose described, the appellant said that it was an immature act on the part of a bachelor. When tackled, however, on the implicit assertion of the card that he (the appellant) was married, the appellant said that the card had been made up by his then fiancé without his consent being given to the format. Her friends had a printing house and she arranged for the cards to be produced. He had subsequently endeavoured to scratch out the "Mrs" and produced from his back pocket a further example of the card in which indeed an attempt had been made to scratch out the "Mrs". Asked why he still had such cards in his possession in New Zealand, he said that he did not know and that there was no harm done.

Once again we are disbelieving of the appellant. The explanation he gave of the circumstances giving rise to the creation of the cards was delivered with a singular lack of sincerity.

11. On at least two occasions the appellant made a point of stressing his candour. The first was when he was challenged on his failure to mention at the Refugee Status Branch interview the claim that his father had, over an extended period of time, been responsible for the deaths of a large number of persons in the Dala' area. The second was when he admitted that his second Yemen passport had not been destroyed. On both occasions his claim was that he was aware that the appeal hearing was his last

opportunity to present his case, that he had nothing left to lose and was making a full disclosure of his case.

We accept that genuine refugees who are in fear of persecution may withhold information and even lie at the Refugee Status Branch level. In the result, the full account is not presented until the appeal hearing. But it is also the Authority's experience that persons who are not bona fide refugees will also withhold information, change their story and lie as a matter of convenience. The category into which any particular case falls will depend on a number of factors, but most importantly upon:

- (a) The Authority's credibility assessment of the individual.
- (b) The Authority's assessment of the balance of the evidence presented to it.

In the present case we see only a conscious and deliberate attempt to mislead the Authority and to present as genuine a spurious claim to refugee status. We have already commented adversely on the appellant's overt opportunism and his well practised avoidance techniques. The appellant has shown tenacity and cunning in attempting to practice an elaborate deception.

CONCLUSION

Taking into account our adverse finding of credibility, the Authority does not accept the appellant's evidence in any respect. It follows that the two issues identified earlier in this decision are answered in the negative.

The Authority finds that 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.

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Chairman