

**REFUGEE STATUS APPEALS**  
**AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76412**

**AT AUCKLAND**

<b><u>Before:</u></b>	M A Roche (Chairperson) D Henare (Member)
<b><u>Counsel for the Appellant:</u></b>	C G Taylor
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	21 January & 9 March 2010
<b><u>Date of Decision:</u></b>	31 March 2010

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**DECISION**

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

**INTRODUCTION**

[2] The appellant is a married man aged in his mid-40s. He arrived in New Zealand on 21 June 2009 and claimed refugee status upon arrival. He was interviewed by the RSB on 29 July 2009. His claim for refugee status was declined in a decision dated 3 September 2009 against which he appeals to this Authority.

[3] The appellant claims that he was detained for three months in Saudi Arabia because of his interest in the Jehovah's Witness religion. He claims that after he was released, a verdict was issued against him by a religious court, sentencing him to death for changing his religion. He has provided to the Authority a copy of this verdict and other documents relating to his detention in Saudi Arabia.

[4] The central issue to be determined in this appeal is the credibility of the appellant's claim.

### **THE APPELLANT'S CASE**

[5] What follows is a summary of the appellant's evidence. It will be assessed later in the decision.

[6] The appellant is from the city of Mecca. His family is very religious. His father is a senior official in a state organisation that monitors the observance of Islam in the Kingdom. His father directed him to study Shari'a law at university because he wanted him to be an Imam. Unlike the rest of his family, the appellant has never had any particular interest in religion and has distaste for the brutal Shari'a punishments carried out in public in Saudi Arabia. Unbeknown to his father, he changed his course of study to public relations in his final year, as he had no interest in being an Imam.

[7] After university, the appellant established a business as a building developer. In addition to this, he was employed in a telecommunications company.

[8] In 2003, the appellant entered into an arranged marriage. He and his wife have several children.

[9] Throughout his adult life, the appellant has travelled outside Saudi Arabia to neighbouring countries from time to time in order to escape the stultifying and repressive atmosphere in Saudi Arabia. In December 2007, he went to Syria for a brief holiday. On the plane he met a Syrian who was a Jehovah's Witness. The Syrian discussed religion with the appellant and explained the belief of Jehovah's Witnesses to him. The appellant was very interested in what the Syrian was telling him and felt greatly attracted to the Jehovah's Witness faith.

[10] After he returned from his holiday, the appellant stayed in touch with the Syrian. He spoke to him from time to time on his cell phone. The Syrian sent him Jehovah's Witness brochures in Arabic to read. The appellant studied these brochures and continued to be interested in and attracted to the Jehovah's Witness faith.

[11] The appellant was in the habit of regularly socialising with a group of friends at a café in Mecca. He would often have discussions of a religious nature with his friends at the café, who were interested in his opinion on religious affairs because he had studied Shari's law at university. After meeting the Syrian and becoming interested in the Jehovah's Witness faith, the appellant would make reference to Jehovah's Witness beliefs during these discussions.

[12] After becoming interested in the Jehovah's Witness faith, the appellant stopped praying and observing other Muslim practices such as fasting for Ramadan. As he lived alone with his wife and young children, nobody noticed this. The appellant began to consider himself a Jehovah's Witness. His attraction to the Jehovah's Witness faith was very strong and he felt that the religion was "almost magical". One of the reasons why he was attracted to it was because, in contrast with Muslims, Jehovah's Witness followers are peaceful, loving people who care about each other and who are friendly and approachable. The Jehovah's Witness belief that particularly attracted him was the concept of life after death.

[13] The appellant's brothers heard that he had been having discussions about the Jehovah's Witness faith. They came to see the appellant and told him to stop having these discussions.

[14] On 29 November 2008, the appellant's father and two of his paternal uncles came to his house. They told the appellant that they had come to discuss with him what they had heard about his religious beliefs. They searched the house and found some Jehovah's Witness brochures that had been left on a table. After finding these brochures, they told the appellant that, having found the evidence of his apostasy, there was nothing to discuss with him and they locked him in a room. His father called the religious police who arrived at his house shortly afterwards and beat him into a state of unconsciousness. The appellant was taken somewhere while still unconscious and then transported from there to the police department in Jeddah. He regained consciousness in the vehicle on his way to the police department and found himself handcuffed with his legs tied. He was taken into the police department, blindfolded and then taken to a cell. His fingerprints were taken. He remained there for approximately three months and, during this time, was beaten and tortured every one to two days. He was not questioned at any time.

[15] The appellant's brother-in-law, was, at this time, employed by the police department. Using his personal contacts, he managed to have the appellant released on bail in early March 2009. After his release, the appellant was prohibited from returning to Mecca because non-Muslims are unable to enter that city. He had a second home in Jeddah and went there. His brother-in-law told him what had been happening while he was in detention and, in particular, told him that his father had taken a case against him to a religious court and was seeking to have him executed for apostasy. His brother-in-law, through his contacts, was able to follow the progress of the court case against the appellant and keep him informed of developments.

[16] In early April 2009, his brother-in-law advised the appellant that it was best for him to leave Saudi Arabia until things had settled down. He was of the view that it would be safer for the appellant to be outside Saudi Arabia while he tried to solve his problems for him because, if the appellant was detained again, it may not be possible to get him released.

[17] Shortly after being released from detention, the appellant discovered that his father had taken control of his assets. However he was able to obtain some funds by telephoning the manager of his construction company and instructing him to send him the cash that was in the office. He duly received this money however, the next time the appellant attempted to telephone the manager, the telephone had been disconnected.

[18] In addition to the money the appellant got from his company, his brother-in-law gave him 10,000 Saudi Arabian riyals towards the cost of his travel and expenses.

[19] On 6 May 2009, the appellant departed from Saudi Arabia for Sharjah in the United Arab Emirates (UAE). Once in Sharjah, he telephoned his father to see if he could make peace with him. His father told him that he would use the funds he had confiscated from him to pay for him to be killed. Several days after this telephone conversation, the appellant relocated to Ajman where he felt safer because it was more remote. During his time in the UAE he travelled regularly between Sharjah, Ajman and Dubai.

[20] In early June 2009, his brother-in-law telephoned him and told him that a verdict had been issued against him and that he should travel as far way from

Saudi Arabia as possible. Very soon afterwards, the appellant booked a ticket to New Zealand.

[21] The appellant remained in Dubai until 19 June 2009 when he departed for New Zealand. Approximately one week before he left Dubai, he sold his mobile telephone to raise money. He bought a cheap substitute and a new SIM card and transferred some telephone numbers from his old SIM card to his new SIM card. He then destroyed his original SIM card so that his telephone communications could not be traced in Saudi Arabia.

[22] After arriving in New Zealand, he attempted, unsuccessfully, to contact his brother-in-law. The appellant has subsequently learned, from a neighbour in Saudi Arabia with whom he has remained in contact, that his brother-in-law lost his job because of the assistance he provided to the appellant.

[23] The appellant has remained in contact with his wife, who is now living with her family and the youngest child, born while the appellant was in detention. His other children are living with his father.

[24] Some time after the RSB declined his claim, the appellant contacted his wife and asked her to assist him by obtaining documents relating to the prosecution against him. She was able to obtain three documents with the assistance of some of her relatives. The appellant's neighbour sent him these documents, two by facsimile and the third, the court verdict, by email.

[25] Initially, the appellant made little effort to pursue the Jehovah's Witness faith in New Zealand. When he first arrived in New Zealand, he resided in Auckland at the YMCA. There, he had a chance meeting with a Jehovah's Witness, who visited him from time to time and discussed the Jehovah's Witness faith with him. He also visited Jehovah's Witness churches on approximately two occasions. However, his priority was to find work and to support himself and, in any case, the Jehovah's Witness services in Auckland were conducted in English.

[26] The appellant is currently living in Hawke's Bay. There he has met, and become friends with, another Jehovah's Witness. He has been studying Jehovah's Witness material with this person and attending a Jehovah's Witness church with him twice a week. Because the appellant's English is limited, there are often parts of the service that he does not understand. His friend assists him

by explaining the content of the services to him. The appellant attends the services because he wants to understand more about the Jehovah's Witness faith.

#### Documents filed

[27] Counsel filed opening and closing submissions. She also filed translations and copies of the three documents from Saudi Arabia relating to the appellant's case. These are:

- i) A verdict of a judge from a public court in Jeddah, recording that a session of the court had been held on 3 June 2009 and that the appellant's father was present and accused his son (the appellant) of being a non-believer and an apostate against Islam and that this claim has been proven correct by the sworn testimony of the appellant's uncles. The verdict records that, in the appellant's absence, judgment has been passed on his apostasy of the Islamic faith and that he will be arrested and executed, should he return to Saudi Arabia. This document was scanned and sent as an enclosure in an email to the appellant (the covering email was also filed);
- ii) a document dated 1 December 2008, recording the appellant's details and that the document related to an investigation. This document, which was sent from Saudi Arabia by facsimile, contains a set of fingerprints said to be those of the appellant; and
- iii) a document from the Ministry of the Interior, dated 29 November 2008, with a photograph of the appellant attached to it and details relating to his detention filled in. In the field "Type of crime", it is noted that the appellant has been accused of being a non-believer and an apostate against Islam. Under the field "Description of sentence", the document is filled in "to be held in custody for three months until he returns to the Islamic religion". Under the field "Date of sentencing", the document is filled in "3 December 1249" (converted in the translation to 1 December 2008). This document was also sent from Saudi Arabia by facsimile.

## **THE ISSUES**

[28] 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."

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

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

## **ASSESSMENT OF THE APPELLANT'S CASE**

### **CREDIBILITY**

[30] Prior to determining the framed issues, it is necessary to make an assessment of the appellant's credibility.

[31] The Authority had some concerns about the appellant's evidence, particularly following the first hearing day. Although his claimed dilemma arose from his interest in the Jehovah's Witness faith, at the hearing he demonstrated little knowledge of it or evidence of attempts to pursue it in New Zealand. In addition, there were two inconsistencies in his evidence for which he was unable to provide a satisfactory explanation. First, he gave evidence to the Authority that after being beaten unconscious at his home, he recovered consciousness in a police van. To the RSB he had stated that he recovered consciousness in a cell. The second inconsistency related to the timing of his cessation of Muslim observances.

[32] There was also a disparity between the appellant's oral evidence and the details of one of the documents provided in evidence. Although the appellant had claimed to have been released from detention through the intervention of his

brother-in-law, the document he provided which relates to this detention (see [27](iii) above) contradicts this account in that it records that the appellant was sentenced to three months' detention on 1 December 2008. It would appear from the document that the appellant was released following the completion of a finite sentence, rather than released on bail as a result of his brother-in-law's intervention.

[33] Apart from the matters noted above, the appellant was a generally credible witness and gave evidence that was consistent with both the account he provided to the RSB and other material on his file. The few inconsistencies that have been noted must be viewed in the context of a two day hearing during which the appellant gave evidence that was otherwise consistent and credible. His account of his movements and of events, both within Saudi Arabia and the United Arab Emirates, was consistent with the account provided at his RSB interview. Although he had only a modest knowledge of the Jehovah's Witness faith, he gave credible evidence about his reasons for his attraction to that faith and about both his deep antipathy towards Islam and the long-standing difficulties he has had with his father because of his lack of interest in that religion.

[34] The documents filed in evidence corroborate many aspects of the appellant's claim. The two documents that relate to his detention (at [27](ii) and (iii) above) appear to be genuine. Although there is a discrepancy between the appellant's evidence and one of the documents concerning the question of whether he was released on bail or merely completed a three-month detention, the dates and other details of the detention recorded on the document (which contains his photograph) are consistent with the appellant's evidence. Similarly, the verdict issued by the public court in Jeddah corroborates various aspects of the appellant's account, including the involvement of his father and uncles in his prosecution. Its date is consistent with the timeframe provided by the appellant of his movements in the United Arab Emirates and, in particular, his purchase of a ticket to New Zealand.

[35] Although in the Authority's jurisprudence, the ease of forgery means that findings concerning the authenticity of documents generally follow findings concerning credibility of witnesses, in this case, the Authority has insufficient concerns regarding the appellant's evidence upon which to base a rejection of the credibility of the documents. There is nothing on the face of the documents that suggests that they are false and a number of features which suggest otherwise.



[36] Finally, with regard to the credibility of the appellant, the Authority notes that his demeanour over the two hearing days was consistent with his account.

[37] Taking all of the above into account, the Authority finds that the appellant was a credible witness and accepts his account for the purpose of this decision. It is noted that while the RSB came to a different conclusion concerning the appellant's credibility, they did so in the absence of the corroborative documents the appellant has since been able to obtain from Saudi Arabia.

**OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO THE COUNTRY OF NATIONALITY?**

[38] The Authority has accepted that the appellant has been accused and convicted of apostasy in Saudi Arabia. In order to determine whether the appellant has a well-founded fear of being persecuted as a result, it is necessary to consider country information concerning Saudi Arabia and the treatment of converts from Islam in that country.

**COUNTRY INFORMATION**

[39] An analysis of country information concerning the treatment of apostates in Saudi Arabia was made in *Refugee Appeal No 76385* (17 September 2009). An extract from that decision appears below:

“[27] King Abdullah bin Abd Al Aziz Al-Saud rules Saudi Arabia under the title ‘Custodian of the Two Holy Mosques’ which is a reference to his responsibility for Islam’s two holy sites in Mecca and Medina. The government bases its legitimacy on its interpretation of Sharia and basic law. The law provides that the Koran and the traditions of the prophet Mohammed serve as the country’s constitution. All citizens are expected to adhere to Islamic principles.

[28] A semi-autonomous government agency called the Commission to Promote Virtue and Prevent Vice (CPVPV) has authority to monitor social behaviour and enforce morality consistent with the Government’s interpretation of Islam. This agency was reported in 2008 as having 5000 staff members including 3,227 *Mutawwa’in* or religious police.

[29] The public practice of non-Muslim religions is prohibited. Proselytising by non-Muslims, including the distribution of non-Islamic religious material such as bibles, is illegal. Although under government policy, non-Muslims are permitted to practice their religion within their own homes, religious police conduct raids on private non-Muslim religious gatherings leading to the arrest and detention and sometimes deportation of participants: Barnabus Fund *The Application of Apostacy Law in the World Today* (3 July 2007).

[30] Conversion by a Muslim to another religion is considered as apostasy and punishable by death. There have been no confirmed reports of executions for apostasy since 1992 although in the late 1990s, there were reports of prisoners who were beaten to death by government authorities for refusing to recant their alleged apostasy. Blasphemy is also potentially punishable by death. According to Human Rights Watch (HRW) there have been several prosecutions this decade for apostasy and insulting religions (the relevant report notes one such prosecution in 2004 and two in 2005). The HRW report also notes the predicament of a Shi'a Muslim who has been on death row in Saudi Arabia since 1993 for allegedly insulting the prophet Mohammed.

[31] More recently, in March 2008, a barber was sentenced to death after it was reported to the authorities that he had blasphemed God and the prophet in his shop. In May 2008, a Saudi national was charged with "setting up an electronic site that insults Islam". Prosecutors were seeking a five year sentence. The defendant subsequently fled the country after receiving death threats: United States Department of State *2008 Country Report on Human Rights Practices: Saudi Arabia* (25 February 2009); United States Bureau of Democracy, Human Rights, and Labor *International Religious Freedom Report 2008: Saudi Arabia* (19 September 2008); Human Rights Watch *Saudi Arabia: Stop Trials for "insulting" Islam* (12 May 2008).

[32] There are no churches in Saudi Arabia. The Bishop of Arabia stated in an interview in January 2009, that normal Church activities are not possible there. In the same interview, he stated that Saudi Arabians are strongly advised against converting to Christianity as they would be unable to practice their faith and that if they did convert, their only option would be to emigrate: Heuman Paul "An interview with the Bishop of Arabia" *Pyjamas Media* (20 January 2009).'

[40] It can be inferred from the above country information that it is unusual for Muslims in Saudi Arabia to convert to other religions. Under Shari 'a law, Muslims who blaspheme or are apostates are liable for the death penalty. Reports of such penalties being imposed or carried out are rare. Given the number of active religious police in the Kingdom, the rarity of penalties being imposed on apostates points to the rarity of apostates rather than any suggestion that a blind eye is turned in such cases.

## **IS THERE A REAL CHANCE OF THE APPELLANT BEING PRESECUTED IN SAUDI ARABIA?**

[41] Persecution has been defined in refugee law as the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection (see Hathaway, *The Law of Refugee Status* (1991) 104 to 108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at [15]).

[42] It has been accepted that the appellant has rejected the Islamic faith and has begun an association with the Jehovah's Witness faith. It has also been accepted that the appellant has been prosecuted for apostasy at the instigation of

his father and that there is a verdict against him ordering his arrest and execution. It is uncertain whether this sentence would actually be carried out should the appellant return to Saudi Arabia. Although there are reports of death sentences being issued for apostasy and associated crimes in Saudi Arabia and reports of incarcerations on 'death row', there are no reports of such sentences being carried out in recent times. The Authority accepts that, based on his past treatment, at the very least the appellant would be detained and mistreated as a result of his profile as a known apostate.

[43] The Authority is satisfied that on return to Saudi Arabia there is a real chance that the appellant would be subjected to treatment amounting to persecution because of his rejection of Islam and interest in the Jehovah's Witness faith. His fear of being persecuted is therefore well-founded.

#### **CONVENTION REASON**

[44] The relevant Convention ground is religion.

#### **CONCLUSION**

[45] For the above reasons, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"M A Roche"  
M A Roche  
Chairperson