

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

**REFUGEE APPEAL NO 76174**

**AT AUCKLAND**

**Before:** C M Treadwell (Member)  
**Counsel for Appellant:** I Uca  
**Appearing for NZIS:** No Appearance  
**Date of Hearing:** 5 February 2008  
**Date of Decision:** 30 May 2008

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**DECISION**

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**INTRODUCTION**

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

[2] This is the second time that the appellant has claimed refugee status in New Zealand.

[3] On 13 April 2005, the Authority (differently constituted) delivered its decision in respect of the appellant's first appeal. See *Refugee Appeal No 74852* (13 April 2005). It accepted as truthful the appellant's claim to have twice been arrested and mistreated because he was an active member of the *Mouvement Culturel Berbère* ("the MCB"), but found that the state's interest in pursuing him had diminished and he did not have a well-founded fear of being persecuted if he returned to Algeria.

[4] On the present appeal, the appellant says that, since his first claim, a brother has been suspected of supporting an Islamist group and the appellant is

implicated in his brother's supposed support.

[5] The central issues which emerge on this appeal are the credibility of the new claim and, if it is credible, whether the appellant is at risk of serious harm if he returns to Algeria.

### **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[6] Second or subsequent refugee claims (including appeals to the Authority) are subject to jurisdictional limitations.

[7] Section 129O(1) of the Immigration Act 1987 (which came into force on 1 October 1999) (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."

[8] In the result, it is necessary to consider the appellant's original claim and his further claim, as presented at the second appeal, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear the second appeal and, if so,
- (b) whether he is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[9] 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 one. This involves a comparison of claims as asserted by the refugee claimant. In the absence of significant difference in the grounds upon which the claims are based, there is no jurisdiction to consider the subsequent claim: Refugee Appeal No 75139 (18 November 2004).

[10] Where jurisdiction is established, the merits of 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. Section 129P(9) of the Act 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 REFUGEE CLAIM**

[11] The appellant's first refugee claim is set out at paragraphs [7]-[47] of *Refugee Appeal No 74852* (13 April 2005), summarised as follows.

[12] The appellant is a Berber from X Province in the Kabylie region of Algeria. He is the third of six children from a reasonably wealthy middle-class family.

[13] In the year that he started high school, the appellant became active in the MCB. At 18, joined the *Front des Forces Socialistes* ("the FFS"), a Berber political party, as did his brother AA and his sister BB. Another brother, CC, joined another Berber political party, the RCD.

[14] After enrolling in a course at a university in Algiers, the appellant joined a group of like-minded Berber students from his region ("the Berber group"), who met regularly. Like the MCB, it promoted Berber writers, singers and poets, and organised Berber Spring festivals each year. The appellant, with other members of the group, founded a cultural journal in which he regularly wrote.

[15] In September 1994 the group organised a march within the university to protest against the abduction of a well-known Berber singer, Matoub Lounes, also a prominent member of the MCB. The march was halted by the police, using tear gas and rubber bullets.

[16] The appellant remained at university until 1996 but left without completing his degree because he resented the lack of teaching in the Berber language, Tamazight, and because Islamists on the campus, who regarded Berbers as atheists and objected to the Berbers' "galas" on the grounds that they included "modern music", began a campaign of death threats, three of which were received by the appellant.

[17] At the beginning of 1997, the appellant was appointed as an assistant teacher at a school. He contributed to a bi-monthly journal published by the school, which contained articles and information relating to the Berber culture.

[18] The appellant resumed his involvement in the MCB. Until April 2001, this was limited to attendance at the MCB offices and participation in the annual Berber Spring commemoration. He also attended FFS meetings and took part in occasional peaceful marches to denounce the actions of Islamists. He did not attend the demonstrations which followed the murder of Matoub Lounes by Islamic extremists in June 1998 because of the violence of the demonstrators. Instead, he and others put up posters denouncing the killing. A group of 350 MCB members, including the appellant, attended Lounes' burial.

[19] In April 2001, Massinisa Guernah, a student organising a Berber Spring commemoration, was killed by the *Gendarmerie*. Berbers formed into *Arouches* (village or district committees) and held large-scale marches and demonstrations. The appellant, actively involved in the X Province *Arouche*, participated in three marches, of increasing tension and with escalating clashes with the police.

[20] Following the third march, a meeting was held of Berber leaders from the appellant's region. There, a manifesto of 15 demands (the "El Kseur platform") emerged, including removing security forces from the region, giving martyr status to Berbers killed by the security forces, stopping legal proceedings against demonstrators, declaring Tamazight a national and official language, and bringing members of the security forces who had killed unarmed civilians before the courts. Further, it was decided that there would be a national march in Algiers, to present the El Kseur demands to President Bouteflika.

[21] Two million people took part in the march. The appellant and others from X travelled to Algiers in buses. Because of the number of marchers, they were some distance back from the head of the march.

[22] The march was stopped by security forces, gendarmes, police, army and military personnel, using tear gas, live ammunition and helicopters hovering overhead and firing on the marchers. About 100 people were killed and many were badly injured. The appellant was affected by tear gas and his knees were injured by objects thrown out of the helicopters.

[23] After the march in Algiers, a meeting was held of Berber representatives. One thousand MCB representatives attended, the appellant among them as a representative from X. He was not a leader, but he was an "active member playing a leadership role in his home area".

[24] The representatives decided to hold another march in Algiers. The appellant's group, however, was stopped while still some kilometres away. Other participants were similarly stopped. No further marches were planned, as it was known that the authorities and security forces would never let marches go ahead.

[25] About one month after the aborted Algiers march, three security force members detained and interrogated the appellant and his brother AA. The appellant was accused of inciting young people to join the demonstrations.

[26] The appellant was seriously mistreated. His interrogators hit him with their knees, causing injury to his kidneys, and hit him on the head with iron bars. They tried to pull his fingernails out. He was given no medical treatment, although he asked for it. AA was released after three days, but the appellant was held for 20 days.

[27] Following his release, a doctor told him that the torture he had suffered would have an impact on his psychological state. This was indeed the case, as the appellant experienced anguish and instability when he went to restaurants or cafes, and he spent long periods asleep during the day.

[28] The appellant was not charged with any offence. When he was released he was told that he was against the government, had been inciting young people to protest, and would be under surveillance. He was also told that if he was found again in a cultural movement, or at an MCB meeting, his life would be in danger.

[29] About one month later, the appellant was arrested a second time, while walking with an MCB leader DD, from the *Y Arouche*. They were taken to the same Gendarmerie base. DD was released the same day but the appellant was detained for three days. While in detention he was beaten and an attempt was made to rape him. He was again accused of being anti-government and inciting young people to protest against the government and to damage government property. He was not charged but was again told that he would be under surveillance and was threatened.

[30] Following his release, the appellant returned to his home. He stayed there for about two weeks but then decided that he should go into hiding. He spent the next 12-14 weeks staying with various relatives and friends in different towns in the area. In fear, he did not involve himself in any MCB activities. He returned to

work at the beginning of the new year, but resigned after about four weeks, because he was afraid that the security forces could detain him at any time.

[31] During this period neither the security forces, nor any other authority, came looking for him at the school, nor were any enquiries made of his family. However, the appellant felt that if he returned to X Province he would be followed, and informants would alert the authorities if he did return there.

[32] At the end of January 2002 the appellant visited his parents. At around 4pm, seven security officers arrived and searched the appellant's room. They found some old papers about the marches he had been on, and some banners and pamphlets printed with slogans, from the 2001 marches. The appellant was not arrested, but was told that he would continue to be under surveillance.

[33] Following this incident, the appellant spoke with his family, and members of his branch of the MCB. It was decided that he should leave the country. He had stopped his political and cultural activities, but that had not prevented the security forces from targeting him. On the advice of an agent, he left Algeria for Tunisia, from where he travelled to New Zealand.

[34] While in Malaysia in transit, the appellant telephoned his family twice. In the first call he spoke to his brother AA, who told him only that "things were heating up" at home. On the second call he spoke with his father. The appellant's father said that he feared for the family's safety. At that time, there had been no visits from the security forces.

[35] In June 2002, the appellant telephoned his brother CC from New Zealand. CC told him that the security forces had come to the house a month earlier and detained their brother AA. AA was still in prison at the time of the call. The family suspected that when the security forces could not find the appellant, they took his brother AA.

[36] Fearing further upsetting news, the appellant did not contact his family again for five months. When he did, he was told that AA had been released after two months in prison. He telephoned his family regularly thereafter.

[37] AA told him that, in fear, he decided to cut down on his political and cultural activities. As a result, he had not been detained again. CC told the appellant that he could quite easily be killed if detained again.

[38] The panel of the Authority hearing the appellant's first appeal found him to be truthful. It also accepted the 24 January 2005 report of Dr McCormick, psychiatrist at the Bexley Clinic, that the appellant is suffering, *inter alia*, from Major Depression (with psychotic features), Post Traumatic Stress Disorder and epilepsy which began in 2002.

[39] Notwithstanding that it accepted his credibility, the Authority declined the appellant's first appeal on the grounds that:

- (a) The appellant's two detentions occurred in the nine months following the riots after the death of Massinisa Guernah in April 2001. Those events were, by the time of the first appeal, three years in the past.
- (b) Subsequent country information indicated progress by the government towards reconciliation with the Kabylie Berber population, including (in early 2005) some concessions by the government in terms of the El Kseur platform.
- (c) While 2003-2004 country information did record the continuing arrest and detention of Berber activists, this "may be limited to leaders of the Berber movement and, in particular, those whose actions are violent".
- (d) The last enquiry made by the security forces for the appellant was in January 2002 and his brother AA's detention was in mid-2002. Nothing further had happened to the family.
- (e) If he returned to Algeria the appellant would be able to resume his MCB activity but "may need to exercise a degree of caution".

[40] Taken cumulatively, these findings led the Authority to conclude that the appellant did not face a real chance of serious harm if he returned to Algeria.

## **THE APPELLANT'S SECOND REFUGEE CLAIM**

[41] The appellant's second refugee claim repeats the account of his first claim and adds the following.

[42] After AA's release from custody in mid-2002, the appellant's family did not experience any further difficulties with the Algerian authorities until 2005. In the intervening period, both AA and CC reduced their pro-Berber activities and kept out of the public eye.

[43] In mid-2005, the appellant's youngest brother EE began Islamic Studies at university. He became increasingly devout. He began wearing Islamic dress. Eventually, difficulties with the university security personnel because of his dress and Islamism caused him to give up his studies.

[44] In December 2005, the appellant's parents and EE undertook the *haj* to Mecca. By early 2007, EE found himself being the target of harassment and investigation at police roadblocks and in the street.

[45] In late June 2007, the security forces visited the family home, looking for EE. He was not at home at the time but the men searched the premises and took away a suitcase of the appellant's old papers which had been stored away by CC after the appellant left for New Zealand. AA was detained for questioning and was held for a month.

[46] During his detention, AA was asked about the contents of the suitcase (which had contained anti-government materials which he had collected in 2001) and about a NZ\$90 Western Union receipt which related to some money the appellant had sent EE for textbooks. The receipt had been found on a second search of the family home while AA was in custody. They suspected EE of supporting the *Groupe Salafiste pour la Prédication et le Combat* (then, "the GSPC"), now known as the al-Qaeda Organization in the Islamic Maghreb ("al-Qaeda Maghreb"). In order to extricate himself, AA admitted that the suitcase belonged to the appellant and that the receipt related to money the appellant had sent to EE.

[47] AA was released in late July 2007. He telephoned EE – staying at an uncle's house – and warned him to leave Algeria. EE immediately made arrangements to leave Algeria for Tunisia, where he has been living illegally ever since.



[48] The appellant learned of these events when he telephoned his parents at the end of July. His parents have no telephone number for EE in Tunisia but receive calls from him regularly.

[49] There have been two further visits by the security forces to the family home since the appellant lodged his second refugee claim. The first occurred in September 2007. On that occasion, the appellant's father was taken in and questioned for several hours as to the whereabouts and activities of EE and the appellant. The second visit was in December 2007 – on which occasion no-one was detained.

### **Documents**

[50] In support of his second appeal, the appellant produces, *inter alia*, the following documents:

- (a) Letter (undated, but posted on 4 August 2007 from France) from his brother CC, recording the first visit of the security officers to the house, the seizure of the suitcase and the detention of AA. The letter records that the suitcase contained, *inter alia*, a copy of *The Dirty War* by Habib Souaidia (an exposé of the Algerian government by a former army officer), a video of *al-Jazeera* broadcasts critical of the Algerian government and press articles about the implication of the authorities in the death of Matoub Lounes. Islamic texts belonging to EE were also seized.
- (b) A fax dated 27 February 2008 from the appellant's brother EE, sent from Tunisia, confirming:

“I have been in Tunisia since August of last year after having stayed approximately a month and a week at my uncle's place, after the authorities visited our home, and I am aware that you know what happened to the family members, without need for me to remind you of the events that you [*interpreter*: possibly “I”] have grown sick of hearing.”
- (c) Correspondence between the appellant and Western Union, the appellant attempting (unsuccessfully) to locate evidence of his transfer of NZ\$90 to his brother EE in late 2006.
- (d) A report dated 21 August 2007 by Dr T Wansbrough, confirming that the appellant remains under medical care for his mental health and

noting, in particular, the possible link between the appellant's epilepsy, which has developed in New Zealand, and the head injuries he suffered in detention in Algeria.

[51] Counsel has filed opening and closing submissions in writing, together with numerous articles of country information.

### **CONCLUSION ON JURISDICTION**

[52] As noted in *Refugee Appeal No 75139* (18 November 2004):

[51] Jurisdiction under s 129J(1) is determined by comparing the previous claim to refugee status against the subsequent claim. It is clear from the definitions in s129B(1) that the exercise requires the refugee status officer and the Authority to compare the claims **as asserted by the refugee claimant**, not the facts subsequently found by [the Refugee Status Branch] officer or the Authority."

[53] On this analysis, the Authority is satisfied that, in the present case, the jurisdictional threshold is met. If true (a point which will be addressed hereafter), the appellant's second claim asserts circumstances in Algeria which have changed to such an extent that the second claim is based upon significantly different grounds to his first claim. At the time of his first claim, the appellant stated that the Algerian authorities had formed an adverse view of him because of his support and activities for the pro-Berber MCB prior to his departure from Algeria. Conversely, the second claim is *sur place*. It is predicated squarely on the assertion that the authorities currently suspect the appellant of providing support, with or via his brother EE, for an insurgent Islamist group, al-Qaeda Maghreb. It is clear that circumstances in Algeria have changed such that the second claim is brought on significantly different grounds.

[54] Bearing in mind that the comparison of the second claim against the first simply requires the Authority to consider the claims *as asserted*, and before the veracity of the second claim is tested, the jurisdictional threshold is met.

### **THE ISSUES**

[55] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:

"... owing to a 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."

[56] 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**

[57] There are aspects of the appellant's second refugee claim which merit caution as to its veracity.

[58] Perhaps most obviously, the timing of the events on which it is predicated is fortuitous. A year and a half after the appellant's first refugee appeal was declined by the Authority in April 2005, he lodged an appeal to the Removal Review Authority in November 2006. That appeal, which advanced essentially the same concerns as had been canvassed by this Authority on the first refugee appeal, was declined in May 2007. The appellant then sought the assistance of Matthew Robson MP, in requesting that the Minister of Immigration grant an exception to residence policy. That request was declined in June 2007. On 27 June 2007, the appellant was sent a letter by Immigration New Zealand, giving him until 11 July 2007 to leave New Zealand voluntarily. On 3 August 2007, the appellant lodged his second refugee application.

[59] The apparent fortuity is that the appellant does not assert the occurrence of any significant events in Algeria from mid-2002 (shortly after he arrived here) to mid-2007 when, he says, a fresh series of events occurred, just in time to found a second refugee claim. The serendipity appears suspicious.

[60] Against that apparent fortuity, however, it is necessary to balance several considerations. First, the number of people who lodge second refugee claims is comparatively small. Second, those who do so for genuine reasons will always have fresh information – it is inherent in the nature of the jurisdiction. Third, the

fresh information will be likely to have occurred shortly before the second claim is lodged, given that genuine claimants will be anxious to have the uncertainty of their status resolved. Fourth, it will only be persons whose new information comes to hand prior to their leaving New Zealand who will be in a position to lodge a second claim. Thus, it cannot be surprising if some second claims are premised upon new information which appears to emerge 'in the nick of time'.

[61] Added to the reality that some second claims may well have this appearance of convenient timing, the appellant has had several opportunities on which he could have advanced false information, had he wished to. His appeal to the Removal Review Authority would have been enhanced by fresh accounts of difficulties, for example, as would his request to the Minister. Yet he did not embellish his claim on either occasion.

[62] The second claim is also corroborated by the presence of evidence, in the form of the fax sent from Tunisia, which tends to confirm that the appellant's brother EE has, in fact, left Algeria. And both brothers, EE and CC, provide confirmation of the detention of AA and the interest of the security forces in both EE and the appellant for 'pro-Islamist' reasons.

[63] Finally, the appellant has been consistent in his evidence. He has not sought to embellish his second claim since first making it and gave frank evidence, without dissembling.

[64] As has long been held in refugee law, both in this jurisdiction and internationally, the application of the benefit of the doubt principle is an integral part of the determination process in a field littered with what Professor J C Hathaway termed "evidentiary voids". The point was reinforced in *Refugee Appeal No 523/92* (17 June 1995) at p19, where the Authority noted:

"The benefit of the doubt principle is to be applied liberally, as decisions of this Authority will show. The principle is that if a decision-maker is unable to make up his or her mind as to whether the claimant is a refugee, a decision in favour of the claimant is to be given as it is inherent in such a situation that the claimant's account could be true."

[65] For a more recent approval by the High Court of the principle in *Refugee Appeal No 523/92* (17 June 1995), see *C v Refugee Status Appeals Authority* (High Court Auckland, M 1365-SW00, 4 May 2001) per Nicholson J at [60] - [62].

[66] Here, doubt exists. The Authority is unable to say with certainty that the appellant's second claim is untruthful. He is entitled to the benefit of the doubt. His second refugee claim is accepted as credible.

**Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Algeria?**

[67] "Being persecuted" comprises two elements - serious harm and the failure of state protection; see *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard for persecution is a sustained or systemic violation of core human rights. See in this regard *The Law of Refugee Status*, J C Hathaway (Butterworths, Toronto, 1993) at p108 and *Refugee Appeal No 2039/93* (12 February 1996).

[68] The issue which now faces the Authority is markedly different from the issue which presented itself on the first appeal. At that time, the Authority was required to consider whether the appellant's activities in support of the pro-Berber movement, the MCB, gave rise to a real chance of serious harm in the future. Given the ebbing of the tide of Berber response to the killing of Matoub Lounes and the conciliatory attitude of the government, coupled with the fact that no enquiry had been made for the appellant for several years, the Authority concluded that the risk of serious harm fell below the level of a real chance.

[69] In contrast, the Islamist insurgency and the violent response of the Algerian authorities to it has not disappeared. While most of the Islamist militant groups of the early to mid-1990s have been neutered or have disappeared in the wake of various amnesties, the GSPC, recently rebranded as al-Qaeda Maghreb, remains a serious threat. Estimates of its membership range from several hundred to as high as 4,000. Hiding chiefly in the mountains in the north of Algeria (including Kabylie), it conducts sporadic terrorist acts including bombings and the mass murder of civilian populations. As the United States Department of State reported in its *Country Reports on Human Rights Practices: Algeria* (February 2008):

"[G]overnment and press reports stated that terrorists killed 132 civilians (70 in 2006, 76 in 2005) and 160 security force members (142 in 2006, 177 in 2005); security forces killed an estimated 378 suspected terrorists (277 in 2006, 235 in 2005).

Most of the terrorist attacks during the year were attributed to the Salafist Group for Preaching and Combat (GSPC), which allied itself to Al-Qa'ida in September 2006 and changed its name in January to Al-Qa'ida in the Islamic Maghreb (AQIM).

The year was marked by significant violence. For example, on April 11, three suicide car bomb attacks in Algiers caused 33 deaths and over 100 injuries. One of the attacks targeted the building housing the prime minister's office and the office of the interior ministry. The two other attacks targeted a police station in Bab Ezzouar, a suburb of Algiers. AQIM claimed responsibility for the attacks.

On July 11, a suicide car bomb attack occurred in Lakhdaria, a town southeast of Algiers, targeting a military barracks and resulting in 10 deaths and 35 injuries, all soldiers. On September 6, a man wearing a suicide vest detonated himself in a crowd in Batna waiting to greet President Bouteflika, killing 19 citizens, injuring 107. On September 8, a suicide car bomb detonated inside a coastguard base in Dellys, killing 35 and wounding 60. On December 11, two suicide vehicle bombs in Algiers claimed the lives of 37 individuals, according to press reports. A bus filled with students bore the brunt of one of the blasts. The other bombing specifically targeted the offices of the UN Development Program (UNDP) and resulted in the deaths of 11 UN workers. AQIM claimed responsibility for all five attacks.

[70] In response, the actions of the Algerian authorities are brutal and frequently violate core human rights norms. As noted by Amnesty International, in its 2008 *Country Report: Algeria*:

“Violence by residual armed groups persisted, often in connection with criminal activities such as smuggling, protection rackets and money-laundering. The government continued its armed campaign against these groups, which it claimed were aligned with al-Qa’ida. Despite the persistent risk of torture in terrorism-related cases, Algerians were deported from several countries where governments alleged they were a risk to national security. Some countries apparently received assurances from the Algerian authorities that returnees would not be tortured or ill-treated, but Algeria refused independent monitoring of detainees who had been returned from other countries.

....

#### **Violations in counter-terrorism**

Torture continued to be used with impunity. There were persistent reports of torture and other ill-treatment in the custody of the Department for Information and Security (*Département du renseignement et de la sécurité*, DRS), a military intelligence agency which carries out terrorism-related arrests and investigations. Detainees held in DRS custody said they were beaten, tortured with electric shocks, suspended from the ceiling, and forced to swallow large amounts of dirty water, urine or chemicals. They were held by the DRS in secret locations for up to several months, during which they were denied contact with the outside world, in violation of the law. Reports of torture and ill-treatment were not known to have been investigated, despite new provisions criminalizing torture introduced in 2004. At least three people convicted of belonging to a terrorist group were sentenced to death in their absence.”

[71] See also the United Kingdom Home Office’s *Country of Origin Information Report: Algeria* (April 2006), which reiterated the report of Amnesty International and added:

“6.20 The Medical Foundation for the Care of Victims of Torture, in the report, “Rape as a method of torture” ed. Dr Michael Peel, published in [April] 2004, states in relation to Algeria:

'In Algeria at the time of the study [2002] there was a policy of intimidation and humiliation, of which sexual assault was an integral part. Men were made to squat with the neck of a soft-drink bottle against their anus. They were then kicked or pushed so that they lost balance and they were penetrated by the bottle. Rape was not generally accompanied by questioning, but it was officially sanctioned. It was made known unofficially by the authorities that men had been raped in detention, and should no longer have the status of adult males in the community. This fitted into the overall pattern of intimidation through torture in which semi-conscious bodies were dumped by the authorities, covered with blood and bruises, to discourage others from questioning their authority.'"

[72] While the Medical Foundation's report referred to practices reported some six years ago, there is nothing in the country information to suggest that the level of brutality and lack of respect for human rights inherent in those practices has diminished or disappeared. The same government, operating through the same agencies, continues in power and the country information continues to record the impunity with which such agencies act.

[73] The existence of such practices is, of course, reinforced by the fact that the appellant has already suffered such mistreatment at the hands of the Algerian security forces on two occasions.

[74] Even though the appellant is not a supporter of any Islamist group (and was himself, as a Berber activist, a target of them during his university days) any interest by the Algerian authorities in him for that reason puts him at risk of being interrogated and investigated. On the country information, there is a real chance that such interrogation and investigation will be accompanied by serious physical harm, including rape, beatings, electric shock, suspension and the forced ingestion of harmful liquids, as reported by the Home Office and Amnesty International. Such serious harm by agents of the state clearly meets the definition of "being persecuted".

[75] It is not overlooked that the focus of the interest of the authorities appears to be EE, whose Islamist profile has aroused suspicion. It may be that the mere act of sending EE a modest sum of money would give rise to no more than routine enquiry of the appellant. There is no certainty of that, however, further, there is the fragile state of the appellant's mental health. Dr McCormick's report of 24 January 2005 makes it clear that the appellant, previously admitted to the Psychiatric Unit at Auckland Hospital, suffers from such trauma as a result of his prior detentions in Algeria that he is hyper-vigilant and his concentration becomes

impaired when reminded of those events. He requires questions to be put to him in a slow, measured way and to be given time to respond (manifestations which the Authority observed itself). It is highly unlikely that he would be impressive when being questioned by Algerian security officials, leading to heightened suspicion rather than the opposite.

### **Convention Reason**

[76] Such mistreatment as the appellant faces if he returns to Algeria would be for reasons of an imputed political opinion.

### **CONCLUSION**

[77] It is concluded:

- (a) The Authority has jurisdiction to consider this second appeal.
- (b) For the reasons above, the appellant is a refugee within the meaning of Article 1A(2) of the Convention.

[78] Refugee status is granted. The appeal is allowed.

"C M Treadwell"

C M Treadwell  
Member