

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71051/98

AT AUCKLAND

Before: A R Mackey (Chairman)
D J Plunkett (Member)

Counsel for Appellant: D R Ryken

Counsel for NZIS M Hall-Collins

Date of Hearing: 2 & 7 December 1998

Date of Decision: 26 August 1999

DECISION WRITTEN BY D J PLUNKETT

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellant, a national of Algeria.

INTRODUCTION

The appellant is a 35 year-old married man who arrived in New Zealand on 15 August 1997 and made his first application for refugee status here on 10 September 1997 and his second, having instructed his present counsel, on 30 October 1997. His wife, a German national, has visited him in New Zealand several times and was in New Zealand at the time of the hearing. Following interviews with the RSB on 3 December 1997 and 11 June 1998, the appellant's counsel was notified of the decline of his application in a letter from the RSB dated 31 July 1998, enclosing a decision of the same date. This prompted the appellant's appeal to this Authority.

This appeal was originally scheduled for a hearing on 24 November 1998. Immediately prior to the hearing, the Authority wrote to the RSB requesting its presence at the hearing, given that the evidence on the file raised potential

exclusion issues. Counsel for the NZIS/RSB duly appeared at the hearing and sought an adjournment. A short adjournment until 2 December 1998 was granted. The Authority records that counsel for the NZIS/RSB was present during the resumed hearing but did not cross-examine the appellant or his wife and did not call any witnesses. Counsel said she had spoken to the New Zealand SIS which had no further information to tender to the Authority beyond that produced to the RSB. She did, however, make submissions and following the hearing produced evidence as to the appellant's immigration status in Germany. The Authority refers to its Minute dated 3 February 1999 concerning this further evidence.

A preliminary issue arose at the hearing as to the language that the appellant would give evidence in, and indeed as to whether he required an interpreter at all. The appellant said his native tongues were Arabic and French. Counsel said he dealt with the appellant in English and found him to be "close to fluency". Prior to the hearing, counsel had requested an Arabic or French-speaking interpreter from North Africa. The Authority was unable to locate such an interpreter. Counsel agreed to proceed with the Arabic interpreter available at the hearing (who was from Iraq). The appellant requested that the Authority's questions be translated into Arabic but advised that he would answer in English. The Authority records that the appellant gave evidence during the hearing both in English and Arabic. Several times during the course of the hearing, the appellant confirmed that he had no problem understanding the Authority's questions or providing his answers. He described the interpreter as "very good".

THE APPELLANT'S CASE

The appellant comes from a middle class family. His father, who has since died, was a university lecturer. He has one brother and four sisters. All live in Algeria, apart from one sister, who went to live in Canada about eighteen months earlier, as she obtained a job there. His brother is a statistician. All the family are Muslims, though he was not brought up as a strict Muslim. He went to state, rather than religious, schools. When he was 16, he left school and studied electro-mechanics for two years at a polytechnic and then worked for his uncle in a factory. The appellant completed his compulsory military service in the years from 1984 to 1986. He was not involved in any fighting or civil unrest during his service. The appellant said that the army taught him to become a better Muslim. He stopped drinking alcohol and became "more correct".

After he left the army, it took him more than six months before he could find a job, eventually being employed as an electrician. He worked there for more than one year. In 1987, he went to Mecca during the Muslim festival of Ramadan.

He did not at this time, or indeed at any other time, support any fundamentalist Muslim organisations.

The appellant was shocked and disappointed by the elections in October 1988 and thought the country would descend into civil war. He therefore decided to leave Algeria and headed for Spain, where he worked in an orange processing factory for two to three months, but he found it hard to find employment there and could not speak the language and accordingly headed for London. He arrived there in early 1989 and worked in various restaurants and hotels. In London, the appellant was "more religious" and studied religion. Every Friday, he would go to the Red Crescent Islamic Centre, where he had contact with Egyptians and Saudis, prayed, or did voluntary work in the library or cleaning the mosque.

At the Centre, the appellant was offered work in Pakistan helping Afghan Muslims in a hospital. He was told he would be driving an ambulance and would be paid US \$200 per month, with food and accommodation provided. He wanted to go "as an act of humanity". The appellant accordingly registered with the Red Crescent in London and when he got to Pakistan in March 1989, he registered with the Red Crescent in Peshawar, where they issued him with a Red Crescent identity card. He worked for about three months as a hospital orderly, helping wounded Afghan civilians and fighters. He drove an ambulance only once or twice. The hospital was run by the Red Crescent society but he could not remember the name of the hospital.

The appellant did not venture into Afghanistan, though he was near the Afghan-Pakistan border and went two or three times to a border town. In the hospital and in Peshawar, he met some Afghan *Mujahideen*. Some were patients in the hospital and he met others in two houses in Peshawar where Arabic-speaking Muslims stayed. He had also met other Algerians in Peshawar who had fought the Russians in Afghanistan and gone to Peshawar to find jobs and live because it was dangerous for them to go back to Algeria. The appellant did not, however, think there was any danger for him in returning to Algeria because he had worked "officially".

After three months in Pakistan, he contracted malaria and was confined to Red Crescent accommodation near the hospital. The Red Crescent then returned him to London.

Back in London in August 1989, the appellant worked as a cleaner in a hostel. He was in London for only a few days before returning to Algeria in September 1989. He cannot remember encountering any problems upon arrival in Algeria or on departure, despite having a Pakistan visa in his passport. He believes he would have handed this passport to Algerian border control on both occasions.

The appellant stayed in Algeria for only about four days before departing for Spain. He worked again in an orange processing factory, though did not find it easy to obtain work. The appellant was arrested about ten times in Spain because he did not have a visa. He would be kept for about three days at a police station and given 48 hours to leave the country but he never did.

From Spain, the appellant went to Frankfurt in Germany in about August 1990. He thought it would be easier to make money there. He found a job as a builder's labourer. The appellant made his first claim for refugee status in Germany because, he says, he was arrested by the police at a train station and as he was found not to have a passport, they took him to F, a "refugee city". He does not remember the basis of his claim, though it had something to do with Afghanistan. He did not tell the truth. At this time, he had no fear of returning to Algeria.

The appellant left Germany after about three months and went to Holland for about nine months. He entered Holland illegally and worked as a pizza maker in Amsterdam. He did not have any contact with any Islamic groups there. He maintained regular contact with his family in Algeria, who did not report any problems to him.

During 1991, until he returned to Algeria in August of that year, the appellant travelled to many countries, including Bulgaria, Turkey and Czechoslovakia. In Czechoslovakia, he worked for about five months in a supermarket. This period included travel on a false Dutch passport and with false Bulgarian and Turkish stamps on his valid Algerian passport, which he had asked his brother to arrange. The false Dutch passport he bought in a coffee shop in Holland frequented by Moroccans. He spent only one week each in Bulgaria and Turkey and did "nothing" there. He says he needed to spend time in Bulgaria and Turkey in order

to obtain a visa and then enter Czechoslovakia on his Algerian passport. He left Czechoslovakia because he had trouble with the police. He maintained regular contact with his family who had no problems then.

The appellant went back to Algeria to see his mother in August 1991, though he cannot recall from which country he travelled. When he arrived at the airport in Algiers, he gave the authorities his passport and, noticing the Pakistan stamp, he was told to wait in a room until someone came to talk to him. He was kept at the airport police station for four or five days. He explained that he had worked in Pakistan and was asked to make a statement as to when he was in Pakistan and what he had done there. He was asked whether he had anything to do with drugs, arms or explosives and denied this. He thinks he was asked whether he had any involvement with the Islamic Salvation Front (FIS) or any fundamentalist groups but replied that he had left Algeria before these problems arose. He was not accused of being an FIS member or supporter. He was not beaten or mistreated, except that there was not enough food and he "could not go to the toilet". When he left, the police said if they needed him they would contact him and ask him to come back. His Red Crescent identity card was confiscated, though his passport was returned to him.

The appellant was in Algeria for about ten days, staying with his family. He left Algeria because his father received news that he (the appellant) and others in the family had "problems". His father advised him to leave Algeria. The appellant does not know what these problems were, except that it had nothing to do with the fact that he had gone to Pakistan. In Algeria, the appellant did not make contact with anyone in the FIS.

He returned to the refugee city in F, Germany, though he also lived and worked illegally in Frankfurt. In F, he was given a room and a social security benefit. He pursued his outstanding refugee application because, he says, he now had a genuine fear of returning to Algeria because of what had happened to him at the airport in 1991. Even though he was only detained for a short period and was not mistreated, he had an inkling that the situation was changing and he would not get the same chance again. He told the Authority the regime in Algeria was bad and there was no justice, even though he had not had a serious problem with his Pakistan visa while was in Algeria. His refugee application was refused so he appealed. He later abandoned his appeal when he got married in March 1995, principally in order to retrieve his passport which the German authorities had

retained while the refugee claim was ongoing. The appellant and his wife wanted to travel so he needed his passport. Even though his refugee claim had been refused, he was allowed to remain indefinitely in Germany as the spouse of a German citizen.

Once the appellant had retrieved his passport, as it had expired, he went to the Algerian consulate in Frankfurt to renew it. This was in 1995. He had some difficulty there. At first they did not want to renew it and said they would have to send it to Algeria. The appellant believes this is because they saw the Pakistan visa. His passport was renewed for nine months, after he paid a bribe. The appellant did not in fact travel on this passport, preferring to travel on false European passports.

The appellant then sought to renew his passport again. He went to the Algerian embassy in Berlin in October 1996. He had a "bad feeling" about this visit and asked his wife to accompany him to Berlin. He told her that if he did not return to their hotel after two or three hours, she was to call the police. The officials in the embassy knew about his first passport and asked him about Afghanistan and "things like that". He said he had nothing to do with terrorism or fundamentalists. Like every Muslim seeking a passport, he was asked if he was an FIS supporter. They said to him that if he went to Algeria, nothing would happen to him. He was even offered a job there, though he found this suspicious. The appellant understood this to mean that he would have to work for them, which would involve "bringing information to them" about Algerians. One of the officials told him that if he provided a "gift" (such as a suit, as the appellant was in the clothing trade) this would help to obtain his passport more quickly. The appellant did not provide any bribe but received his passport, valid for five years. The official told him that he was not afraid of anybody and that he could do anything he wanted. The appellant was warned to be cautious. He says he was afraid they really could do anything. The official said he was in a lot of trouble because he worked with fundamentalists in Pakistan. The appellant was "very happy" to receive his passport, since he thought he would never again have to go back to the Algerian authorities as, five years later, he would have permanent residence in Germany and be able to obtain a German passport. He rang his wife at the hotel and told her everything was "okay". She went back to F while he remained for a couple of days in Berlin staying with friends, before joining her in F.

He did a great deal of travelling between 1995 and 1997, making numerous trips

to Luxembourg, Belgium, Holland, Spain, Syria, Turkey, France and India. Some of these were business trips (the appellant bought and sold goods) or to indulge in his passion for gambling at casinos. His wife went on some trips but not others. She did not know about his gambling. He had money for his gambling vice because his trading business in Germany was very profitable. He sold all sorts of goods illegally, such as clothing, gold and electrical equipment. His frequent travel was also an endeavour to identify a sanctuary, a country where he and his wife could live permanently. They even considered living in the Arab countries he visited. The appellant also went on a religious pilgrimage to Mecca in April 1996. In October 1996, he went to Singapore for 12 days on a false Italian passport. He was told it would be very hard to get work there and so returned to Germany.

In the summer of 1996, he went to Tunisia to see his mother. She told him that life was not very good in Algeria as there were economic problems and people could be killed by explosions. She said his brother had been detained by the police for one week and had been tortured, following the death of a policeman in a nearby forest, during a general roundup of young men in the area. He did not know when this happened. The appellant is not sure but "maybe" another reason his brother was arrested was because he (the appellant) had been to the Algerian embassy in Germany. He does not know what his brother was asked about. The family were also once questioned about the whereabouts of family members, including the appellant. The police only came once.

The appellant arrived in New Zealand on his false Italian passport. He left Germany rather than face a prison sentence for crimes he had committed there. He had received a letter from the judicial authorities activating a prison sentence for convictions for fraud, resisting police officers and occasioning bodily harm. The sentence had been suspended to enable him to carry out community work. However, the appellant did not perform the community work because, he says, he was medically unfit. The German authorities had not accepted this. He had not intended staying in New Zealand but proposed to go to Australia and apply for refugee status there. The appellant had no problems on arrival but after obtaining an Australian visa in New Zealand, attempted to depart for Australia. He was arrested by the police for possession of a stolen Italian passport. The appellant was convicted of entering New Zealand on false documentation and sentenced to seven months imprisonment, spending three and a half months, largely in Mt Eden Prison.

When searched by the authorities at the airport, they found a photocopied page of Armed Islamic Group (GIA) labels in his luggage. The appellant explained that he had bought these in Kuala Lumpur and intended to use them to make a false claim for refugee status in Australia. He had actually abandoned this intention but had nonetheless retained the copy stickers, thinking they were somewhat unimportant. The appellant was questioned twice by the SIS in prison and once subsequent to his release from prison about these stickers. He was generally uncooperative and would not talk to them while he was in prison, though was somewhat more forthcoming after his release. They asked him if he was a Muslim extremist, which he denied. He said he was a normal Muslim and was just doing business here, buying and selling cars, as well as a kitchen job.

Apart from his conviction in New Zealand, the appellant accepted that he had the following criminal record in Germany:

1. Conviction on 29 March 1993 for libel (insult) and fined DM50. The appellant said he was walking in the street when he was shunted by a man driving a car. They exchanged verbal insults and when the other man brought in reinforcements, the appellant fled.
2. Conviction on 21 December 1993 for theft and fined DM300. The appellant said he was cold and stole a jacket from a shop.
3. Conviction on 18 February 1994 for attempting to free prisoners and grievous bodily harm. The appellant said he was in court when two prison guards beat an Algerian who had been convicted and sentenced to 14 months imprisonment. The appellant tried to intervene but was pushed away by the guards. Two or three days later, the appellant was arrested. It was alleged he had tried to free some prisoners and had beaten someone in court. The appellant says this was not true but he was convicted by the judge. He was fined DM1,200.
4. Convicted on 12 April 1995 of libel (insult) and fined DM150. The appellant asked a policeman, who had stopped him for driving through a red light, if he was a Nazi.
5. Convicted on 21 May 1996 of fraud with forgery of documents in two cases, resistance towards enforcing police officer, including bodily harm and forgery

of documents. Sentenced to one year's imprisonment, suspended, and four years probation. The appellant said he used someone else's credit card to buy jeans but was caught by the police at a checkpoint in a train station. He said the police beat him and he acted in self-defence. The appellant said he had used a credit card in this way two or three times. The court documents from Germany show that he had bought a watch, six pairs of jeans and two shirts with stolen credit cards.

The appellant advised he had no other convictions.

The appellant said that his family do not currently have any problems with the authorities in Algeria but they would have if he went back.

The appellant's wife also gave evidence. She knew nothing of his problems in Algeria as she had not met him until 1991. She knew nothing of his business interests in Germany and very little about his extensive travelling, except that he was always looking for a country to live in. Sometimes she travelled with him overseas. She was not aware that he had ever travelled on a false passport, apart from entering New Zealand on a false passport. She confirmed that he was concerned about his visit to the embassy in Berlin and was not "panicky" after he obtained his passport. She believed he had been treated badly by German immigration authorities. She said the appellant had withdrawn his refugee appeal since, if he had remained in Germany as an asylum seeker, he would not have been able to go outside F and could not work, at least legally. She thinks he will not be entitled to further residence in Germany because of his convictions. The appellant told her he bought the copy GIA stamps in Bangkok. She finds it ridiculous that it is suggested he was involved in a terrorist organisation.

The Director of the SIS wrote to the RSB on 17 February 1997 outlining their "security concerns" regarding the appellant. The letter refers to his stolen Italian passport and what is said to be his false claim that he purchased it in Thailand. As to the GIA stickers, it is stated that the appellant claimed in court in New Zealand that he was a member of the FIS, though had denied being a member of the GIA and being in possession of GIA emblems. He is alleged to have admitted that the only reason he applied for refugee status was that he was caught with a false passport. The SIS state their belief that the appellant has connections with the GIA. They make reference to his criminal record, including passport fraud. The SIS records that it has "substantial security concerns" as to the appellant

remaining in New Zealand. A list of criminal convictions is enclosed with the letter. It is substantially similar to the official German record made available to the Authority and which is undisputed. It does, however, record a conviction for violation of the Narcotics Act on 25 March 1993. The appellant denies any involvement with drugs and the Authority records that the official records make no reference to any drugs conviction. The Authority places no reliance on the reference to a narcotics offence in this document.

After the hearing, counsel for the NZIS/RSB arranged, through the Ministry of Foreign Affairs, for the German authorities to provide advice as to the appellant's legal status in Germany. It was provided on 24 March 1999 and confirms that the appellant no longer possesses any residence permit for Germany. The opinion of the German Ministry of the Interior is inconclusive as to his right of entry and states that it would be dependent on a large number of parameters. The only way of achieving certainty, it is said, would be for the appellant to apply for a visa at the time he wishes to re-enter Germany.

The appellant submitted an analysis of the GIA emblems by a New Zealand resident medical doctor with 20 years experience as an Arabic translator. He comments on what he regards as clearly identifiable mistakes in the characters which, in his view, are written very poorly. Some of the characters are not identifiable to him or at all comprehensible. In response, counsel for the NZIS/RSB produced a letter from the SIS to the RSB (dated 4 December 1998) in the following terms:

“With respect to the suggestion that the GIA stickers are not genuine, we have checked with an overseas liaison service which has confirmed that the markings on the emblem are Arabic, and translate as ‘Armed Islamic Group’. The GIA is composed of several different factions, each with its own emblem. Whilst our interlocutors had not seen crossed swords before, this did not mean that the stickers were not genuine. Crossed swords are a common sign supporting ‘Jihad’, or armed struggle”.

The appellant fears returning to Germany, not because of the prison sentence awaiting him there, but due to the risk of deportation from Germany to Algeria and the fate awaiting him in his home country. He fears arrest and imprisonment for a lengthy period, possible torture and maybe even death, as a consequence of the Pakistan visa in his old passport.

The Authority has been assisted by counsel's written (20 November 1998, 27 April 1999) and oral submissions and the country materials and other documentary

evidence filed in support of the appeal, all of which have been considered by the Authority. The appellant also submitted a video on the Algerian situation up to until approximately 1992. This was viewed by the Authority as general background.

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 (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

The first issue for the Authority to address, prior to considering the framed issues, is the credibility of the appellant. The Authority concludes that the appellant is an unreliable witness, whose evidence is not to be believed, except where corroborated by apparently independent documents. Furthermore, the appellant's wife is no more reliable than the appellant himself. The Authority found the witnesses to be vague, evasive and inconsistent. It is noteworthy that the appellant has a long history of false refugee claims and the use of fake passports, which is considered in more detail later. We found the appellant to be a person who will create a story or provide an answer which he perceives suits the instant purpose.

In concluding that the appellant's evidence is not to be relied on, the Authority takes into account the following (which are not exhaustive of the many

inconsistencies and other unsatisfactory aspects of the appellant's evidence):

1. The appellant told the Authority that he worked in Pakistan as a hospital orderly and did not "really" drive an ambulance, except one or two times. Nor was he trained as an ambulance driver. In his statement (dated 25 November 1997) submitted in support of his refugee application, he claims to have worked for the Red Crescent driving an ambulance. He told the RSB at his interview on 11 June 1998 that, while he did not spend much time driving ambulances initially, he did later on. The appellant's explanation for this discrepancy was that this is what he was appointed to do but when he got to Peshawar he found he was employed as a hospital orderly. The Authority does not accept this. The appellant's statement is quite detailed and was obviously prepared by counsel with some care. In it he claims he was "working...driving an ambulance". He said the same to the RSB.
2. The appellant claimed to have been working for a Red Crescent hospital in the Peshawar region in Pakistan. He says he registered with the Red Crescent in London and reported to them in Peshawar upon arrival, where his identity card was issued. However, the Pakistan Red Crescent National Headquarters advised the NZIS on 26 May 1998 that the appellant has never served as an ambulance driver with the Pakistan Red Crescent at Peshawar at the relevant time, and that other NGO's operating in Peshawar had also been contacted but could not find his name in any organisation. In explanation, the appellant initially said that the Red Crescent would have deliberately provided false information and, furthermore, they were not well organised and may have made a genuine mistake. The Authority can see no reason why they would deliberately have provided false information to the NZIS, nor was any reason advanced by the appellant. While it is possible that a genuine mistake could have been made, given that the appellant was there (according to him) almost ten years ago, the Authority does not accept this explanation in this case given all the other inconsistencies and other unsatisfactory aspects of his evidence.
3. The appellant said in his statement submitted to the RSB (dated 25 November 1997) that when he went to the Algerian embassy in Berlin he was told that he was "in a lot of trouble" and they would not give him a passport. At the end of this visit, he "absolutely panicked" and "tried everything I could to find another place to live safely", going to Turkey and Syria but

unfortunately was unable to get a job in any of those countries. His evidence to the Authority was different. He said he was not told that he would not get a passport and at the end of the interview, when he had his passport, he was "very happy". The Authority asked him whether the officials said he was in trouble, his reply being "not really". When these discrepancies were put to the appellant, he modified his evidence. He said that initially they said they would not give him a passport but after he explained everything, they changed their mind. He also now said that they did tell him he was in a lot of trouble. It was also the appellant's evidence to the Authority that, once he had his passport on leaving the embassy, he stayed one or two days in Berlin before returning to F. He could not remember how long after obtaining this passport was his next trip out of Germany, nor where he went, though he thought it was to Tunisia to see his mother. As to his earlier statement that he "absolutely panicked" and tried everything to find another place to go to, his explanation was that he was happy to get the passport but as he was afraid for his family in Algeria, he went to many countries to try and find somewhere to live. He added that the statement did not say everything. It is clear that the appellant's description of the visit to the Berlin embassy and his reaction to it given to the Authority is wholly different from that given in his statement. Furthermore, the mobility of his evidence when faced with an inconsistent previous statement further establishes the falsity of his story.

4. It was the appellant's evidence that, at the time of the detention of his brother (which his mother told him about in 1996), the police visited the family only once, questioning them as to the whereabouts of family members and taking his brothers away. They did not return. He did not know of any visits by the authorities, apart from the police. In his second refugee application, submitted by his present counsel, the appellant says that in 1996, the security forces visited several times before his father's death in 1996 and "many times" subsequently. When asked to explain this discrepancy, he said what was recorded in the application was not true. He accepted that much of what he told counsel was not true because, he said, he was in prison then and was "not in a normal condition" and "not that relaxed". But he was telling the truth to the Authority, he added. Once out of prison he had a "testament with God and counsel".
5. The appellant "thinks" that "maybe" his brother was arrested because of him, though he was "not sure". He said the police asked about his whereabouts at

the time. It is clear though that (assuming this incident is true) his brother was arrested during a general round-up of young men, following the death of a policeman nearby. The questioning concerning the appellant's whereabouts seems to be related to the desire of the police to locate all family members. The appellant's evidence was itself quite tentative and the Authority finds that the arrest of his brother has no sinister overtones, at least so far as the appellant is concerned. It is implausible that, about five years after the appellant was himself detained (the appellant was told of his brother's arrest in 1996, though he does not know when it occurred), this event had any sequel in the detention of his brother, particularly given that on no other occasion have the authorities in Algeria expressed any interest in the appellant. Had the appellant genuinely thought that this incident related to police interest in him, he would at, the very least, have found out from his mother when it occurred. His vagueness shows that the incident either did not occur, or if it did, was of no significance to the appellant.

6. It was the appellant's evidence that he bought the sheet of GIA labels in Kuala Lumpur, yet counsel says in his letter of 22 June 1998 to the RSB that the appellant had bought them in Bangkok. The appellant's wife thought he had told her he brought them in Bangkok. The appellant did not know whether this was a mistake by counsel or whether he had actually said this to him. Counsel submitted it might be his mistake but this cannot explain the wife's evidence. While not, of itself, particularly material, it shows, once again, that the appellant's evidence is unreliable.
7. It is of note that the appellant is a person with a history of making false refugee claims and using false travel documents. The appellant travelled to New Zealand, and earlier to Singapore, on a false Italian passport. He also had with him in New Zealand, a false Italian identity card and false Italian driver's licence. He said that he had previously had another false Italian passport (the New Zealand police wrote to the Authority on 27 August 1998 advising that Interpol had advised them the appellant had had in his possession a false Italian passport in the name of FZ when he was arrested in July 1995 for fraud, leading to his convictions in May 1996). He has also travelled on false Dutch and Spanish passports. His brother arranged false Turkish and Bulgarian stamps in his Algerian passport. He made a false refugee claim in Germany, despite having had no fear of returning to Algeria at the time. He claims to have had a genuine fear about two years later, after

the 1991 visit to Algeria. According to the appellant, he purchased the GIA emblems to make a false refugee claim in Australia that he was being pursued by GIA. The story he gave his immigration consultant when he made his first refugee claim (on 10 September 1997), including his statement dated 10 September 1997 was, he concedes, false. He then instructed counsel, who impressed upon him the importance of giving truthful evidence. However, it is clear that his initial instructions to his present counsel in relation to his second application (made on 30 October 1997) and his supporting statement of 25 November 1997, also included falsehoods. He admitted that he had told many untruths to counsel because, he says, he was in prison. He was adamant though, that his evidence to the Authority was truthful. The Authority finds otherwise. The appellant has a marked propensity to invent stories, bolstered by false travel, identity and other documents, to suit his purposes and his present claim to the Authority is no different.

8. The Authority does not accept that the appellant has any genuine fear of death or persecution at the hands of the Algerian authorities, said to arise from his detention in Algeria in 1991, nor that he left Algeria in 1991 due to “problems” faced by himself and his family.

He claims to have left Algeria following his father’s advice that the family had unspecified “problems”. Yet he does not know what these problems were, except that they did not relate to his Pakistan visa. If the appellant really did depart his homeland involuntarily, for the last time, he would surely know why.

The appellant also alleges that, when he returned to Germany, he pursued his refugee claim with renewed vigour because, following the visit to Algeria, he had a genuine fear of returning there again (the appellant admitting that the refugee claim in Germany was originally false, being filed at a time when he had no such fear). However, the appellant’s abandonment of this claim is consistent only with the absence of any real fear and is inconsistent with the claimed existence of such a fear. His reasons for withdrawing his refugee appeal were not compelling. It was primarily to avoid restrictions on his travel and work, as the German authorities had held his passport while he pursued his application. Additionally, he intended to pursue a temporary residence application based

on marriage which, four years later, could have led to permanent residence. He needed his passport for this also. Such restrictions, though, plainly did not hinder the appellant either in travelling or in maintaining his lucrative trading business. Even if he did regard the restrictions as a problem, a person genuinely in fear of his life will use every opportunity to obtain protection. While he may have intended to pursue residence on the grounds of his marriage, he took a chance in giving up his refugee claim and subsequently travelling out of Germany. This is not the conduct of a person in grave fear of his life.

While the appellant describes life in Germany as a refugee as “without a future” and asserts that he was travelling *inter alia* to find a sanctuary, he made no inquiries anywhere about obtaining asylum in any of the countries he visited. He travelled extensively, particularly in the period from 1995 to 1997, to numerous European, Arab and Asian countries, yet he made no refugee claims. Most of the countries recognise refugees or have UNHCR offices (including Singapore and India). Counsel points out that some of the European countries are parties to the Dublin Convention, whereby the state responsible for determining refugee status is the first state in which the applicant applied (in this case Germany) and other states may remove an applicant for asylum to that first state. He puts this forward as a reason for the appellant not applying for refugee status in some of the European states. However, this is not a reason given by the appellant for not applying.

Even when he came to New Zealand, he did not apply for refugee status until arrested upon attempting to leave this country. The appellant's explanation was that “it is not good to apply”. As to why he did not apply when he first came into New Zealand, he said it was his idea to go to Australia and apply there. He was told it was difficult here. The Authority suggested to the appellant that his failure to make refugee applications on his frequent travels suggested that he had no fear of being killed or otherwise persecuted. He did not agree with this. He claimed not to have thought about taking every opportunity to provide for his safety. In some countries he claimed one could not apply, though he never made any enquiries himself. The Authority finds that the appellant has no genuine fear of death or persecution at the hands of the Algerian authorities, arising from the visa in his passport and the incident in 1991. Had he had a

genuine fear, he would have made greater efforts in the ensuing seven years to obtain asylum.

The Authority did not find the appellant's wife to be any more reliable than the appellant himself. Her evidence as to the appellant's business in Germany was evasive. She persistently claimed not to know what the appellant sold, where in Frankfurt he conducted his trading or how he found his customers. She said she trusted him. His wife initially claimed not to know whether he had ever travelled on a false passport and told the Authority that he had never said to her that he had travelled on a false passport. She thought he had travelled to New Zealand on his Algerian passport. When it was pointed out to her that he had posted his Algerian passport to her while enroute here, she accepted that she was aware that he had used a false passport to come here. She explained that she had forgotten to tell the Authority about his use of a false passport to get to New Zealand. She claimed, though, to be unaware of any other occasions on which he used false passports.

The Authority accepts certain parts of the appellant's evidence, where it is corroborated by documents. It is accepted that he is an Algerian who went to Pakistan in 1989 and has a Pakistan visa on an earlier passport. It is also accepted that he returned to Algeria twice, though we do not accept that he was ever in trouble with the Algerian authorities on either occasion due to the Pakistan visa. Nor is it accepted that he had any real problems with the Algerian authorities in Germany in renewing his passport. The Authority finds that he came to New Zealand to avoid imprisonment in Germany and not deportation to Algeria. If he had any real fear of returning to Algeria, it would have manifested itself in an earlier claim (or claims) for refugee status on one of his frequent trips outside Germany and he would not have abandoned his claim in Germany.

The appellant's story, shorn of all its embellishments, is of an Algerian with a Pakistani visa in an earlier passport. He was briefly detained, though not mistreated, in 1991 because of the visa. The Authority must now assess whether this puts the appellant at risk of persecution in Algeria, given that he may not have a right of residence in Germany and may be deported there in view of his criminal record in Germany. The assumption will be made, as unlikely as it is, that if the appellant returned to Algeria the authorities would, sooner or later, identify him as a person who had earlier been to Pakistan. This is somewhat unlikely, given that his current passport does not have such a visa, and there is therefore no reason

why he would come to the attention of the authorities if he was to return.

The background to an assessment of the risk of persecution to the appellant must be the poor human rights record of the present military backed Algerian regime, since the civil war erupted in early 1992 between the regime and militant Islamist groups such as the GIA. The human rights violations include numerous arbitrary arrests, torture, disappearances and extrajudicial executions by the various armed groups and the security forces. Thousands (perhaps tens of thousands) of civilians have died in the conflict, along with many thousands of terrorists and members of the security forces. The violations, including massacres, have continued, at least until 1998.

Foreign Affairs (Addi) Algeria's Army, Algeria's Agony July/August 1998

Human Rights Watch Algeria's Human Rights Crisis August 1998

International Herald Tribune UN Study of Terror in Algeria Stirs Up a Storm 17 September 1998 p 2

Guardian Weekly Fear as Algeria's leader quits 20 September 1998 p 4

United States Department of State Country Reports on Human Rights Practices for 1998 (April 1999) pp 1621-1643.

Turning now to the risks pertaining specifically to the appellant arising out of his Pakistan visa, Dr Larbi Sadiki of the Centre for Middle Eastern Central Asian Studies at the Australian National University, provided this advice to the RSB (on 22 May 1998):

"The Afghan conflict with the former Soviets was almost concluded in the year 1989. Activities by the so-called "Arab-Afghans" in Afghanistan ceased long before 1989. Training and fighting by Arab volunteers, mostly sponsored by the Saudi Ousama bin Laden, were intensive mostly during the years 1982-1988. The person in question seems to me to be a later comer into the Pakistani scene, i.e. in 1989... If driving an ambulance was no more than a job, involving no illegal or surreptitious activities, it should be easy to defend, especially if the person in question has no history with the Islamists or the Afghans. The main Islamist movement in Algeria itself was not fully organised until 1989. His absence of the country since 1989 should not make him subject to state suspicion. That is, his links with the Islamists at home are non-existence. What worries regimes in Cairo and Algiers is the combination of Afghani and home-based Islamists connections. In this case, the second link in the chain is missing. Or is it?" (emphasis added)

The risk of persecution comes from the co-existence of two factors, a connection with Afghani Islamists (a suspicion which could be raised by his presence in Pakistan) and links within Algerian Islamists. It is the latter which is missing here. He has never had any links with Islamists in Algeria and indeed, was not living in

Algeria in the lead up to the elections in December 1991 and January 1992, nor during the clash between the authorities and the Islamists which occurred sporadically in 1991 and escalated into widespread violence in early 1992, with the cancellation of the second round of the national elections in January 1992. As to even the first factor, a connection with Afghani Islamists, the Authority notes that the appellant was not in Pakistan until the end of the war with the Russians in Afghanistan (the Soviets had left Afghanistan by February 1989). This, coupled with his official hospital work for the Red Crescent (as he claims), makes it even remote that the Algerians will be suspicious of his presence in Pakistan. In other words, even the first factor appears somewhat speculative in this case, or, at least, “easy to defend”, as Dr Sadiki says. The appellant was able to defend this visa when detained briefly in 1991 and, while the civil war did not break out in earnest until 1992, after this visit, the Authority finds that the appellant can expect to be questioned again as to his visit to Pakistan but will not be at risk of persecution.

The appellant has no faith in Dr Sadiki. He says he is not an Algerian and “will not have too much information about Algeria” which, he says, remains dangerous for him. In the absence of country information to the contrary, the Authority accepts Dr Sadiki’s opinion.

Counsel cites the decision of the Australian Refugee Review Tribunal in N97/20357 (6 January 1998) where refugee status was granted to an Algerian supporter of the FIS who had spent some years in Pakistan in the period from 1989 to 1994. He had been refused a passport by the Algerian embassy in an Asian country. The Tribunal was satisfied that the asylum seeker in that case was at risk *inter alia* as a result of his employment as a professional in Pakistan, treating Afghan Islamic refugee camp residents. The Authority finds the facts of this case far removed from that of the appellant in our case. The refugee in the Australian case was an active supporter of the FIS, he had been in Algeria supporting the FIS election campaign in 1991 and 1992 and his support was public knowledge, the Algerian authorities had refused to renew his passport and the security forces had been to the family home in Algeria looking for him and his family there had been questioned about him. In that case, not only is the second factor identified by Dr Saidki present (the link with Algerian Islamists), but the security forces had already shown interest in him.

The Australian Tribunal had advice from the Australian Department of Foreign Affairs and Trade (DFAT) and from Dr Sadiki. A DFAT report dated 7 November

1997, as quoted by the Tribunal states:

“An Algerian who resided or worked in Pakistan would not automatically be targeted by the Algerian authorities on her/his return to Algeria. It would depend on what exactly s/he was doing in Pakistan...”

Dr Sadiki in his advice dated 7 November 1997 said:

“Residence in Pakistan, no matter how prolonged, does not on its own constitute a tangible ground for regime persecution for Algerian nationals.

The reasons being the following:

Firstly, emigration is not a crime in Algeria, a country with some 2 million expatriates and

Secondly, Pakistan is neither a “rogue” state nor one of those states suspected of harbouring “terrorists”. Accordingly residence in it is not a liability;

Thirdly, in the mid-1990s, Pakistan cooperated with Arab governments by either expelling or handing over those dubbed in many of the Arab state-owned media as “Arab Mujahideen”, many of whom partook in neighbouring Afghanistan’s war against the former invading Soviets. Those handed over or expelled were described as “fundamentalists” who constituted imagined or actual “threat” to the security of Arab regimes, especially those facing Islamist opposition at home, namely, Egypt, Algeria, Tunisia, etc.;

Fourthly, If an individual concerned has not been placed in a kind of a “black list”, is not “wanted” by the authorities, and his relatives or immediate family members report no such occurrences, then he or she faces no danger to his/her life or freedom that necessitate sanctuary or refuge”.

The fact that the appellant’s passport was extended for five years, without payment of a bribe, and with little difficulty (as we find), in October 1996, also indicates that the Algerian authorities have no interest in him. The appellant claimed that German authorities and German lawyers could, by virtue of his marriage to a German national, create problems if the Algerians had refused to renew his passport. He thought the German authorities might be able to insist that he be given an Algerian passport. Clearly, the issue of an Algerian passport is a matter solely for the Algerian authorities. He also thought they might be tricking him into thinking there was no danger for him in Algeria. A far more likely explanation, in the Authority’s view, is that there is in fact no danger.

In summary, all these factors point to only the remotest chance that the appellant would be at risk of persecution upon returning to Algeria, namely; the existence of the visa in a former (not current) passport, the absence of any links with Algerian Islamists, his presence in Pakistan at the end of Soviet involvement in the Afghan war, his official work for the Red Crescent there (as he claims), the absence of any

real problems for him when he returned home in 1991, the absence of any interest in him by the Algerian authorities since 1991 (such as harassment of his family) and the relative ease with which he renewed his passport in October 1996. This is so despite the poor human rights record of the military under the present regime. It is clear from Dr Sadiki that not every Algerian who has been to Pakistan faces a real risk of persecution upon return to Algeria. The Authority finds that this appellant does not.

EXCLUSION

Article 1E

Article 1E of the Convention states:

“This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.”

This issue arises in relation to the appellant’s marriage to a German national and his earlier right of residence in Germany. However, it is clear from the advice from the German Ministry of the Interior that the appellant has no present unconditional right of residence there. Article 1E is therefore inapplicable.

Article 1F

As to whether the appellant has links with the GIA, as feared by the SIS, due to his possession of GIA labels, the appellant eschews any such association. He explains his possession of them by reference to a false refugee claim he intended to make in Australia. The Authority notes the comments of the experienced translator as to the amateurish nature of the labels evidencing their lack of genuine origin. There is some force in this argument, particularly when regard is had to the appellant’s history of making false refugee claims. Even if the emblems are genuine, as suggested by the SIS, this does not mean that the appellant sourced them from the GIA itself. His story that they were purchased in a market, whether in Kuala Lumpur or Bangkok, could still be true. Significantly, there is no other evidence pointing to the appellant having any links with the GIA. The fact that he appears to have easy access to false travel and identity documents does not point to links with a terrorist organisation. The Authority will give the appellant the benefit of the doubt and accept that he has no such links. Accordingly, it cannot

be said that there are “serious reasons for considering” that the appellant has committed a crime against humanity. There is therefore no issue as to exclusion under Article 1F(a) of the Refugee Convention for a crime against humanity.

Article 1F(b) provides that the Convention shall not apply to:

“any person with respect to whom there are serious reasons for considering that... He has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee”.

The appellant has five sets of convictions in Germany, the most serious being convictions in February 1994 for attempting to free prisoners and for attempting to free prisoners and grievous bodily harm and in May 1996 for fraud and resistance towards the enforcing police officer, resulting in bodily harm. In respect of the latter conviction, the Authority notes that the relevant German authorities have sought to activate his suspended prison sentence because he did not undertake the required community service due, the appellant says, to a medical problem.

The appellant’s crimes are plainly “non-political”. The issue that arises is whether they are “serious”. The UNHCR says that a serious crime “must be a capital crime or a very grave punishable act”; UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (January 1992) para. 155. This is cited, without comment, by the Authority in Refugee Appeal No. 29/91 (17 February 1992) (at p.23). In that case, the Authority considered that the appellant’s participation in implied threats against villagers (where the appellant carried a firearm) and a shooting in which at least one person was hit (it was not known whether the villager was killed or what injuries were inflicted) was a serious crime. In another case, the Authority has held that murder or being a party to murder, is a serious crime; Refugee Appeal No. 70432/97 (7 May 1998). In the opinion of Professor Hathaway, a leading academic writer in refugee law, this exclusion refers to crimes which ordinarily warrant severe punishment, thus making clear the Convention’s commitment to the withholding of protection largely from those who have committed truly abhorrent wrongs; The Law of Refugee Status (1991) p.224. Another respected academic writer, Goodwin-Gill, says that “serious crimes, above all, are those against physical integrity, life and liberty”; The Refugee in International Law (1996) p.105.

There has been some discussion in academic writings and cases in other jurisdictions as to whether there exists a proportionality test (balancing the

seriousness of the offence with the gravity of persecution upon return) but this has recently been dismissed by the Court of Appeal, which made the following observation on determining the seriousness of the crime:

“Whether a crime is to be categorised as serious is to be categorised as serious is to be determined by reference to the nature and details of the particular offending, and its likely penal consequences. It does not depend upon, nor does it involve, a comparative assessment of its own gravity with the gravity of the perceived persecution if return to the homeland eventuates”.

S v Refugee Status Appeal Authority [1998] 2 NZLR 291, 300 per Henry J.

The Court of Appeal favours a restrictive interpretation of “serious”. In agreeing with the view of the Authority (in the decision under review) and the High Court that the appellant's participation in aggravated robberies and one shooting in that case were serious, the Court held (*ibid* p.296):

“We are not persuaded that there was any reviewable error in the finding by the Authority, endorsed in the High Court, that these were serious crimes of a category envisaged by Article 1F(b). There was ample justification for so viewing them. In reaching this conclusion we have not overlooked Mr Ryken's submission that proper weight must be given to the Convention's use in the French text of the term “crime grave”. We agree that the exclusion is directed to offending in the upper end of the scale, which is likely to attract a severe penalty, at least in the nature of imprisonment for an appreciable period of years. It is impossible to be any more precise, but the general intention is clear, and in the New Zealand criminal jurisdiction it can safely be said that a crime which is described as serious will be a “crime grave”.”

Turning to the facts of the present case, it is clear that the appellant's convictions for libel (insult) and theft are irrelevant to this issue.

In February 1994, he was convicted for attempting to free prisoners and grievous bodily harm. The only evidence we have of the physical harm inflicted is the appellant's who said he was convicted of “beating” someone. While the Authority does not know the maximum penalty under German law, it must have regard to the actual punishment, which was a fine of DM 1,200. Accordingly, this cannot be categorised as a serious crime.

The appellant was also convicted in May 1996 of fraud (including forgery) and resistance towards a police officer (including bodily harm). According to the official German court record, the appellant punched and kicked the arresting officer, resulting in a broken nose to the officer. He was sentenced to one year's imprisonment (suspended) and four years' probation. The German authorities have sought to activate his prison sentence as he did not complete the required

community service. Given the relatively modest bodily harm occasioned and the suspension of the prison sentence (which was not lengthy), the Authority finds that the crime was not so “serious” as to warrant exclusion under Article 1F(b) of the Convention.

CONCLUSION

The Authority disbelieves the appellant's story, except to the extent that he is an Algerian with a Pakistan visa in a former passport. The Authority finds that there is no real chance of the appellant suffering persecution as a result of this visa should he return to Algeria. The Authority does not accept that he has a fear of persecution and, even if he does, it finds that it would not be well-founded. Issue No. 1 is thus answered in the negative.

For the above reasons, the Authority finds 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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Member