

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76080

AT AUCKLAND

<u>Before:</u>	B A Dingle (Member)
<u>Counsel for the Appellant:</u>	I Uca
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	1 & 27 August 2007
<u>Date of Decision:</u>	14 November 2007

DECISION

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

INTRODUCTION

[2] The appellant arrived in New Zealand on 28 February 2007. He claimed refugee status at the airport and, after being interviewed by an immigration officer, a decision was made to detain the appellant pursuant to s128 Immigration Act 1987 ("the Act") because he had neither appropriate documents for immigration purposes nor any appropriate identity documents.

[3] On 2 March 2007, the RSB received the appellant's Confirmation of Claim form, dated 1 March 2007. The appellant was interviewed by a refugee status officer on 1, 2 and 5 April and 1 May 2007. A decision declining the grant of refugee status was published on 14 June 2007 and it is against that decision that

the appellant now appeals to this Authority.

[4] The appellant is a married man in his mid-20s who holds Chadian nationality but was born and has lived his whole life in Saudi Arabia. His wife, who is also Chadian, and his three children, remain living in Saudi Arabia. The appellant claims that he cannot return to Saudi Arabia because he does not have valid residence status and, furthermore, that because he has committed identity fraud there in the past, he will be arrested and given unduly harsh treatment on account of his past immigration and identity fraud offences.

[5] The appellant also claims that he cannot return to Chad for the following reasons:

- (a) he has never lived in Chad before;
- (b) he may be pursued by the authorities in Chad for being the nephew of somebody who opposes the ruling Chadian regime;
- (c) he is a member of the same tribe as the former President, Hissène Habré, and may therefore be subject to negative attention;
- (d) he may be extradited to Saudi Arabia on charges relating to identity fraud;
- (e) he may be forcibly conscripted into the army in Chad; and
- (f) he may be interrogated, detained and suffer serious harm as a consequence of returning without documentation to Chad.

[6] Both the credibility and the well-foundedness of the appellant's claim are determined in this decision.

THE APPELLANT'S CASE

[7] In the course of presenting his claim to refugee status, the appellant has advanced three different accounts of the grounds of his claim. What follows is a summary of the three accounts. A credibility assessment of his third account, upon which he now bases his claim to refugee status, follows later in the decision.

The first account – presented at the airport and (initially) to the RSB

[8] The appellant's first account was that he was born in November 1990 and that he had lived his entire life in Chad with his father, mother and brother. His father was a successful merchant and the family was wealthy. Although his father did not participate directly in political activities, he had expressed anti-regime sentiments in discussions with friends and associates. Because of those political expressions, the appellant's father was arrested in 2004 and was detained until late 2004 or early 2005, at which time he died in detention.

[9] In response to the father's death, the appellant's older brother became involved in politics and wrote articles describing the situation in Chad, which he published on a website. The appellant also began writing articles commenting on social and political issues. Together with another friend, the two brothers founded a newsletter publishing information relating to the political and social situation in Chad.

[10] In May 2006, the authorities visited the appellant's home in pursuit of his brother. When they found the brother was not at home, they threatened to take the appellant until the appellant's mother intervened and the authorities left. In fear of the appellant's safety, the appellant's mother advised him to go immediately to a relative's house to avoid any further difficulties.

[11] Within a short time, the authorities returned to the house in pursuit of the appellant's brother. When they found that neither the appellant nor his brother were at home, they arrested the appellant's mother and were still detaining her at the time of the appellant's first RSB interview. Meanwhile, one of the appellant's uncles arranged for him to be smuggled through Sudan to Saudi Arabia where the appellant was to be looked after by another uncle. When he arrived in Saudi Arabia, the appellant approached the authorities, hoping to receive a residence and work permit. Instead, he was detained as an illegal immigrant and was only released after his uncle bribed the officials.

[12] In December 2006, the appellant travelled to Dubai and stayed there for another two months before beginning his journey to New Zealand.

[13] The details of this claim were presented during three half-day interviews with the refugee status officer. Because the appellant was, at that time, claiming to be an unaccompanied minor, he was interviewed for only three hours at a time, in accordance with RSB procedures. On the third day of the RSB interview, when he was presented with photographs taken from the laptop computer he had

brought with him to New Zealand, and which indicated that he had worked at a computer facility in Saudi Arabia, the appellant indicated that he wished to submit a revised written statement, making a number of substantial changes to his evidence. That statement and the subsequent RSB interview comprise the second version of the appellant's case.

The second account – presented to the RSB and (initially) on appeal

[14] In late 1981, the appellant was born in Al Medina, Saudi Arabia, to Chadian parents. He was born in Saudi Arabia because, at the time, his parents were performing *Umrah* to Mecca. He returned with his parents to Chad 40 days after his birth. The appellant's father had a real estate business and his mother was an English teacher. The appellant had one younger brother. The family lived in Chad's capital, N'Djamena. For the purposes of this appeal, the appellant's early life was unremarkable.

[15] In early 2000, the appellant's father was arrested and accused of funding an anti-government movement led by Mohammad Nouri. The appellant's family did not believe the father was involved with this group, although he had been known to express political opinions about the Chadian regime. About two weeks later, the appellant's mother was also arrested and detained for approximately seven months. As a result, the appellant was advised by an uncle that he should leave Chad to avoid negative attention from the Chadian authorities. His uncle helped the appellant to travel to Saudi Arabia, where he had other uncles with whom he could stay.

[16] In approximately April 2000, the appellant travelled to the border of Sudan and was taken by a people-smuggler to Saudi Arabia. After arriving in Saudi Arabia in May 2000, the appellant was arrested by deportation department officials and was released after his uncle (resident in Saudi Arabia) heard about his detention and paid a bribe to the officials.

[17] In approximately 2001, the appellant discovered that his father had died while in custody. Both the appellant and his brother, who had also moved to Saudi Arabia, were extremely upset and their father's death spurred them on to write political commentaries and articles which they published on the internet.

[18] In 2001, the appellant bought a Saudi identity card so that he could work while there. In 2002, the appellant attempted to regularise his immigration status

and so applied for a Chadian passport which was issued to him from the Chadian embassy in Saudi Arabia.

[19] In 2002, the appellant married his wife who was also a citizen of Chad. Also in 2002, the appellant continued to try and gain a legal work permit in Saudi Arabia, but was unsuccessful. In the course of his attempt, he had submitted his Chadian passport to his employer but, when he was unable to secure legal status to work in Saudi Arabia, he did not bother to uplift his passport. Over the course of the next few years, the appellant used two different Saudi identities in order to find employment. He had no particular difficulties in doing this, although he was threatened by a Chadian national who wanted to borrow money from the appellant that if he did not oblige, the Chadian would report him to the authorities.

[20] In early 2006, the appellant was unable to continue his employment because his Saudi identity card was due to expire. In approximately the middle of 2006, he obtained a false Saudi Arabian passport under another Saudi Arabian identity. The appellant's own photograph was on the passport and for a few months, the appellant worked under this identity.

[21] By the beginning of 2007, the situation for Chadians who did not have legal residence status in Saudi Arabia had become extremely precarious. The threat of being arrested and deported, combined with the difficulties in finding sufficient employment, caused both the appellant and his brother to leave Saudi Arabia. The appellant departed Saudi Arabia using the false Saudi passport and flew to Dubai. Although he considered staying in Dubai, he realised it would be difficult to do so without the proper documentation. Instead, he made arrangements to travel to New Zealand.

[22] At the RSB interview, the appellant said that he had initially claimed to be an unaccompanied minor because he was frightened of being detained in New Zealand or deported back to Saudi Arabia. He stated that he did not know the whereabouts of his brother but knew that his mother was living in a small village in eastern Chad with relatives and was no longer working.

[23] It was on the basis of this account that the RSB determined his claim. A version of this account was also presented to the Authority at the hearing on 1 August 2007. However, when the Authority questioned the appellant as to why his father's name appeared on the appellant's resident permit for Saudi Arabia, dated 2003, when the appellant had claimed in both previous accounts that his father

had been dead for some years, the appellant admitted that his father was alive and living in Saudi Arabia with a second wife and family. At that point, after a short discussion with his lawyer, the appellant indicated that he wished to present a further, fresh claim based on new evidence. At that point, the Authority requested the appellant to outline a summary of his new claim and then the hearing was adjourned so that counsel could take further instructions and a written statement could be completed.

[24] The appeal hearing continued on 27 August 2007 at which time the third version of the appellant's account was presented.

The third account

[25] The appellant was born in 1981 in Saudi Arabia. While he was still a very young child, his parents divorced and his mother returned to live in Chad. The appellant remained in Saudi Arabia with his father and has lived there ever since. Both of his parents have since remarried; his father has four children with his second wife and his mother has four children with her second husband. The appellant also has a paternal grandmother, aunts and an uncle who live in Saudi Arabia.

[26] The appellant lived with his father until he was 14 years of age. Both the appellant and his father had irregular immigration status in Saudi Arabia and so, at some point, the appellant's father secured a false Saudi identity for the appellant so that he could attend school.

[27] When the appellant was 14 years of age, he was involved in a fight during which he assaulted another individual. As a result, the appellant was taken before a court and sentenced to 150 lashes and seven months in a supervised detention centre for minors. The appellant was processed by the court under his own genuine identity. After release from the detention facility, the appellant went to live with his uncle and grandmother in Riyadh.

[28] In 1999, the appellant applied for and was issued with a Chadian passport from the Chadian embassy in Riyadh. At around the same time, he was also issued with a "embassy card", a form of identity card, the sole purpose of which seemed to be identification at the Chadian embassy. He also obtained a birth certificate issued by the same Chadian embassy.

[29] After attending high school for two years, the appellant studied English at a language institute for seven months and also completed a computing course in 2004.

[30] Following completion of his study, he undertook various jobs, sometimes using false Saudi identities and sometimes working under his own name.

[31] In 2002, there was an opportunity for Chadian citizens in Saudi Arabia to regularise their immigration status. The appellant did so and was granted a residence permit (also known as a residence licence) for a period of approximately 10 months. The appellant's sponsor for the permit was his father and the expiry date of the permit was therefore aligned with the expiry date of his father's residence permit (in 2003). The permit did not allow the appellant to work in Saudi Arabia.

[32] Since leaving school, the appellant has used two false Saudi Arabian identities. In the first instance, he bought a Saudi Arabian identity card and worked in the name of that identity until the expiry of the card. The second false identity used by the appellant was that of an acquaintance, KK, who gave him his identity card less than a year before the appellant departed Saudi Arabia. The appellant worked under this second identity for a short time and then used it to apply for the Saudi Arabian passport on which he travelled to New Zealand.

[33] Since leaving Saudi Arabia, the appellant has become aware that KK has since reported his identity card stolen and has applied for a Saudi Arabian passport in his own identity. The appellant therefore concludes that the Saudi Arabian authorities will now be aware that the appellant has committed an offence of identity fraud and will be aware that, using that identity, the appellant has departed Saudi Arabia.

[34] The appellant fears that if he returns to Saudi Arabia he will be punished severely for his offences of identity fraud. He believes that he will be made an example of to other Chadians who may be considering adopting similar plans to depart Saudi Arabia. He believes that he will be arrested, detained, and suffer serious harm immediately on return to Saudi Arabia.

[35] As to Chad, the appellant fears that he will be at risk of being persecuted because he has never lived in Chad before; he may be pursued by the authorities in Chad for being the nephew of somebody who opposes the ruling Chadian

regime; he is a member of the tribe of the former President; he may be extradited to Saudi Arabia on charges relating to identity fraud; he may be forcibly conscripted into the army; and he will be mistreated as an undocumented returnee.

Other material received in support of the claim

[36] Prior to the hearing, under cover of a letter of 30 July 2007, the Authority received a supplementary statement (the second version of the claim) from the appellant; a copy of the appellant's marriage certificate (with translation); a copy of three pages of the appellant's mother's Chadian passport and a copy of the appellant's uncle's Chadian passport. A memorandum of counsel was submitted on 31 July 2007.

[37] During the hearing, further documents and country material were submitted including:

- i. copies of four residence permits and a driving license of the appellant's paternal uncle living in Saudi Arabia;
- ii. a residence permit for Saudi Arabia in the appellant's name for the period 16 November 2002 – 8 September 2003 naming the appellant's father as his sponsor;
- iii. a statement from the appellant, dated 21 August 2007, which set out the third account;
- iv. a further memorandum of counsel under cover of a letter of 21 August 2007;
- v. a bundle of country information, received on 1 August 2007, which included material relating to: the general security situation in Chad; the issue of forced recruitment in Chad; efforts by the Saudi authorities to suppress terrorism; the Saudi Arabian system of citizenship, residence permits and identity documents; restrictions on Chadians accessing social services in Saudi Arabia;
- vi. a decision of the RRT; and

- vii. a short article relating to a security agreement between Chad and Saudi Arabia.

[38] These materials have been considered and, where appropriate, are referred to below.

[39] Counsel sought and was granted leave to make closing written submissions, to be submitted to the Authority by 17 September 2007. They were not submitted. By way of letter on 27 September, counsel advised that closing submissions would be put before the Authority by 1 October 2007. No submissions have been received.

THE ISSUES

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

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[41] 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

[42] The Authority finds that the appellant was not a credible witness, and that his account cannot be believed, for the reasons which follow.

The changing account

[43] As noted above, the appellant has presented three different accounts of his former life and the grounds for his claim to refugee status in New Zealand. For

each account, the appellant has completed a written statement, which he has confirmed as being true and correct. For each account, the appellant has also presented detailed oral evidence (for the first and second accounts, at the series of RSB interviews and for the second and third account at the appeal hearing).

[44] When asked by the Authority to explain why he had persisted in giving two false accounts of his refugee claim, over a period of six months, the appellant stated that he did not trust anyone when he arrived in New Zealand and that he had believed that if he presented a false claim based on political grounds, he might have a chance of securing refugee status and building a new life for himself. He did not explain why, having presented the first false account, he then fabricated an entirely new claim and persisted in advancing it for some months.

[45] The Authority's concern as to the cynical presentation of three irreconcilable accounts is reinforced by the following.

[46] First, the appellant has admitted fabricating the first two accounts only when the credibility of each account has been so challenged that he has been unable to maintain it. There is no sense whatsoever that his admissions of falsehood have been in any sense voluntary or would have occurred in the absence of compelling evidence that his accounts were not credible. The Authority has no doubt that in the absence of credibility challenges by the RSB and the Authority, the appellant would have been content to continue advancing his false claims and be granted refugee status on that basis.

[47] Second, the Authority does not believe the first false account was invented to protect family in Saudi Arabia. The appellant has been reminded on numerous occasions throughout the processing of his claim that the information he provides to the New Zealand authorities is confidential and will not be passed back to the authorities either in Saudi Arabia or Chad. He has also been apprised, since the outset of his claim, of the potentially serious consequences giving false information in the processing of his claim. For example, a record of an interview of the appellant by an Airport Immigration Officer conducted on his arrival in New Zealand records that he was informed that: it was an offence to provide false information; any information he provided would be taken into consideration in assessing his refugee claim; any false or misleading information provided might affect the outcome of his refugee claim. The appellant is recorded as having confirmed that he understood this warning.

[48] Third, the Authority is not persuaded that the appellant's reasons for giving false information are genuine. His reason for the first false account was that he wanted to protect his family in Saudi Arabia and therefore did not wish to admit to being married, or having children. It would have been difficult to admit this and still maintain he was an unaccompanied minor. As noted above however, he had already been informed that information would not be passed back to the Saudi Arabian or Chadian authorities. His evidence in relation to his second account was that the Saudi authorities have no particular reason to link his genuine identity to the false passport and have not done so, so there was no reason for him to fear for the safety of his family. Furthermore, in the appellant's second account he did admit to the existence of his wife and family but nevertheless persisted with another, alternative, false account.

[49] The Authority is mindful that there are circumstances in which false evidence may be put forward which is later retracted and which may not impugn the overall credibility of the claim. However, such retractions warrant a high degree of scrutiny by the decision-maker and need to be considered *inter alia* in light of the context of the retraction (for example, whether voluntary or not), the timing of the retraction, the explanation for the false evidence having been presented, the demeanour of the witness and whether or not the false evidence goes to the core of the claim. In other words, the credibility concern raised by the presentation and retraction of false evidence must be weighed against other factors present in the evidence as a whole. In the circumstances of this appeal, there is no feature of the appellant's evidence or the presentation of his claim which persuades the Authority that despite his persistent lies, his third account should be believed.

Other credibility concerns with the third account

[50] Quite apart from the credibility concerns outlined above, the appellant's evidence in relation to his third account was unsatisfactory for the following reasons.

[51] The appellant's evidence about his immigration status in Saudi Arabia was mobile and inconsistent. At various points in the second day of the appeal hearing (during which he gave his third account), the appellant made the following assertions about his immigration status in Saudi Arabia:

- (a) Prior to getting his own Chadian passport in 2003, the appellant was included in his father's passport for residence in Saudi Arabia and after that time his father continued to sponsor him for the purposes of his residence permit;
- (b) Only people 18 years or younger are included in their parents' passports and residence permits. The appellant only had a residence permit when he was over that age and so was never included in his father's passport or residence permit;
- (c) He cannot recall when or whether he was included in his father's passport and/or residence permit;
- (d) The appellant currently has permanent residence in Saudi Arabia and his father is his sponsor;
- (e) The appellant has no residence permit in Saudi Arabia and he did not renew his expired permit in 2003 because he had a falling out with his father;
- (f) The appellant tried to renew his residence permit in 2006 but was not allowed to; and
- (g) The appellant never attempted to renew his residence permit once it expired in 2004.

[52] Similarly, his evidence as to other identity documents was mobile. For example, he told the Authority:

- (a) He has never had his Chadian embassy card or a copy thereof while in New Zealand and there was no copy of it on the DOL file;
- (b) He arrived with his Chadian embassy card and a copy of this card is on the DOL file;
- (c) He has only ever (even in Saudi Arabia) had one Chadian embassy card; and
- (d) He has had two Chadian embassy cards – the first being issued in Riyadh in 1999 and the second one issued from the Jeddah Consulate not long before his departure from Saudi Arabia in 2006.

[53] The Authority notes that there were further inconsistencies as to the details about his Chadian identity cards during the first day of the appeal hearing when he was presenting his claim in terms of the second account. There is no sensible reason why his evidence should differ about his identity card as between the second and third account. The mobility and inconsistencies in his evidence are simply the result of the appellant's attempts to mould false evidence according to the context of the questions and his failure to accurately recall it at a later point.

CONCLUSION ON CREDIBILITY

[54] Taken cumulatively, the above concerns lead the Authority to conclude that the appellant's third account is not credible except to the limited extent that the Authority does accept that he is a national of Chad and that he travelled to New Zealand on a false Saudi Arabian passport. The Authority does not accept any details about the appellant's claimed former residence in Saudi Arabia or about the personal situation he claims he will return to in Chad, including his claim to be undocumented. This decision now turns to consider his claim for refugee status on that basis.

ASSESSMENT OF THE APPELLANT'S CASE

Risk on return to Chad

[55] The appropriate question to be considered is whether an individual having all of the appellant's characteristics would face a real chance of serious harm for a Convention reason if returned to Chad; see *A v RSAA* (CIV 2004-4-4-6314, 19 October 2005, HC, Auckland, Winkelmann J) at [38].

[56] The appellant claims to be at risk of being persecuted in Chad for the following reasons:

- (a) he has never lived in Chad before;
- (b) he may be pursued by the authorities in Chad for being the nephew of somebody who opposes the ruling Chadian regime;
- (c) he is a member of the same tribe as the former President;
- (d) he may be extradited to Saudi Arabia on charges relating to identity fraud

because he used a false passport to depart Saudi Arabia;

- (e) he will be questioned, detained and harmed on arrival in Chad because he will not have a passport; and
- (f) he may be forcibly conscripted into the army in Chad.

[57] To recall, the only characteristics of the appellant that are accepted are that he is a male Chadian who travelled to New Zealand using a false Saudi Arabian passport.

[58] With regard to claims (a) – (e) above, there is no credible evidence before the Authority on which a consideration of such claims can be made. As to claim (f), there is no evidence before the Authority which establishes that the risk of the appellant (as a male Chadian) being forcibly conscripted to the Chadian army is anything more than remote or speculative. The Authority finds that, having regard to all the characteristics of the appellant there is nothing which gives rise to a well-founded fear of being persecuted in Chad.

Risk on return to Saudi Arabia

[59] As noted above, there is no credible evidence before the Authority that establishes the appellant has a right of return to Saudi Arabia so the risk to the appellant on return there does not arise for consideration.

SUMMARY OF FINDINGS

[60] In summary, the Authority finds that the appellant is a national of Chad who travelled to New Zealand on a false Saudi Arabian passport. All other aspects of the appellant's claim (the third account) are rejected as not credible. The appellant has no well-founded fear of being persecuted in Chad for any of the reasons he has advanced, namely: his undocumented return; his uncle's political activities; his tribal affiliations; forced military service; extradition to Saudi Arabia; and his never having lived in Chad.

[61] Therefore, the first issue framed for consideration is answered in the negative and the second issue as framed does not arise for consideration.

CONCLUSION

[62] 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.

"B A Dingle"
B A Dingle
Member