

AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75779

AT AUCKLAND

<u>Before:</u>	B Burson (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	31 January and 1 February 2006
<u>Date of Decision:</u>	10 May 2006

DECISION

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

INTRODUCTION

[2] The appellant claims to have a well-founded fear of being persecuted in Syria on account of his Kurdish ethnicity. He also claims that because he has evaded his compulsory military service obligations he will be imprisoned for draft evasion and subjected to serious ill-treatment. Finally he claims that if forcibly conscripted into the Syrian Army against his will he will suffer serious mistreatment because he is a Kurd.

[3] Before assessing the appellant's claim in this regard a summary of his evidence will be set out.

THE APPELLANT'S CASE

[4] The appellant was born in X in the early 1980s. He is a Kurd. He lived in X all his life prior to his travel to New Zealand. His parents came to X from a predominantly Kurdish region in Syria many years ago. They, along with many

other Kurdish families, were forced to move from their homes by the Syrian government which did not want Kurds living in the area where his family's village was situated.

[5] The appellant has had no education whatsoever. Upon reaching school age, he told his parents that he did not wish to go to school. He had heard from his older siblings that they had been discriminated against and mistreated by both teachers and pupils at their school simply because they were Kurds. He also wanted to learn Kurdish and did not want to go to school because he would have been taught in Arabic. His parents did not force him to go and he stayed at home.

[6] The appellant remained at home until the mid-1990s. When he was 12 years old, he began working for a local manufacturing company that was owned by a Kurdish man. Some of his siblings were also working there and the appellant worked at this factory for the next five years. In the late 1990s he and his brothers began working in another factory. Like the previous company, this also was Kurdish-owned and made the same product. The appellant remained working for this company until shortly prior to his departure for New Zealand. All his working life, the appellant worked 11 or 12 hours per day six days a week.

[7] The appellant's parents spoke Kurdish only between themselves and not with their children. There were a number of reasons for this. Firstly, the family lived in a mixed neighbourhood in X and his parents were worried that if they were heard speaking Kurdish at home, their Arab neighbours might inform the authorities and this could bring trouble with the police. This was because the Syrian government was Arab and did not like the Kurds.

[8] Furthermore, the appellant's parents were concerned that if they were stopped in the street and spoke in broken or halting Arabic, this would cause trouble for them with the Syrian authorities. As a result, although he learnt some basic phrases and words from one of his brothers, he cannot otherwise speak, read or write Kurdish.

[9] The appellant's family were not part of any political party or organisation devoted to Kurdish culture. It was difficult for these sorts of things to exist because any expression of Kurdish identity would invite trouble from the Syrian authorities.

[10] The appellant is aware of the problems Kurds face in Syria generally. The Syrian authorities do not want to give the Kurds their rights or even to have their own language so that the Arabs can control everything. Apart from this the general population used to generally look down on Kurds in the street and generally treat them as inferior to Arabs.

[11] Apart from not being allowed to openly speak in their native language, the Syrian authorities also denied Kurds the right to call themselves Kurds. On all his identity papers and official documentation, the appellant's identity was listed as Arab. Kurds in Syria were also generally discriminated against in obtaining public services. They generally had to pay bribes to get anything done.

[12] Furthermore, the Kurdish communities were not allowed to openly celebrate Kurdish festivals such as *Newroz* (New Year). Every year the Kurdish community in X, including the appellant's family gathered to celebrate the *Newroz*. Every year the crowd was violently dispersed by the authorities who attacked the gathered community with water cannons and batons. Although many people were arrested during these incidents neither the appellant nor any member of his family was arrested on these occasions.

[13] The Kurdish community were not allowed to have gatherings at their home of any substantial nature even to celebrate a wedding. If this happened they were liable to be arrested. The appellant knows this because it happened to a family in his area. The father was taken away, detained and ill-treated simply for having a gathering of Kurds in his house in celebration of a wedding.

[14] There have also been attacks against Kurds by the Syrian military forces. A few years ago 100 Kurds were killed when they tried to demand their rights. The appellant had seen reports on Syrian state television that Syrian authorities have claimed that this was simply a riot at a football match but the appellant believes there was something more to it. The appellant also knows that last year three villages in the area from which the appellant's family originally came have been burnt to the ground by the Syrian military.

[15] In 2001, the appellants brother, AA, became eligible for military service. AA had heard stories about the mistreatment of Kurdish conscripts from their elder sibling, BB, and he decided to avoid his military service obligation. AA went into hiding and stayed at various relatives' houses in X, thereafter only returning home very briefly.

[16] The military authorities came looking for AA on a frequent basis. On some occasions it was the *Mukhabarat* (Intelligence Service) who came to the house. Although he cannot recall when it happened, the appellant recalls that on one such occasion his father was taken for questioning and held for a number of hours. He told the authorities that he did not know where AA was. During this time the appellant's father was physically mistreated and the authorities threatened to imprison the appellant's mother if they were not told where AA was.

[17] Some two days later the authorities returned and again demanded to know where AA was. The appellant's parents told them that he was outside Syria and that they could check if they wanted to. The authorities once again took the appellant's father and together they went to their local immigration office where it was confirmed that AA had in fact obtained a Syrian passport.

[18] The appellant became liable for military service in 2003. In mid-2002 he received notification that he was required to go to a military administrative office and obtain his military service registration card. He was required to undertake a blood test and take a certificate from the blood test centre to the military administrative office where his blood type and other details were recorded in his military service book.

[19] Thereafter a local official came to the family home to serve a summons, for military service, on the appellant. The appellant told the official that he was working and had to help support his family and wanted to get his military service deferred. Although this was not a ground for deferring his service, the official agreed to say that he had not served the summons, upon payment of a bribe. Thereafter, the appellant paid this official 500 Syrian lira on a six monthly basis over the next 20 months.

[20] The real reason that the appellant bribed the official for this period was because he had no desire to undertake military service. He remembered what BB had told the family of his mistreatment during his period of compulsory military service, during his return home on leave. BB had told the family that he, like all the Kurdish conscripts, were assaulted with sticks and made to sit in water contaminated with raw sewage. He said they were always treated worse than their Arab conscripts and given harsh orders to obey. On some occasions Kurdish conscripts had their faces smeared in jam and were left in the sun to allow bees to sting them.

[21] In addition to bribing the local official, the appellant decided to obtain a passport in case he could use it to avoid military service. As he had not completed military service, he was only legally able to be issued with a passport valid for no more than two months. He therefore bribed an official to extend his passport's currency to a period of two years.

[22] In 2004, whilst waiting in a queue to get some bread, the appellant was assaulted by three local youths who knew he was Kurdish. The incident began with some pushing and shoving. The Arab youths abused him for being a Kurd and began to punch him. One of them stabbed him in the back with a screwdriver. After the attack the appellant went to a police station to register his complaint but the police refused to help him. They told him to "get out" because he was a Kurd and refused to do anything.

[23] The appellant did not go to hospital because he believed that he would not be treated by the hospital staff, who discriminated against Kurds. Instead, he was treated at home by his mother and had to take two weeks off work while he recovered from his injuries.

[24] At the beginning of 2005, the appellant met up with two Kurdish friends from the local neighbourhood who had been conscripted into the army. Like BB, they also informed the appellant of their being beaten and mistreated during their military service by their Arab commanders. They also reported that they were given harsh orders to obey and thrown in raw sewage. They told the appellant that these things only happened to Kurds and the Arab conscripts were not treated in this way. These accounts reinforced the appellant's desire not to perform his military service obligations.

[25] At around this time the appellant's family lost contact with AA. However, in mid-2005, AA telephoned the family to tell them that he had arrived in New Zealand. The appellant overheard his parents talking amongst themselves mentioning that this brother had been sentenced to a period of seven and a half years' imprisonment for failing to perform his military service. The appellant also spoke to AA. AA told the appellant that New Zealand was a place that respected human rights and democracy. He encouraged the appellant to come to New Zealand if he did not want to do his military service.

[26] The appellant decided to leave Syria. As he had been working for a number of years he had saved some money. He therefore withdrew his money

and obtained a visa to another country. The appellant left through normal immigration channels and encountered no difficulties. However, shortly after arriving in that country, his Syrian passport was stolen. The appellant therefore found an agent who obtained for him a false passport and who arranged for his onward travel to New Zealand.

[27] Upon arrival in New Zealand the appellant claimed refugee status at the airport. He then contacted his family shortly thereafter to tell them he was safe. This conversation was brief as his telephone card had minimal credit on it.

[28] However, some weeks later the appellant again telephoned his family and was informed that the authorities had visited the family home twice looking for him. The local official, who the appellant had been bribing, came to the house in accordance with their past arrangements on a number of occasions but was told the appellant was not at home.

[29] A month or so after his departure the military service officials came to the house. The appellant believes that upon ascertaining that the appellant was unable to bribe him as usual, the official must have told the military service officials that the appellant had been served with his summons. They were told the appellant was not at home. A week later they returned and this time the appellant's father told them that the appellant was out of the country because he did not want to go into the army

[30] The appellant is worried that if he returns to Syria he will be sentenced to prison like AA. He believes he will be arrested at the airport. The appellant does not want to perform his military service because he might even be tortured or killed in the army. They look down on Kurds and, he has heard stories from BB and his friends that Kurds in the army are mistreated.

The evidence of AA

[31] The Authority heard from AA who has been recognised by the RSB as a Convention Refugee on the basis of his facing disproportionate punishment for evading military service on account of his being a Kurd.

[32] AA is two years older than the appellant and is the next eldest sibling. AA spoke at length about the appellant's personality. He described the appellant as a simple and uneducated person who was ignored by a family which comprised seven children.

[33] AA described the appellant in terms as having behavioural problems. The appellant was, AA said, a person who had poor social skills and was unable to mix or communicate well with others. He was always a very frightened and nervous child. The family had come to learn that the appellant had to be asked or cajoled in a certain way in order to get him to do things. AA said that the appellant did not respond very well to aggressive behaviour.

[34] These characteristics meant that family were always very concerned about the appellant's safety and for that reason the family would not let him go unaccompanied in the streets. Indeed, AA said the appellant's father had been with the appellant on the day when he was assaulted in the queue outside the bakery. His father had left the appellant alone briefly to buy some milk only to return and find the appellant injured as a result of the attack.

[35] AA spoke about the appellant not wanting to perform his military service. He confirmed both he and the appellant had heard the same stories from BB. He recalled that while he was still in Syria, AA had been told by one of their sisters that the appellant had begun to talk to the family about going to work in other countries in the Middle East as a means of avoiding his military service. However, his mother and sister, worried about his safety travelling to a country with no support, convinced him to continue seeking to postpone his service.

[36] AA was very concerned about the appellant's ability to survive a period of military service. His personality was such that if given an order to do something that was menial the appellant would simply refuse. He feared that the appellant would be unable to cope with the military environment. AA believes the appellant will react in a way that will create or escalate a situation to a point where he would be beaten and could even be killed.

Medical evidence

[37] On 28 February 2006, the Authority also received a medical report of Dr W Daniels, a former senior surgeon with the New Zealand Police, dated 10 February 2006 in relation to the injury to the appellant's back. In his report, Dr Daniels confirms his familiarity with the Istanbul protocols for the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

[38] Having examined the appellant, Dr Daniels notes a scar on the appellant's back and states:

"It is difficult to gauge its age. [The appellant] tells me it is about two years ago. The appearance of the scar would be consistent with that time frame.

This scar is totally consistent with the penetration of the skin and the underlying tissues with a small blade such as a screwdriver ... there is no other credible cause."

Other documentary material and submissions

[39] The appellant has filed a copy of his Syrian identity card and a copy of his military service booklet. The appellant also filed a copy of his parents' family book in which he and the other children are listed.

[40] Counsel has also filed country information in support of the appeal together with a written memorandum of submissions. On 8 March 2006, the Authority served on counsel a copy of Appendix 2 of David McDowall's *A Modern History of the Kurds* (I B Taurus, 2000). By letter dated 21 March 2006 counsel made submissions thereon.

[41] All this material together with counsel's oral submissions at the hearing has been taken into account by the Authority in reaching its decision.

THE ISSUES

[42] 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."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[44] There were a number of credibility issues that arose at the hearing.

[45] Although the appellant stated that all of his identity papers listed him as Arab, none of these documents submitted show his identity as such. The appellant claimed he did not want to go to school partly out of a desire to learn Kurdish and yet AA, when questioned on this aspect of the appellant's claim professed surprise at the appellant's evidence. The Authority also notes the appellant's failure to mention the problems AA faced for avoiding his military service obligations or the problems his father faced in his confirmation of claim and written statement.

[46] However, the Authority observes that the appellant has been consistent throughout his claim at a general level. In his confirmation of claim form and statement, he has mentioned problems that Kurds face in Syria and told of his desire to avoid his military service obligations because of stories that BB had told him of his own experiences of mistreatment. The core of his account, as it related to his own situation, has thus been consistent. The Authority notes that there is medical evidence which, to the extent it can, corroborates the appellant's account of the provenance of the injury he sustained to his back.

[47] Having closely examined the appellant over one and a half days, the Authority observes that he is, as his brother and counsel described, a person whose cognitive and communicative abilities appear very limited. For example, he was adamant that he had not had any further medical check-up after his blood test was taken even though it is clearly recorded in his military service booklet that he did so and was passed as fit to serve. He was often very vague about the timing of events that happened. He persistently articulated issues of discrimination and inequality in terms of Kurds not being "as comfortable" as Arabs. When asked to elaborate on why it was a problem to be listed as an Arab and not a Kurd, he could not articulate his feelings in anything other than in a basic fashion. The appellant described himself variously as having "a brain that was closed and not open" and having "a brain that was made of shoes".

Conclusion on credibility

[48] The Authority also notes the appellant's brother's compelling evidence as to the appellant's simple nature and closed upbringing within the family. The Authority accepts the appellant is straightforward and simple as claimed. None of this is meant pejoratively. Rather, the Authority is satisfied that his inability to recall matters with accuracy and the discrepancies that arose, on the facts of this case, cannot be attributed to untruth.

[49] Therefore the Authority accepts the appellant's evidence of his past experiences and history. It accepts the account of the attack in the queue outside the bakery. It accepts that he has been told by BB and his friends that they and other Kurds have been mistreated during their periods of military service. It accepts that the relevant authorities in Syria are now aware that he has left the country to avoid his military service. It accepts that the appellant does not wish to perform his military service obligation.

[50] The Authority does not, however, accept that the reason that he did not go to school was, in part at least, because he wanted to learn Kurdish. It observes that the appellant cannot speak Kurdish now. He has had ample opportunity to do so and has not. More compellingly, when told of this, AA expressed surprise and was unaware of it. This part of his evidence is not therefore accepted.

[51] It is against this factual background that the appellant's claims of a well-founded fear of being persecuted will be assessed.

A WELL-FOUNDED FEAR OF BEING PERSECUTED

[52] Counsel submits that the appellant faces a well-founded fear of being persecuted for three discreet reasons:

- (a) simply on the account of his being a Kurd;
- (b) because the undertaking by him of military service will either:
 - (i) expose him to a serious risk of ill-treatment as a Kurd;
 - (ii) require him to partake in actions amounting to a breach of the laws of war contrary to his beliefs and in doing so, he relies on the Authority's decision in *Refugee Appeal No 75378* (19 October 2005).

As to the claim on the basis of being a Kurd

General observations on the Kurds in Syria

[53] D McDowall in *A Modern History of the Kurds* (I B Taurus, 2000) at p466 notes that Kurds probably account for somewhere between 8-10 percent (some 1.2–1.5 million persons) of the total population of Syria scattered over three principal areas in northern Syria. There is, however, a large Kurdish diaspora in major urban centres.

[54] McDowall (at p471–476) succinctly charts the post-independence emergence of a mutual mistrust between Syria's Arab and Kurdish elites; a mistrust fuelled by competing ideological perspectives: a rise in Pan-Arab nationalism in the Arab elites on one hand against the more communist perspectives of the Kurdish elites which emphasised class struggle over feelings of ethnic nationalism.

[55] Over time, this has led to popular anti-Kurdish sentiment and an official policy programme aimed at cementing Arab control in Syria. McDowall notes that, concerned about changes to the demographic balance in the predominantly Kurdish regions of al-Hasaka, in 1962, the Syrian government acted to ensure Arab control by conducting a census with such onerous requirements of proof of residence, that some 120,000 Kurds were stripped of their citizenship. Furthermore, in 1975, the Syrian authorities deported 140,000 Kurds from 332 villages to create an Arab-belt some 10–15km wide between Syria and the adjacent Kurdish regions of Turkey and Iraq. The Authority pauses here to observe that it is likely that the displacement of the appellant's family from their former homes took place during this time.

[56] The Amnesty International report *Syria: Kurds in the Syrian Arab Republic one year after the March 2004 events* (10 March 2005) (The AI report) at p5 estimates that this population of stateless Kurds now comprise some 200,000 to 360,000. This larger figure would appear, however, to be comprised of two distinct groups:

- (i) *Ajanib* (foreigners) being those who could not prove the residence criteria in the 1962 census ; and
- (ii) *Maktoumeen* (the unrecorded) being those left out of that census or the dependents of persons registered as *Ajanib*.

[57] The AI report notes that these stateless Kurds face severe discrimination. Not being issued with passports, they cannot legally leave the country. They face discrimination in the access of public health services, employment, participation in political life and the enjoyment of property rights. *Maktoumeen* children cannot study in school beyond the ninth year. As to this, see generally Human Rights Watch *The Silenced Kurds* (October 1996).

[58] However, Kurds in Syria who do not fall into either of these categories also face discrimination. The AI report at p3, notes that the predominantly Kurdish areas of the country lag behind the rest of the country in terms of social and economic indicators, a situation contributed by “direct and indirect discrimination against the Kurdish population”. Furthermore, McDowall (at pp476–477) notes restrictions on the use of the Kurdish language in the publication of books or other written material. He also states they suffer discrimination in employment opportunities.

[59] While it is the case therefore that Kurds in Syria do face discrimination at an official and societal level, McDowall notes however:

“Today, the Kurds of Syria remain victims of discrimination and oppression but not on the scale endured in Iraq, Turkey or Iran.”

[60] This relative position is reflected in the political arena. McDowall notes (p477) that, unlike in neighbouring countries with sizable Kurdish populations, there is no significant political dynamic arguing for establishment of an independent Kurdish state (Turkey) or an autonomous region within a loose federal arrangement (current Iraq); see also in this context International Crisis Group *Syria Under Bashar (II): Domestic Policy Challenges* (11 February 2004) (the ICG report) at p18; Freedom House *Countries at the Crossroad: Syria* (29 June 2005) (The Lesch report) at p540. Rather, the 15 unrecognised Kurdish political parties limit their platform to the advancement of democracy and equality for Kurds with full cultural and social rights.

The Kurds in Syria and Ba’ath Party rule

[61] The ICG report notes (p1)

“The history of modern Syria is closely identified with that of the Ba’ath party, an organisation that aspired to Arab unity on the basis of socialism and nationalism, and the army, which came to play a key role in political affairs.”

[62] The ideological differences between Kurdish and Arab elites must be historically contextualised against the establishment of the *Ba'ath* (Resurrection) Party as the dominant political force in Syria. In his seminal work *A History of the Arab Peoples* (Faber and Faber, 1991) Albert Hourani (at Chapter 24), describes what he calls the “Climax of Arabism” during the 1950s and 1960s. He observes (at p404):

“Two were of particular importance in the 1950 and 1960s. One was the Ba'ath (Resurrection) party, which grew up in Syria. It is a party which presented a challenge to the domination of Syrian politics by a small number of great urban families and by the parties or the associations of leaders which expressed their interests. Its appeal was primarily to the new educated class, created by the rapid increase in education, who came from the less dominant classes in society, and to a large extent from communities outside the Sunni Muslim majority: 'Alawis, Druzes and Christians. **Its origin lay in intellectual debates about the national identity of the Syrians, and their relations with other Arabic speaking communities: a debate which was more urgent in Syria than elsewhere, because the frontiers drawn by Britain and France in their own interests corresponded less than in most Middle Eastern countries to natural and historical divisions.**”

(Emphasis added)

[63] There can be little doubt that Hourani’s reference to debates as to Syrian national identity taking place against the backdrop of a post-colonial demarcation of “national” boundaries, unrepresentative of “natural and historical divisions”, encompasses the ideological tensions between Arab and Kurdish elites in Syria to which McDowall refers. The salient point for present purposes is that the debate became firmly resolved in favour of the Arab elites and the suppression of distinct Kurdish identity became intimately bound up with the establishment of the *Ba'ath* Party as the dominant political force in Syria and beyond.

[64] By 1963, the *Ba'ath* Party gained a position of political dominance in Syria. Initially driven by factionalism and internal division, by 1970 the then Defence Minister, Hafez al-Assad, gained control over all vital military and security apparatus. From this power base he initiated a coup and established himself as president, a position he held until his death in June 2000.

[65] In relation to the political structure established under Hafez Al- Assad the IGC report observes (p2):

“[Syria]s governed by an elaborate system of institutions. Assad meticulously built a hybrid: personalised rule co-existed with highly structured state and party institutions: a narrow Alawi, family and personal power base coexisted with a broader inter-religious coalition and social contract; and a sophisticated, omnipresent military – security apparatus coexisted with a strong political party and powerful social relays.”

[66] The report continues (p3):

“Politically, the regime mixed harsh repression and tight control by multiple security services with an almost obsessive adherence to institutional procedures and symbolic political gestures.”

[67] As to the structure of the country’s security services and intelligence, the IGC note a plethora of agencies which operate their own prisons and interrogation centres in near complete independence from the judicial and penal system and cite (at p2), a report which estimates that the number of people working for these agencies was one out of every 153 adult Syrians - see Alan George *Syria, Neither Bread nor Freedom* (London 2002) at p2.

[68] Following Hafez al-Assad’s death, he was succeeded by his son Bashar, a development which in light of the younger Assad’s education and experience of Western Europe had given rise to a hope of relative political liberalisation. The IGC report notes that initially Bashar al-Assad’s government took steps to end some elements of state control particularly in the economic area. Emboldened by this, from June 2000 to August 2001, Syria’s civil society began to call for a democratic opening. In what has become known as “The Damascus Spring” meetings, communiqués, forum for public discussion and informal groupings flourished.

[69] The IGC report notes, however, (at p7) that while the regime’s initial response was encouraging, including the pardoning of some political prisoners, the liberalisation drive came to a “rapid and sharp halt”. This manifested itself in the arrest and detention of those who had called for political liberalisation, the closures of newspapers and the imprisonment of journalists and writers – see also in this context Human Rights Watch *Dangerous Backlash in Syria* (7 September 2001); Human Rights Watch *Syria: Clampdown on Freedom of Expression* (12 February 2002); Freedom House *The Worst of the Worst; the World’s Most Repressive Regimes: Syria* (31 March 2005) (The Freedom House Report) at p84.

[70] Commenting on the relationship between the Damascus Spring and the ethnic composition in Syria, the IGC report notes (at p18) that one of the considerations which weighed against a process of political liberalisation were fears of demands by Kurds for autonomy or independence.

[71] It is unsurprising that with this history, the *Ba’ath* regime continues to brutally stifle dissent. The Lesch report notes that one of the primary weapons the regime has used to stifle dissent has been a decree issued in 1963, one day after

the *Ba'ath* Party came into power, declaring a state of emergency, a decree that still remains in force. The Human Rights Watch report *World Report 2005: Syria* states:

“Emergency rule imposed in 1963 remains in effect, and the authorities continue to harass and imprison human rights defenders and other non-violent critics of government policies. The government strictly limits freedom of expression, association and assembly, and treats ethnic minority Kurds as second class citizens.”

[72] Reference in this regard can also be had generally in the United States Department of State *Country Report on Human Rights Practises 2005: Syria* at section 1 (The USDOS report) which notes a “generally poor” human rights record.

[73] Country information confirms that detention conditions in Syria are such that if anybody detained for asserting Kurdish nationality, faces a real chance of being subjected to torture or other forms of serious ill-treatment - see for example Syrian Human Rights Committee *Annual report on Human Rights* (June 2005) who state:

“This year, SHRC has documented the use of various types of torture, a routine and ordinary matter practised by the Syrian Security and Intelligence Authorities in the prisons and interrogation centres”

[74] Similarly the AI report (at pp15-17) details accounts of torture it has received from Kurds arrested following clashes with security forces in 2004. Similar reports are made in the USDOS report (at section 1(a)).

[75] The AI report notes an incident in Qamishli in March 2004 where security forces responded to a disturbance between Arab and Kurdish fans at a football match by firing live ammunition into a crowd. Thereafter, the security forces fired upon the funeral procession causing a number of fatalities. This caused rioting throughout the Kurdish north east resulting in the death of at least 36 people, mostly Kurds. More than 2,000 people, almost all of them Kurds, were arrested (at p1).

Syria's Kurds in the post-Saddam era

[76] The IGC report suggests that the Kurdish issue is a matter of some political sensitivity in Syria even before the invasion of Iraq by United States of America, and coalition forces, in April 2003.

[77] The Freedom House report asserts (p85) that recent events in Syria indicate that notwithstanding the regime's claim to be threatened most by radical Islamic movements, its greatest fears are in relation to “secular opposition forces

seen as prospective allies of the West". Given the role of the Kurdish political parties and *peshmerga* (fighters) in the downfall of the regime's sister regime in Iraq, this can only be a reference to Syria's Kurds.

[78] Both the Freedom House Report and the Lesch report (*ibid*) contextualise the riots and demonstrations by Kurds in March 2004 as linked to the invasion of Iraq. The former reports persons in the crowd holding posters of President George W Bush were fired upon while the latter states the riots were "sparked by events in Iraq". Other country tension between Syrian Kurds and the authorities' information points towards a sensitivity to events in Iraq. Thus there is a report of deaths in clashes following commemoration by Syrian Kurds of the infamous gas attack on Halabja by Iraqi forces in 1988 - see BBC report *Kurds 'killed' in clashes* (16 March 2004).

[79] The Syrian Human Rights Committee report *Campaigns against Syrian Kurds* (13 September 2005) <http://www.shrc.org/data/aspxng/printpage.aspx?mylink=/data/aspx/d7/2377.xml> (accessed 27 September 2005) reports a tightening of pressure on members of Kurdish political parties and in particular, the Unity Democratic Kurdish Party. The report states that as at September 2005, 105 Syrian Kurds had been arrested for supporting or sympathising with the party. It also reports that as at the time of its report, 45 supporters arrested after the events in March 2004, remained in prison.

[80] Finally, other country information establishes that tensions continue with occasional conflict between Kurds supporting the PKK (a banned Turkish separatist group) and the authorities in a town near the Turkish border in August 200 - see BBC News *Syrian Kurds clash with police* (16 August 2005).

Conclusion on country information

[81] In light of the above information, there can be no doubt that the Kurdish population in Syria face social and economic discrimination at an official and popular level. They are denied their cultural and language rights. While some Kurdish political parties have been allowed to operate, their presence is at best tolerated by the regime on the basis that they confine their political platform to issues of domestic equality and do not advocate more radical positions on autonomy or independence. While tolerated, their members and supporters are liable to be arrested and detained, depending on the political space afforded to

them by domestic and international dynamics. They cannot function as a matter of right.

[82] This tight control on the aspirations of Kurds for recognition of a separate identity can be traced back to the foundation of the Syrian state which was born amid an ideological divide between Kurdish and Arab elites. This tension has been played out alongside the emergence of the *Ba'ath* Party as the dominant political force in Syria and which, since gaining outright control in 1963, pursued a policy of suppressing the Kurdish population. The *Ba'ath* Party continues to control Syria through an extensive military-security apparatus in which basic civil and political freedoms are heavily circumscribed.

[83] While the policy of suppression of the Kurds in Syria has not reached the levels seen in countries such as Turkey or Iraq, in the current domestic and wider geo-political environment, any attempt to assert a distinct Kurdish political identity is likely to be met with significant force including arrest and detention, where the risk of death, torture and other forms of serious ill-treatment, cannot be ruled out.

Application to the appellant's case

[84] Although in general terms country information establishes Syrian Kurds are discriminated against in the enjoyment of their civil, political, economic, social and cultural rights, whether the circumstances of any individual Kurds disclose a well-founded fear of being persecuted must be established on a case by case basis. In this case, the Authority finds that the appellant's individual circumstances do not disclose a well-founded fear of being persecuted simply because he is a Kurd.

[85] The appellant is not a member of any Kurdish political party or organisation. He is not a member of any cultural organisation. None of his family is a member of such organisations. He is not a political animal and, with the exception of attending communal *Newroz* celebrations, has not been involved in any way in the public expression of a distinct Kurdish identity. There is nothing to indicate that the appellant is likely to become so involved in the future. The chance of his being persecuted on this basis is entirely remote.

[86] Similarly, while the appellant has had no education, this was a matter of personal choice. The appellant has been able to find work on a continuous basis and has managed to sustain for himself an adequate standard of living. There is no suggestion that he would not be able to do so in the future. He has a house

that he can live in. It has not been suggested that he has, or would in the future, face discrimination leading to his suffering serious harm. It must be recalled that his family are neither *Ajanib* (foreigners) nor *Maktoumeen* (unrecorded).

[87] In light of the above, the Authority finds that the chance of him suffering serious harm simply on the basis of his being a Kurd does not, therefore, reach the real chance threshold. This aspect of his claim is dismissed.

As to the appellant's claim based on military service obligation

[88] The Authority reminds itself that this aspect of the appellant's claim relates to his being a Kurd who is liable for military service. The War Resisters International Report *Refusing to Bear Arms* (1998) confirms that all Syrian men between the ages of 18 and 40 are liable for military service and that some exemptions are required. The Authority accepts that none of the exemptions listed are applicable to the appellant. The report notes that a right to conscientious objection is not legally recognised and there are no provisions for substitute service.

[89] Country information available to the Authority is limited as to the position of Kurds in the military. What is available presents something of a mixed picture.

[90] McDowall (at p477) notes that the shortage of employment opportunities in Syria for young Kurdish males means that many in fact volunteer for military service and, indeed, have been used in special units including units used to suppress the revolt by the Muslim Brotherhood in 1982 in which tens of thousands of persons were killed or disappeared. This is in a sense unsurprising. As noted by the IGC, the army is one of the key institutions of a state noted for its highly centralised and concentrated power structures. Service in the armed forces is thus one mechanism by which loyalty to the state is cemented and potential dissent co-opted.

[91] On the other hand, the AI report notes (at p12) that at least six Kurdish conscripts died in suspicious circumstances while carrying out their military service in the weeks and months after the March 2004 events. Amnesty International notes:

"The deaths were reported due to beatings or shootings by military superiors or colleagues."

[92] It notes that they received no reports of deaths of non-Arab conscripts during this period.

[93] The death of Kurdish conscripts is also referred to by the Syrian Human Rights Committee annual report on human rights situation in Syrian 2005 (covering the period from June 2004 to May 2005) (June 2005 which notes at p34):

“... through this year, a number of Kurdish citizens fulfilling their mandatory military service met their death in military units.”

Conclusion on country information regarding Kurds and military service

[94] It cannot be said that in light of the above country information that all Kurds in the army are at risk of serious ill-treatment amounting to persecution at all times. Rather, the risk to any individual Kurd appears to depend on whether the person volunteered or was conscripted, and their own personal characteristics, judged against the wider political climate at the time of service.

[95] Given the history of the *Ba'ath* Party in Syria and its emphasis on ethno-nationalism, the Authority accepts that in such a key institution of state such as the army, there is more likely to be heightened feelings of nationalistic fervour amongst the Arab officer elite; a point of view that could translate into harsher treatment of lowly Kurdish conscripts compared to their Arab counterparts. Certainly there is evidence to establish at the very least, a current heightened risk as ethnic tensions rise in Syria in the aftermath of the removal of the *Ba'ath* Party's sister regime from power in Iraq, with the help of Kurdish forces

[96] There is therefore, no reason to doubt the anecdotal evidence the appellant has received to the effect that Kurdish conscripts are sometimes mistreated even if the Authority does have reservations about some of the more graphic examples the appellant gave.

Application to the present case

[97] The Authority observes that the appellant is very likely to be questioned upon his arrival from overseas. It will be ascertained that he is a draft evader. His brother, who has been sentenced to five years' imprisonment, provides some indication as to what sentence may be passed on the appellant. It is not, however, necessary to decide whether this amounts to persecution.

[98] This is because the Authority finds that having become liable for military service there is a real chance that the appellant would be conscripted on return. It accepts counsel's submission that the appellant's particular mental and behavioural difficulties are likely to mean that he would face extreme difficulty in "negotiating and navigating" his way through any period of military service. His brother's evidence was that he is unlikely to respond to an aggressive environment such as the army and would respond in a way which is likely to result in him being disciplined.

[99] The appellant is a simple person who believes that he should not have to hide his Kurdish ethnicity; that is what he is. That is the beginning and the end of the matter for him. There is no sophisticated elaboration on the point; it is a matter of fact for him and a matter of fact that he would take with him into the army, where he would be entirely shorn of the protection that his family have hitherto provided to him from the society in which he lives. He would be left to cope on his own.

[100] It is likely that at some point during his period of military service he would be brought into a situation of conflict with his superiors or other Arab soldiers which would result in his being beaten and ill-treated. Current tensions in the region are only likely to heighten the risk of this occurring. He simply does not have the personal capabilities to deal with the discrimination he may face in the army in a way that would minimise the risk of serious physical harm to him.

[101] While the Authority does not say there is necessarily a real chance that he would be killed, nevertheless, the chance of him suffering significant beatings in this environment is a real one. Given the centrality of the armed forces to the Syrian state apparatus this will amount to both a "systemic" violation of his basic human rights - see *Refugee Appeal No 2039/93* (12 February 1996). It is thus appropriately categorised as being persecuted for the purpose of the Convention.

Convention ground and nexus

[102] Whilst it is to a significant level this appellant's particular behavioural qualities that inform the degree of risk to him, it cannot be said that his ethnic identity is remote to the point of irrelevance. It is his Kurdish ethnicity that would be the catalyst for discriminatory treatment in the army. Plainly it is a matter contributing to the predicament in which he would find himself.

[103] For these reasons the Authority answers the first and second principal issues in the affirmative.

[104] The need to consider his further ground of claim relating to a risk of being required to act in breach of the laws of war does not arise.

CONCLUSION

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

.....
B Burson
Member