

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

**REFUGEE APPEAL NO 73988**

**AT AUCKLAND**

<b><u>Before:</u></b>	S L Murphy (Chairperson) A Molloy (Member)
<b><u>Counsel for the Appellant:</u></b>	R McLeod, E Griffin
<b><u>Appearing for the NZIS:</u></b>	No Appearance
<b><u>Date of Decision:</u></b>	8 February 2005

---

**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, an Algerian national.

[2] The appellant arrived in New Zealand on 29 September 2001. He claimed refugee status on 1 October 2001, and was interviewed on 3 December 2001 and 7 May 2002. A decision declining his claim was delivered by the RSB on 17 June 2002. It is from that decision that the appellant has appealed to this Authority.

[3] The appellant's case centres on fears he has of both the GIA and the Algerian authorities, because of perceptions by each side that he associated with the other.

[4] The appellant's counsel provided written submissions which the Authority has taken into account in making this decision.

## **THE APPELLANT'S CASE**

[5] The appellant is in his early thirties. He was born in XY, in East Algeria, where he lived until his departure from Algeria, except for a period during which he studied computer science at university in Z.

[6] In the late 1980s, when he was at secondary school, the appellant became involved with the Moslem Brotherhood movement, together with his brother (who has since moved to France). In 1989 he joined a charitable Islamic organisation, *Al Islah*.

[7] *Al Islah* supported the *Front Islamique du Salut* (FIS) in the 1992 elections. As a result, the offices of the organisation were raided by the security forces and the members present at the raid (including the appellant) detained overnight, during which time they were beaten and abused. The organisation was subsequently shut down. The chair of the organisation was detained for several days and tortured.

### **Harassment regarding association with M**

[8] The appellant's cousin, M, was a member of the FIS. After the 1992 elections he joined the *Group Islamique Armé* (GIA).

[9] In May 1993, there was a bombing in XY at a bank, and M became a suspect. M's brother, N, was arrested in order to put pressure on M to give himself up. N has not been seen since.

[10] The appellant's father was arrested on the same day as N, and held overnight (M's own father being deceased). During his detention he was assaulted and interrogated about the whereabouts of M. The appellant was studying in Z at the time, and the officers ordered that the appellant report to them upon his return. He did so approximately a week later, and he too was detained for a number of hours, during which time he was insulted and beaten harshly with a stick. Upon his release, the officers threatened him with death if he had any contact with the GIA.

[11] In 1995 M was killed by the Algerian authorities. His naked body was paraded through the streets, and celebratory shots were fired in the air.

### **Employment difficulties**

[12] The appellant held two positions as a computer programmer between 1997 and 1999.

[13] In 1999 he was headhunted by an agency, RS. RS was involved in the privatisation of public land. The appellant was elected to a senior position in the union for this organisation.

[14] In the course of his role as a union officer he became aware of serious corruption within the organisation. He organised a strike, and also drafted a letter to the local authorities regarding “administrative terrorism” within the organisation. The union received a written response to this letter, which appeared to be condemning the authors of the letter. However, a director was subsequently fired.

[15] As RS was a government department, it received frequent visits from military officers. On one occasion, shortly after the appellant had organised for the letter to be written, a member of the militia approached him and made a threatening comment which the appellant attributes to his involvement in drafting the letter.

### **Work for Gendarmerie**

[16] In March 2001, the appellant was asked to provide computing assistance to a colonel in the gendarmerie, B. The appellant was frightened to render support to the gendarmerie but had little option but to acquiesce. He provided assistance about twice per week.

[17] The appellant’s concerns about his involvement with B were exacerbated by the fact that B frequently drove the appellant in a police car to his office. The appellant was very anxious about this very public association with the gendarmerie.

[18] A few weeks after he had started working for B, the appellant received a threatening letter from the GIA, asking him to stop working for the gendarmerie, and to provide them with information on the layout of its office. The appellant was very frightened but felt that if he stopped work he would attract suspicion from his employers and the gendarmerie, so he continued attending work. He tried to avoid working for B, claiming to be busy, but his efforts were, finally, fruitless.

[19] A few weeks later, he received a further letter from the GIA, this time containing a death threat.

[20] After the second threat the appellant told his director in confidence about the letters from the GIA, cautioning him not to tell the gendarmerie. He felt that any reaction to the letters on the part of the gendarmerie would render him at further risk. However the director went against the appellant's request and advised B of the situation, who confronted the appellant the next day, and took him in for questioning. It became apparent in the course of the questioning, that B was suspicious of the appellant because he had failed to show him the letters from the GIA, and assumed, on that basis, that his loyalties did not lie with the regime.

[21] B took the appellant in for a further round of questioning, this time acting abrasively toward him. During the course of the questions, B announced that he was starting a formal investigation into the appellant. The appellant's house was searched at this time.

[22] The appellant was frightened that the inquiry would result in him being viewed as sympathetic to the cause of Islamic extremism, in light of his failure to report the threats from the GIA, his past association with *Al Islah*, and his relationship with M. He decided that, being now under suspicion from both the GIA and the gendarmerie, he was at serious risk, and that he had no option but to leave the country. He took leave from work then quickly organised for his departure from Algeria.

### **Post flight harassment**

[23] After the appellant left the country, he was advised by his family that three members of the gendarmerie had made several visits to his home. The

appellant's father advised them that he was out of the country. After a few weeks, the visits stopped.

[24] In March 2002, a summons for the appellant was delivered to the family home, asking the appellant to report to the District Security Office. No reason for the summons was recorded on the document.

### **THE ISSUES**

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

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

[26] 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 to (a) is yes, is there a Convention reason for that persecution?
- (c) If the answer to (a) and (b) is yes, is there an internal flight alternative. In other words can the appellant genuinely access domestic protection which is meaningful?

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

[27] The appellant's evidence is accepted.

## Country information

### *History of civil war*

[28] Algeria has been racked by violence since early 1992. At this time the Islamic *Front Islamique du Salut* (FIS) party was poised to win general elections, and oust the incumbent nationalist *Front de Liberation Nationale* (FLN) party, who had been in power since 1962 after winning a war of liberation against the French.

[29] After the first round of the elections in late 1991, the election was suspended by the Algerian military, and the FIS was outlawed, resulting in the fragmentation and radicalisation of the Islamic movement. Armed groups emerged, including the *Group Islamique Armé* (GIA). A guerrilla style insurgency erupted in the countryside, while terrorist style tactics were used in urban centres.<sup>1</sup> In the course of the ensuing years, an estimated 150,000 were killed at the hands of both Islamic extremists and government-backed militias.

[30] In 1997, the least radical of the armed Islamic groups, the Islamic Salvation Army (AIS) announced a unilateral ceasefire. However, the GIA and other more militant groups continued targeting civilians and government members.<sup>2</sup>

[31] In April 1999, former FLN foreign minister Abdelaziz Bouteflika was appointed president on a "Civil Concord" platform. Later that year he pardoned over 5,000 Islamist sympathisers, and brought in a Law on Civil Concord, offering an amnesty for Islamic militants who surrendered within six months and who were not implicated in mass killings, rapes or bomb attacks on public places.<sup>3</sup> The amnesty did not apply to the GIA and another armed group, the GSPC (although some individual members took advantage of it regardless).<sup>4</sup> By the end of the amnesty, up to 6000 militants had accepted it, although most of them came from the AIS (which disbanded in the course of the amnesty).<sup>5</sup>

---

<sup>1</sup> Freedom House *Freedom in the World; Algeria*, 16 September 2004, p2

<sup>2</sup> Ibid

<sup>3</sup> United Kingdom Home Office *Country Report, Algeria* (October 2003), para 4.14

<sup>4</sup> Ibid, 4.17; International Crisis Group *Islamism, Violence and Reform in Algeria: Turning the Page* ICG Middle East Report No 29 (30 July 2004)

<sup>5</sup> Ibid

### ***Situation since the 1999 Civil Concord***

[32] The Civil Concord, although partially successful, did not quell the violence. Some 2,700 deaths were reported in 2000 from the conflict. The GIA continued near daily attacks, and an upsurge in anti-government violence was reported in December. As a result, in early 2001, the President promised an “iron fist” in dealing with the remainder of the militants.<sup>6</sup>

[33] It was reported in 2003 that at least 100 people continued to be killed each month by armed groups, security forces, and state armed militias.<sup>7</sup> In a 2003 report, Amnesty International said that, in spite of improvements since 1999, the human rights situation “remains fundamentally unchanged”, and that there is still a “shockingly high” level of violence and number of reports of human rights abuses.<sup>8</sup>

[34] The GIA continues to operate, in spite of the assassination of its leader Antar Zouabri by the Algerian Security Forces in 2002.<sup>9</sup> Although its ranks have reduced dramatically, it reportedly continues to terrorise parts of the country,<sup>10</sup> with weekly attacks by Islamic militants including the GIA reported against the security forces, civilians and foreigners.<sup>11</sup>

[35] The government was reported in 2004 as continuing to commit abuses including torture, excessive use of force, short term disappearances of prisoners, extrajudicial killings, arbitrary arrests and incommunicado detention.<sup>12</sup>

[36] In its 2003 report, Amnesty International stated that “persons with real or perceived links with armed groups”, “real or perceived opponents of the political system” and human rights activists are at particular risk at the hands of the government.<sup>13</sup>

---

<sup>6</sup> Banks, A ed. 2003 *Political Handbook of the World 2000-2002* CSA Publications, New York, p 24

<sup>7</sup> Freedom House *Freedom in the World; Algeria*, 16 September 2004, p2

<sup>8</sup> Amnesty International *Algeria: Asylum Seekers Fleeing a Continuing Human Rights Crisis: A briefing on the situation of asylum-seekers originating from Algeria* 1 June 2003, pp2-3

<sup>9</sup> The Economist Intelligence Unit Ltd *Algeria Risk: Security Risk* April 23 2004, p2

<sup>10</sup> The Economist Intelligence Unit Ltd *Algeria Risk: Political Stability Risk* 23 April 2004

<sup>11</sup> The Economist Intelligence Unit Ltd *Algeria Risk: Security Risk* April 23 2004, p2

<sup>12</sup> United States Department of State *Country Reports on Human Rights Practices: Algeria*, 25 February 2004

<sup>13</sup> Amnesty International *Algeria: Asylum Seekers Fleeing a Continuing Human Rights Crisis: A briefing on the situation of asylum-seekers originating from Algeria* 1 June 2003, p2

**Is the appellant's fear well-founded?**

[37] The Authority finds the appellant's fear of persecution at the hands of government forces to be well-founded.

[38] The appellant's failure to report the GIA's letter to the gendarmerie led B to suspect that his loyalties did not lie with the regime. This resulted in harsh questioning of the appellant, the opening of an investigation into his background and affairs, and, ultimately, an official summons.

[39] As a perceived opponent of the regime, with perceived links to the GIA, and an outstanding summons by the Algerian authorities, the Authority finds the appellant's fears at the hands of the Algerian government to be well-founded. In making this finding, we have borne in mind Amnesty International's observations quoted above regarding the vulnerability at the hands of the government of persons with real or perceived links with armed groups, and real or perceived opponents of the political system. We have also taken into account the following comment regarding the categories of person who may risk persecution in a report by the Swedish Immigration Board on Algeria in 2004: "Great caution should also be taken if it is likely that an applicant might be likely to be *suspected* of activities in an armed group."<sup>14</sup>

[40] The appellant's fear of persecution is for reason of a political opinion that has been imputed to him.

[41] In light of the finding that the appellant has a well-founded fear of persecution at the hands of the Algerian government, the Authority does not need to make a finding as to his risk at the hands of the GIA.

**Internal Protection Alternative**

[42] Amnesty International reported in 2003 that the authority of the state carries in all parts of the country and that, since legislative changes in 1992, police officers have been able to operate anywhere in the country without requiring

---

<sup>14</sup> Immigration and Nationality Directorate, 2004, *Report on a Visit by the Swedish Immigration Board to Algeria* 16-26 March 2003



authorisation from the police and judiciary with primary jurisdiction over the area.<sup>15</sup> In these circumstances we find that an internal protection alternative is unavailable to the appellant.

[43] Accordingly, the framed issues are answered in the affirmative.

### **CONCLUSION**

[44] In light of the above, the Authority finds that the appellant is a refugee within the meaning of the Refugee Convention. Refugee status is granted. The appeal is allowed.

.....  
S L Murphy  
Chairperson

---

<sup>15</sup> Amnesty International *Algeria: Asylum Seekers Fleeing a Continuing Human Rights Crisis: A briefing on the situation of asylum-seekers originating from Algeria* 1 June 2003, p3