

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND

Application No 75945

IN THE MATTER OF An application pursuant to s129L of the
Immigration Act 1987 to cease to
recognise a person as a refugee

BETWEEN A refugee status officer of the Department
of Labour
APPLICANT

AND

RESPONDENT

BEFORE A N Molloy (Chairperson)
B Burson (Member)

Counsel for the Applicant: A Sandberg

Counsel for the Respondent: No appearance

Date of Hearing: 3 November 2006

Date of Decision: 16 November 2006

DECISION

[1] This application is made by a refugee status officer of the New Zealand Immigration Service (NZIS). He applies for an order under s129L(1)(f)(ii) and s129R(b) of the Immigration Act 1987 ("the Act") that the Authority cease to recognise the respondent as a refugee. It is made on the grounds that the grant of refugee status made by this Authority may have been procured by fraud, forgery,

false or misleading representation, or concealment of relevant information (“by fraud or the like”).

THE GRANT OF REFUGEE STATUS

[2] The respondent is a Saudi Arabian national in his mid-twenties. He entered New Zealand on 9 April 2003 using an Iraqi passport and immediately applied for refugee status. After interviewing the respondent on 19 May 2003, a different refugee status officer issued a decision declining his application for refugee status on 13 June 2003.

[3] The respondent appealed. A different panel of this Authority considered his appeal, which was advanced upon the basis that he was a national of the Republic of Iraq. He claimed to belong to a small Islamic sect subjected to discrimination and targeted by other Muslims in Iraq. He claimed that, while he had endured constant harassment in Iraq for many years, the worst excesses had been held in check by the ruling Ba’ath Party. Those limits were removed with the fall of the Ba’ath Party when the Republic of Iraq was invaded by the United States-led military coalition in March 2003. The respondent claimed that he had fled from Iraq shortly after that invasion.

[4] This Authority (differently constituted) found the respondent’s claim to be credible. On that basis it found that he faced a real chance of being persecuted by non-state agents in Iraq, for reason of his religion. He was granted refugee status in the Authority’s decision in *Refugee Appeal No 74695* (22 January 2004).

APPLICATION TO CANCEL REFUGEE STATUS

[5] In 2006 it became apparent to the NZIS that the respondent had entered New Zealand at various times prior to 9 April 2003. On each of those occasions he obtained entry to New Zealand using a Saudi Arabian passport rather than an Iraqi passport, and using a different name to that under which he obtained refugee status. He had obtained various permits allowing him to remain here under that different name.

[6] As a result of these discoveries the Department of Labour brought six charges against the respondent pursuant to s142(1)(c) of the Act. The summary of facts, caption sheet and the Department of Labour’s departmental return on prosecution of the respondent’s criminal offending, describe how the respondent is a Saudi Arabian citizen who failed to declare his true name, date of birth,

citizenship and previous immigration history.

[7] The respondent appeared in the District Court at Dunedin on 27 April 2006 before Judge O'Driscoll. He was represented by Mr Kilkelly. The respondent pleaded guilty and was convicted on all six charges. He was sentenced to a term of 12 months' imprisonment, and was refused leave to apply for home detention.

[8] This application was lodged with the Authority on 4 September 2006. It was served upon the respondent in person on 8 September 2006, together with a covering letter from the Authority dated 5 September 2006. The Authority's letter informed the respondent that he was entitled to request an interview with the Authority and to provide written submissions in respect of the application within 21 days of the date of service.

[9] The respondent obtained advice from counsel, Mr Kilkelly, who informed the Authority by letter dated 8 September 2006 that the respondent did not wish to challenge the decision to cancel his refugee status. In fact, no decision had then been made to cancel the respondent's refugee status. Rather, an application had been made, seeking an order to that effect.

[10] The Authority subsequently issued a Minute dated 11 October 2006, which provided directions with a view to bringing the application on for hearing. The Minute informed the parties to this proceeding of the date on which the application was to be heard, and provided time frames within which any further evidence or material was to be lodged.

[11] The applicant filed and served additional submissions on 27 October 2006. The respondent did not lodge any additional material, and has taken no steps in respect of the application since the letter from Mr Kilkelly dated 8 September 2006.

[12] The applicant submits that the evidence before the Authority demonstrates that the respondent's refugee status may have been procured by fraud or the like. In particular:

- (a) The respondent had another identity not declared to the Authority. Specifically, he is a national of Saudi Arabia and at the time he obtained refugee status in the guise of an Iraqi, he possessed an apparently genuine Saudi Arabian passport issued on 28 February 2000.
- (b) Prior to the occasion when he lodged his claim for refugee status, the respondent had entered New Zealand three times using his Saudi Arabian

passport.

- (c) The respondent's Saudi Arabian passport contained stamps which demonstrate that he was not in Iraq during periods of time when he had claimed, for the purposes of his refugee claim and appeal, that he was being persecuted in Iraq. Those stamps are corroborated by NZIS records of visa and permit applications made by the respondent under a different name.
- (d) The respondent withheld or concealed all of this information from the NZIS and from the Authority. The respondent's claim to be an Iraqi national, and the fear of being persecuted within Iraq, was fabricated.

[13] A considerable amount of evidence was lodged in support of the application. This included:

- (a) A transcript of an interview conducted with the respondent by Border and Investigations on 9 and 10 April 2003;
- (b) A copy of the respondent's Saudi Arabian birth certificate;
- (c) Written applications to visit New Zealand completed and signed by the respondent under the name Loai Ali Al-Hashem;
- (d) Deposition of Dr R J Watt, Forensic Anthropologist, dated 14 October 2005, as to his findings with regard to facial mapping comparisons of various photographs of the respondent;
- (e) A summary of facts and a caption sheet in connection with various charges brought by the Department of Labour against the respondent pursuant to s142(1)(c) of the Act;
- (f) A video recording of an interview conducted on 9 March 2006 between the respondent and Tania Mulder, Fraud Investigator from Immigration New Zealand on 9 March 2006; and
- (g) A certified copy of Entry of Criminal record, signed by the Deputy Registrar of the District Court at Dunedin. This document was obtained by the applicant at the suggestion of the Authority, and forwarded to the Authority after the hearing of the application.

JURISDICTION

[14] A refugee status officer may apply to the Authority, in accordance with s129L(1)(f)(ii) of the Act for a determination as to whether the Authority should cease to recognise a person as a refugee where that status may have been procured by fraud or the like. Section 129L(1)(f)(ii) of the Act provides that:

- “(1) In addition to their function of determining claims for refugee status, refugee status officers also have the following functions: ...
- (f) applying to the Refugee Status Appeals Authority for a determination as to whether– ...
 - (ii) the Authority should cease to recognise a person as a refugee, in any case where that recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information... .”

[15] The Authority is empowered to hear such applications by s129R(b) of the Act:

- “In addition to the function of hearing appeals from decisions of refugee status officers in relation to refugee status, the Authority also has the function of determining applications made by refugee status officers under section 129L(1)(f) as to whether ...
- (b) the Authority should cease to recognise a person as a refugee, in any case where the earlier recognition by the Authority of the person as a refugee may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.”

[16] The relevant test comprises two stages. For the first stage the Authority must determine whether the respondent’s refugee status “may” have been procured by fraud or the like.

[17] If so, the Authority moves to the second stage, which requires it to determine whether to “cease to recognise” the respondent as a refugee; that is, to cancel his refugee status. This does not automatically follow from a finding that refugee status may have been procured by fraud and the like. Rather, it will depend upon whether the person currently meets the criteria for refugee status. Therefore, this second stage requires the Authority to undertake its orthodox enquiry into whether the respondent satisfies the definition of a refugee as set out in the Refugee Convention.

WHETHER REFUGEE STATUS MAY HAVE BEEN PROCURED BY FRAUD, FORGERY, FALSE OR MISLEADING REPRESENTATION OR CONCEALMENT OF RELEVANT INFORMATION

[18] The only communication which the Authority received from or on behalf of

the respondent in respect of the application is the letter from his counsel, Mr Kilkelly, dated 8 September 2006. In his letter Mr Kilkelly stated that the respondent had instructed him that he did not wish to challenge the decision to cancel his refugee status. No additional information or evidence has been produced by the respondent in response either to the application or to the Minute of the Authority dated 11 October 2006.

[19] The Authority infers from the content of Mr Kilkelly's letter, and from the subsequent inaction on the part of the respondent, that the respondent does not challenge or oppose the basis upon which the application is made.

[20] In addressing the first stage of the test the Authority notes that there is uncontested evidence that the respondent has been convicted of several offences under the Act. Some of those charges relate to the provision of false information to a refugee status officer. Having admitted those charges, the respondent was convicted of six offences under the Act, and was sentenced to serve a period of twelve months' imprisonment.

[21] We also note that at the time the Authority published its decision granting refugee status to the respondent, it was not aware that he was a citizen of Saudi Arabia, or that he had previously entered and remained in New Zealand using his Saudi Arabian passport. The Authority was equally unaware that the respondent had not been present in Iraq at various periods of time during which he claimed he had been experiencing some of the problems upon which his application for refugee status was predicated.

[22] Taking into account all of the evidence, the Authority finds that the grant of refugee status to the respondent may have been procured by fraud or the like. Having satisfied itself in that regard, the Authority will address the second stage of the test.

WHETHER THE AUTHORITY SHOULD CEASE TO RECOGNISE THE RESPONDENT AS A REFUGEE

THE ISSUES

[23] 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."

[24] 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 respondent being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

[25] We deal with each in turn.

OBJECTIVELY, ON THE FACTS FOUND, IS THERE A REAL CHANCE OF THE RESPONDENT BEING PERSECUTED IF RETURNED TO THE COUNTRY OF NATIONALITY?

[26] A claimant bears the responsibility of establishing his refugee claim: see ss129G(5) and 129P(1) of the Act (as referred to in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA)).

[27] The respondent has been afforded the opportunity to provide the Authority with information or evidence to establish a continuing entitlement to a declaration of refugee status. He has provided nothing in writing. Further, he chose not to attend the hearing of this application on 3 November 2006, despite being notified of the date of the interview by the Minute of the Authority dated 11 October 2006, which was forwarded to counsel for both parties on the same date.

[28] The Authority is entitled to determine the application in the absence of the respondent by virtue of s129P(6) of the Act, which provides that:

"... the Authority may determine an appeal or other matter without an interview if the appellant or other person affected fails without reasonable excuse to attend a notified interview with the Authority."

[29] In the absence of the respondent and in light of the respondent's written concession that he does not challenge the application to cancel his refugee status, the Authority finds that the respondent is not a refugee within the meaning of Article 1A(2) of the Refugee Convention.

CONCLUSION

[30] The Authority makes the following determinations:

- (a) The respondent's refugee status may have been procured by fraud or the like.
- (b) The Authority ceases to recognise the respondent as a refugee.

.....
A N Molloy
Chairperson