

AT AUCKLAND

| | |
|------------------------------------|-------------------|
| Appellant: | AD (Syria) |
| Before: | V J Shaw (Member) |
| Counsel for the Appellant: | D Mansouri-Rad |
| Counsel for the Respondent: | No Appearance |
| Date of Hearing: | 10 November 2011 |
| Date of Decision: | 28 November 2011 |

DECISION

INTRODUCTION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour, declining to grant refugee status to the appellant, a citizen of Syria. The appellant also seeks to be recognised as a protected person.

[2] The appellant, a young Christian man, says he fears to return to Syria because he is afraid that he will be seriously harmed or killed by the family of a young Muslim woman with whom he had a sexual relationship. The primary issue for the Tribunal is the credibility of the appellant's claim.

[3] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

[4] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[5] The appellant, aged 27 years, is an Assyrian Christian from Al Hasaka, in the north of Syria. In Syria the appellant has his parents and two sisters and a younger brother who is a reservist in the army. He also has two older brothers: one is a New Zealand resident and the other lives in Australia.

[6] After completing his compulsory military service in 2005, the appellant was unemployed for a year or so then managed to attain casual labouring work in the building industry.

[7] In August 2008, the appellant made an application to Immigration New Zealand in Dubai for a visa to visit his brother in New Zealand.

[8] In February 2009, the appellant commenced working in a flower shop for four hours in the evening. The friend, through whom he had obtained the position, worked in the shop during the earlier part of the day.

[9] Some weeks after commencing his work in the flower shop (the appellant is uncertain of the exact time but around March or early April), a young woman came into the shop with a group of other women and asked to buy flowers. When he was showing her some red roses, she whispered to him that he was handsome. Soon afterwards, she began visiting the flower shop every two or three days. She would stay for a few minutes and they would talk about "love stuff".

[10] The appellant does not know where she lived, as he never thought to ask her. She was working in a women's clothing or bridal shop some 50 metres or less from the flower shop which the appellant thinks was owned by one of her relatives. He does not know what hours she worked there as he never thought to ask her and nor did he ever walk past the shop to look at it as he thought someone might see him.

[11] The appellant and the woman exchanged telephone numbers and they began telephoning each other at least twice a day and texting each other many times.

[12] The appellant and the woman found themselves falling in love. The fact that he was a Christian and the woman a Muslim was of concern to the appellant,

but he had not previously had a close relationship with a woman and both felt increasingly passionate about each other.

[13] Nonetheless he was apprehensive about the fact that she was a Muslim and as the relationship deepened he suggested to her that they should elope together to Lebanon where it would be easier for them to marry and live as a couple of mixed religion. She welcomed this suggestion and was very happy. They did not discuss what her parents' response might be to their relationship or future marriage. The appellant's girlfriend did not say anything about how her family might view the matter, she expressed no concern about it and the appellant does not think that she really thought about it.

[14] The appellant's girlfriend was 21 years old and was completing her last year of high school extramurally. Her father sold fish at a market stall and also sometimes drove a taxi.

[15] Sometime in May, the appellant arranged to meet his girlfriend privately in the house of a friend. The friend was at work and he agreed to give the appellant the key to his home. They were able to spend some three to four hours together talking about themselves and their families. They talked about eloping to Lebanon and his girlfriend agreed that she would go with the appellant.

[16] On her mobile phone the girlfriend showed the appellant photographs of her family. She also had a photograph of herself which she transferred to the appellant's mobile phone. Although the appellant could take photographs on his own mobile phone he did not think to take a photograph of his girlfriend.

[17] Some days later (the appellant cannot be specific as to the time), the appellant arranged with his friend to again have the use of his home so the appellant could spend time with his girlfriend. This time, his girlfriend brought sexually revealing clothing which she changed into from her *hijab*. On his girlfriend's initiative, they then engaged in sexual relations.

[18] The appellant enjoyed this sexual encounter but made no attempt to repeat the experience. He does not know why he did not seek to arrange another such meeting. However, his girlfriend continued to visit him frequently at the flower shop where they would talk over a cup of coffee as the shop was rarely very busy, and on Sundays they met at an internet cafe. They also continued to telephone and text each other on a daily basis.

[19] The appellant's father learned of the appellant's relationship after the friend who had lent his house inadvertently commented to the appellant's younger brother about the appellant being in love with a woman. The brother informed their father who questioned the appellant. When he learned that the woman involved was a Muslim and the appellant was planning to elope with her to Lebanon, he was very angry and warned the appellant against continuing the relationship. He warned that her family might force the appellant to become a Muslim or kill him to uphold their honour.

[20] Despite his father's warning, the appellant continued the relationship. He and his girlfriend continued to meet on Sundays at the internet cafe, she visited him in the shop and they communicated daily by telephone and text. The appellant thinks it is possible that his girlfriend might have suggested another meeting at his friend's house but it did not happen "according to circumstances, sometimes I was quite busy in the shop".

[21] The appellant's visa to visit his brother in New Zealand was finally issued in early October 2009.

[22] The appellant resigned from his position in the flower shop to prepare to come to New Zealand. His girlfriend was very distressed at the prospect of his absence, but he assured her that it was only a visit and he would return. Over this period, he did not see her as regularly as before though they were still sending each other daily texts. He arranged to see her at the flower shop to say goodbye a day or so before his departure. He is not sure why he arranged to meet her at the flower shop given that he had ceased working there which meant they would not be alone at the shop. However, his friend who worked in the shop was aware of the appellant's relationship and the appellant trusted him. His girlfriend cried at the prospect of their separation. He assured her he would return.

[23] The appellant arrived in New Zealand on 20 October 2009. He did not attempt to have any further contact with his girlfriend from this country as the changed atmosphere made him reflect on his father's advice. He did not want to make his family angry with him so decided to try to forget the relationship.

[24] In December 2009, prior to Christmas, the appellant's father informed the appellant's brother, in a telephone call, that the appellant's girlfriend was pregnant and that he had received a threatening telephone call from the girlfriend's father. Because of the threats and harassment from the girlfriend's father the family had

moved from their house to another town. The appellant experienced shock. He did not think to try to contact his girlfriend as he wanted to follow his parents' advice that he give up the relationship.

[25] The appellant had maintained contact with his friend who worked in the flower shop. Around this time his friend informed the appellant that everyone knew about his relationship with the woman and that he had heard that she was pregnant.

[26] Fearing that if he returned to Syria he would be seriously harmed by his girlfriend's family, the appellant, on the advice of his brother, lodged an application for refugee status.

The Appellant's Brother

[27] A signed written statement (9 November 2011) was received from the appellant's New Zealand-resident brother and he also gave oral evidence. He and his wife and two young children travelled to Syria in early June 2011 to stay with his parents. He noted that the security situation at the airport was far heavier than when he had last left Syria in 2004. Just before Christmas 2010, his parents had shifted from Al Hasaka and were now living in a small town some two hours' drive away. They had moved in order to avoid harassment by the girlfriend's father and her brothers and his father had also given up his employment. There had been a threatening phone call from the girl's father and her brother had come to his parent's house and sworn and threatened to kill the appellant.

[28] Before his trip to Syria in June 2011, the brother had requested his father to send a letter from the family's church in Al Hasaka that confirmed the appellant's problem with his Muslim girlfriend's family. That letter, dated 28 April 2011, was duly submitted to the RSB. It was signed by Father Jameel Oshana, and had been obtained and brought to New Zealand by a Syrian friend. The RSB requested INZ in Dubai to verify the letter and this was done by means of a telephone call to the church which responded that no such priest was known to the church. It had been the brother's intention to visit the church in Al Hasaka on his June 2011 trip, to obtain evidence of his brother's situation. However, his father stopped him as the situation was not safe and there was the risk that the girlfriend's family might hurt him.

[29] Because of the unrest in Syria this year there have been many security measures put in place, including the monitoring of telephone conversations. For this reason neither the brother nor his father wished to talk to the church about the appellant's matter. His father did tell him though that in July he had met one of the church workers who normally answered the telephones at the church. His father raised the issue of the call from Immigration New Zealand to the church and the church worker replied that to his knowledge there had been no such telephone call to the church. In the current security crisis there is no possibility of obtaining a statement from the church about the appellant's situation.

[30] The family have no information about what has happened to the appellant's girlfriend, if indeed she is still alive.

Material and Submissions Received

[31] Counsel's provided submissions (9 November 2011). In support of the claim the RSB was given:

- (a) a photograph, said to be of the girlfriend, and several photographs of the flower shop where the appellant worked;
- (b) a certificate from the Assyrian church in Auckland confirming the appellant's membership of the church;
- (c) a letter in Arabic signed by a priest at the appellant's family church in Al Hasaka (and English translation) which confirms that the appellant secretly loved a Muslim girl, her family have discovered the secret and that their daughter is pregnant and have chased the appellant's family; and
- (d) a letter (23 April 2010) from a doctor confirming that the appellant was being treated for depression.

ASSESSMENT

[32] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and
- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[33] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant’s account.

Credibility

[34] The Tribunal found the appellant to be an unimpressive witness. Even acknowledging that his mood seemed somewhat flat and he may well have found the interview process stressful, his account of his relationship with his girlfriend was too implausible to be credible.

Girlfriend’s occupation in nearby shop

[35] The appellant supposedly met the girlfriend around March April 2010, they then quickly fell in love and the relationship progressed over the following weeks to the point that the appellant was seriously considering marrying her. He went so far as to suggest they eloped together to Lebanon, a proposal with which she apparently agreed. The couple had contact over a period of at least five months, including meeting every few days at the flower shop where they could readily talk over coffee because there were very few customers, conducted daily telephone calls and sending numerous daily text messages, spending two afternoons together at a friend’s house and Sunday meetings at an internet cafe. Despite this, the appellant could not even say where the girlfriend lived.

[36] At the appeal hearing the appellant mentioned for the first time that she worked at a women’s clothing/bridal shop in the same market, some 50 metres or so from the flower shop, but he knew nothing about her hours of work. It is unreal that, if she had been working some 50 metres away, there would not have been some discussion about her hours of work, if only because it would impact on her availability to meet with the appellant and the risk that their meetings would be noticed. The appellant claimed he never went near the bridal shop in case he was

seen, which makes it all the more incomprehensible that he and his girlfriend would not have discussed her hours of work and how to avoid being noticed together when she came into the flower shop.

[37] The appellant's evidence about the nearby shop where his girlfriend supposedly worked has also been inconsistent. In his refugee application, he stated that "her family had a shop next to where I worked" and this was how he came to meet her when she came in to buy flowers. The RSB later queried this after the appellant at his interview stated that the appellant's father sold fish in the market and also sometimes drove a taxi to help his son. He responded by saying that his girlfriend had just been visiting a wedding shop and men did not work in such shops only females, so her father and brother could not work there. He did not mention that his girlfriend worked in the shop nor could he say who in her family worked there and he speculated that perhaps the shop was rented on a monthly basis. In response to the RSB interview report, he again confirmed that he knew that only women worked in bridal shops, that he did not know who in her family owned the shop as "I did not get into this subject with [his girlfriend]" but she had a large family so the shop might belong to an uncle or relatives.

[38] If the appellant had known that his girlfriend worked in a nearby bridal shop he would previously have mentioned this fact. Further, if the shop was owned by a member of her immediate or extended family, the subject of his girlfriend's hours of work and who in her family owned and/or worked in the shop would certainly have arisen. The appellant's evidence about these matters is not believable.

No discussion about risk from girlfriend's family

[39] The appellant claims to have fallen in love with a young Muslim woman and that, on becoming aware of the relationship, her family had threatened to kill him and may even have killed their daughter to restore their honour. However, despite the risks associated with such a relationship, at no time was there seemingly any discussion between the couple about this. His girlfriend was apparently very forward in promoting the relationship, initiated sexual intercourse and readily agreed to the proposal to elope to Lebanon, all without once expressing any anxieties or fears about what her family's response might be. Nor did the appellant think to raise the matter himself, even though, as he stated in his refugee application, his girlfriend's family were strict Muslims and that if they had found out about the relationship "it would have been my last day on earth".

[40] Even more extraordinary is the absence of any discussion about the girlfriend's pregnancy. According to the appellant, sexual intercourse took place on one occasion only, which he estimates would have been sometime in June 2010. He departed Syria on 18 October 2010. He last saw his girlfriend to say good bye the day before and, up until that time, they had been in regular contact. Surprisingly, given the serious predicament her pregnancy must have represented for her, the girlfriend made no mention ever of being pregnant, even though at the time of his departure, about which she was very upset and cried, she would have been up to four months pregnant. It is unreal that, if his girlfriend was pregnant, she would not have informed the appellant of the situation given their regular contact.

[41] In keeping with the implausibility of the pregnancy is the appellant's general disengagement from the outcome of the pregnancy or his girlfriend's fate. He has made no attempt to contact her. He says he has maintained occasional contact through the internet with his friend who worked in the flower shop and this friend told him around December 2010 that he had heard his girlfriend was pregnant and "everyone knows about your story with the girl", but he had not since endeavoured to obtain further information through his friend.

[42] Mr Mansouri Rad submits that the appellant appeared to be somewhat dependent on, and easily influenced by, his father and brother. He had wanted to return to Syria, but had been overwhelmed by the consequences of his actions and the impact on his family and their reactions. His family had insisted he remain here and he had become depressed, so that his brother took him to a doctor. Against this background, it is submitted, his lack of contact with his girlfriend after coming to New Zealand reflects his particular personality rather than a fabricated account and he is entitled to the benefit of the doubt.

[43] The Tribunal acknowledges the evidence that the appellant was treated for depression from early in 2010. However, of itself, depression can be caused by or is consistent with various factors. Noted, for instance, is the evidence that the appellant had thought to return to Syria because he was missing his family and because he was bored as he could not work. The Tribunal must assess the appellant's account of why he says he cannot safely return to Syria. His account of his relationship with his girlfriend, which is the crux of the case is not believable, for the reasons explained. The Tribunal is reinforced in this finding by the outcome of the attempted verification of the letter from the church in Syria.

Letter from Assyrian church in Syria

[44] It will be recalled that the appellant's brother arranged for his father to obtain a letter from the Assyrian church in Al Hasaka to confirm the appellant's problems. INZ requested an Arabic-speaking INZ officer in Dubai to contact the Bishop at the church and ask him to verify that Father AA (the priest whose signature appeared on the letter) was a priest at the church and, if so, to speak to the priest and confirm he wrote the letter. The officer reported in an email of 22 February 2011 that she had telephoned the direct number of the Bishop and had spoken to the Bishop's secretary who confirmed several times that they had never had a Father at the church named AA and that he (the secretary) had not heard about the appellant and his girlfriend.

[45] The appellant's brother who arranged with his father to obtain the letter, questions the reliability of INZ's verification. He said it had been his intention during his recent three month stay with his parents in Syria to visit the church in Al Hasaka to obtain the necessary evidence from the church, but he feared that he might be hurt by the girlfriend's family. This seems an exaggerated fear given that he was proposing merely to visit a church in Al Hasaka, a city, he says, with a population of one million people.

[46] The brother also claimed that one of the security measures in place because of the current unrest in Syria was that, inside Syria, telephone conversations cannot be held in a language other than Arabic or the telephone line disconnects. His father did not want him to telephone the church and talk in Arabic as the subject matter was controversial. As the issue was the presence at the church of a certain priest, it is surprising that the father would consider it unsafe for the son, or more especially himself, to telephone the church where he had been a longstanding member of the congregation and request confirmation of Father AA's position as a parish priest. He could also have written to the church and requested the same information.

[47] The suggestion that the father, when shopping, had met one of the church workers who normally answered the phone, who had told him that he had no knowledge of the New Zealand government telephoning the church does not assist. There is no reason to doubt from the file record that an INZ officer telephoned the number of the church and spoke to a person who described himself as the Bishop's secretary.

[48] More relevant is whether the INZ officer was provided with correct information or whether suspicion and reticence might have caused the secretary to be less than forthcoming when responding to a telephone inquiry from a foreign official. In her report of her conversation with the secretary, the INZ officer acknowledges that the church was not Damascus but in Al Hasaka, where there still exists an old mentality as to who is asking questions and what for, and people are afraid to release information because of government political influence. But, in the end, the secretary was said to be helpful and he also confirmed several times that they had never had a Father AA working at the church. The officer did state that she wanted to send a fax with the letter to the church, but there is no record that that proposal was undertaken.

[49] Mr Mansouri Rad submits that there is sufficient uncertainty surrounding the verification of the letter for it to be treated as neutral and put aside. However, the Tribunal considers that it can rely on the information provided to INZ that there is no Father AA at the church. Even taking the secretary's initial suspicion into account, the presence at the church of a Father AA is uncontroversial information which a church official is unlikely to deny when answering a phone call from a caller wishing to speak to such a priest.

[50] It is also clear from the appellant's New Zealand visa application that his family went to some trouble to produce documents about the appellant's employment and ownership of assets that, if not outrightly fraudulent, presented an exaggerated or false picture so as to persuade INZ to grant him a visa. His father would therefore have been quite capable of producing a similar type of document to assist the appellant's refugee claim. The Tribunal concludes that the letter has been manufactured to bolster the appellant's refugee case.

[51] In conclusion, the Tribunal rejects the appellant's core account. It does not accept that he had a Muslim girlfriend in Syria whom he got pregnant and whose family are intending to kill him on his return to Syria.

[52] The appellant's claim will therefore be assessed on the basis that he is a young Assyrian Christian from Al Hasaka in Syria.

The Refugee Convention

[53] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[54] 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.”

[55] In terms of *Refugee Appeal No 70074* (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 Claim to Refugee Status

[56] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000) at [67].

[57] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008) at [57].

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Syria

[58] At the commencement of the hearing the Tribunal sought confirmation as to whether the appellant was seeking to rely on the current civil conflict in Syria as a

source of potential risk. Counsel confirmed that the Tribunal should take the current situation into account to the extent that the appellant would be viewed with suspicion by the Syrian authorities because he was a young Christian man returning to the country and therefore it might be thought that he would join the anti-government protests.

[59] No supporting country information was produced which established that merely being a young man or a young Christian man would be sufficient to bring the appellant under suspicion as a potential government opponent.

[60] The appellant has no political profile in Syria and had not encountered any past difficulties with the Syrian authorities in his home region. He was also able to legally leave the country. He has been absent from the country throughout the period of the current conflict. There is nothing about his personal profile or characteristics that would cause him to be personally targeted by the authorities on his return.

[61] Relevantly, his brother, who is aged 32 years, gave evidence that in June 2011 he made a three month visit to Syria to see his family. He noted heavy security measures at Damascus airport, but encountered no difficulties entering or exiting the country or during his stay. The appellant's situation is likely to be no different to that of his brother.

Conclusion on Claim to Refugee Status

[62] The Tribunal finds that there is no real chance that the appellant will be seriously harmed on his return to Syria. He does not therefore have a well-founded fear of being persecuted. Given that finding, it is unnecessary to address the second issue – that of a Convention reason.

The Convention Against Torture

[63] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

Assessment of the Claim under Convention Against Torture

[64] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

"... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

[65] It follows from the above findings that the appellant's core claim is not credible and that there are no other factors that would put him at risk of being seriously harmed by the Syrian authorities. There are no substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand.

The ICCPR

[66] Section 131(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

Assessment of the Claim under the ICCPR

[67] Pursuant to section 131(6) of the Act "cruel treatment" means cruel, inhuman or degrading treatment or punishment but, by virtue of section 131(5):

- “(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:
- (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.”

[68] Similarly, the above findings also mean that there are no substantial grounds for believing that the appellant would be subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

CONCLUSION

[69] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[70] The appeal is dismissed.

"V J Shaw"

V J Shaw

Member

Certified to be the Research
Copy released for publication.

V J Shaw
Member