

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76397

AT AUCKLAND

Before: B L Burson (Member)
Counsel for the Appellant: R Chambers
Appearing for the Department of Labour: No Appearance
Date of Hearing: 23 October 2009
Date of Decision: 8 December 2009

DECISION

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

INTRODUCTION

[2] The appellant arrived in New Zealand on 27 September 2008. As a Saudi national he did not require a visa to enter New Zealand and was issued with a visitor's permit upon arrival. On 27 November 2008, the appellant applied for a student permit which was granted on 17 December 2008. On 20 April 2009 the appellant lodged his claim for refugee status. He was interviewed by the RSB in respect of that claim on 15 May 2009. By decision dated 17 July 2009 the RSB dismissed the appellant's claim. The appellant duly appealed to the Authority.

[3] The appellant claims to have a well-founded fear of being persecuted in Saudi Arabia by reason of his being of the Shi'a Islamic faith. He further claims that he has fled Saudi Arabia after being pressured to become an informer for the Saudi intelligence services as to the activities of members within the Shiite community in his home city.

[4] What follows is a summary of the evidence presented by the appellant in support of his claim and the evidence he gave on appeal. An assessment follows thereafter.

THE APPELLANT'S CASE

[5] The appellant was born in a city ("his home city") in Saudi Arabia, where he lived all his life prior to coming to New Zealand. His home city has a population of approximately five million inhabitants of whom 60 or 70 per cent are Shiite.

[6] The appellant has four siblings who remain living in Saudi Arabia, as does his mother. His father passed away in 2005.

[7] The appellant's family are devout Shiites. Prior to his death, the appellant's father had been well known in his home city. In the mid-1980s the appellant's father built a *hosseiniya* (a Shiite community and religious centre) at the family home. It was a large purpose built structure and could accommodate 100 people. At the time, it was the only *hosseiniya* in their part of his home city. The appellant's family had a tradition of providing such a facility to their community – the appellant's grandfather had been the owner of the largest *hosseiniya* in the town from where the family originated prior to moving to his home city. His family believed that building and maintaining a *hosseiniya* for the service of their community was a way they, as a family, became closer to God. Over the years a number of clerics visited from Bahrain and Kuwait to preach at the *hosseiniya* alongside clerics from his home city. It was impossible, however, for *maraji'i* (very senior clerics) to visit from Hawza (a collection of Shiite seminaries/universities) in Najaf, Iraq (the centre of Shiite religious learning outside Iran). This would have been extremely risky because of the discrimination against Shiite religious practice in Saudi Arabia.

[8] Not only did the appellant's father keep and maintain the *hosseiniya*, but the appellant's mother also gave religious lectures to women there. Lectures and sermons were held in the *hosseiniya* on Monday afternoons for women and on Tuesday evenings for men. The *hosseiniya* also served as a publication centre. The appellant's father installed printing machines along with fax and telex machines. Shiite religious texts were brought into Saudi Arabia and distributed from the *hosseiniya*. The material was also printed there for distribution among the community.

[9] The appellant recalls his father having a number of problems with the Saudi security forces because of the operation of the *hosseiniya*. The appellant was often home when a group of men who were not attendees of the *hosseiniya*, would come to the front door and asked for his father. Unusually, these men were never invited inside but he noticed that soon afterwards his father would leave the home and not return for a number of days or a week. The longest the appellant recalls his father being away from home in these circumstances was approximately one month. His mother told the appellant and his siblings that their father was away on business. Although it was not discussed, it was understood by the siblings that their father had been detained. His father never confirmed this to them. Although it was common knowledge in the community that many people who were detained were subjected to torture and beatings, his father never recounted his experiences in detention to the appellant or his family.

[10] While growing up the appellant also encountered discrimination and abuse in various forms because he was Shiite. He encountered no particular difficulties at school until he reached the age of 10 at which time he was required to undertake compulsory religious education. The religious education at the school focused exclusively on the Sunni branch of the Islamic faith to the exclusions of the Shi'a branch. The religious education teachers at school were all from the *Wahhabi* sect (a particularly strict school of Sunni Islamic thought, as to which see below) who considered Shi'as to be infidels and treated the pupils accordingly. The appellant was often verbally abused and subjected to minor corporal punishment by the teachers for performing prayers in the Shiite fashion. When he was beaten by the *Wahhabi* teachers it was sometimes with sticks, sometimes with electric cables and sometimes with hands. As a result he failed one year of his schooling.

[11] On occasions the appellant was involved in physical fights outside school with Sunni students because of discrimination and abuse he encountered from them at school. The following morning after one such incident, the appellant was summonsed to the local police station. He attended with his father and they were told a complaint had been made against the appellant. The appellant's father went looking for the father of the boy to make him apologise and ask him to withdraw the complaint. During this time, the appellant was left alone in a room with a police officer and he was slapped on the face several times by him and threatened that he would be put in jail. The complaint was eventually withdrawn but the officer slapped the appellant on the face in front of his father before letting him go.

[12] In 1990, the appellant was abducted whilst playing football and driven outside the city. The two men who abducted him then raped him. He was then driven to another place where they were joined by another four men. The appellant was again gang raped by each of the six men. They wrote on his body that this was the reward of a Shiite living in a Muslim country. Later that evening he was taken to the centre of the city from where he made his way home.

[13] At the time the appellant's father had been imprisoned during one of the aforementioned detentions. No complaint was ever laid with the police about this incident. The appellant does not know why his mother never discussed it with him and she simply tended to his physical and mental rehabilitation herself without involving others. As a result of this incident and the discrimination he encountered at school the appellant found it more difficult to concentrate on his studies. Eventually, in about 1994, the appellant stopped going to school altogether and helped his father in the family business. He did not undertake any further schooling for a number of years.

[14] Soon after, in the mid-1990s, the appellant's father was detained. The appellant noticed that activities at the *hosseiniya* reduced drastically. Celebrations of Shiite religious occasions for large numbers of people no longer took place and the lectures and sermons for men ceased. While lectures by his mother at the *hosseiniya* continued for a further two years, eventually even these stopped. After this time the *hosseiniya* was seldom used and then only for smaller gatherings. While no details were given to the appellant or his siblings about the closure of the *hosseiniya*, his mother would often remark that the government was to blame for this. The appellant came to understand that during his father's last detention, his father had been made to sign an undertaking that he would not use the *hosseiniya* to allow large gatherings of Shiites to observe their religious festivals such as *Ashura*. Nevertheless, despite this ban, occasionally when his parents held small informal gatherings of friends at their home the *hosseiniya* was used. It was also used to celebrate weddings.

[15] In the late 1990s the appellant resumed schooling. He went to a different school which had evening classes. He encountered no physical or verbal abuse to the extent that he had previously, although from time to time people would call him not by his family name but by "Al-Shiite". Also, whenever there was an incident in Iran he would be asked about it, on the assumption that, because he was Shiite, he would know everything about events in Shiite-dominated Iran. One particular teacher at this school struck up a close friendship with the appellant. In due

course the appellant learnt that this friendship had an ulterior motive because this teacher began trying to persuade the appellant to change his religion to become a Sunni. The appellant broke off all contact with him.

[16] The appellant completed his high school diploma, albeit at a later age, and went on to complete a diploma at a private institute gaining a qualification. Following completion of his education the appellant began working for his father before obtaining employment in a number of jobs in the private sector. He told the Authority that Shiites generally were not given prominent positions in the government and only in a Shiite-owned company did Shiites have realistic career prospects. He explained that in two of his previous employments he had been given lower wages than his Sunni counterparts. He was subjected to prejudice and looked down upon by patrons of another employer because they considered the job that he was doing not to be worthy of a Saudi national.

[17] The appellant also faced occasional harassment and violence from Sunnis. On one occasion in the early to mid-1990s, when returning home late from a *hosseiniya*, the appellant was attacked by three people. They chanted anti-Shiite songs and hit him with sticks and electrical wires. He recognised one of his attackers. He later ascertained that his attacker was the son of the same police officer who had detained his father for carrying out Shiite religious festivals at the *hosseiniya*. His property was also damaged from time to time. In 2007 someone engraved the words "Shiite" on his car. When he painted the car, someone poured paint remover over it. On another occasion someone smashed the rear window of his car. From time to time anti-Shiite graffiti was also sprayed on walls of the *hosseiniya*.

[18] During late 2005 to mid-2006 the appellant undertook an activity through which he gained some degree of celebrity status in Saudi Arabia. In mid-2006 he met a member of the Saudi royal family who, keen to exploit the appellant's fame at one of his resort properties, invited the appellant to come and work for him at a resort he owned.

[19] The appellant did not take up this employment immediately. Instead he travelled to Bahrain where he worked for approximately a year. The appellant did eventually submit an application and was accepted for employment at the resort. He commenced this employment in early 2007.

[20] While working at the resort the appellant met CC, a Saudi prince, and one of his companions named DD. Shortly after he started working his brother was

detained by the police after getting into a fight with Sunnis over religious matters. The appellant went searching for his brother and managed to locate him at a police station. The appellant enquired about the reason behind his brother's detention when the others in the fight had been released. He also questioned why the police had not allowed his brother to call the family and inform them of his detention and whereabouts. Instead of getting an answer to his enquiry the appellant was himself arrested and detained.

[21] During this time the appellant was detained with several other people in a small cell. Most of the other people were non-Saudis. There was no ventilation and the air-conditioning units installed in the cell were either broken or dripped water which covered the floor ensuring there was no dry space for the prisoners to sleep. The appellant came to understand from one of the detainees that there was a bigger and cleaner cell available but this was reserved for persons considered to be Saudi citizens.

[22] On approximately the third day of his detention, the appellant and his brother were shackled and handcuffed and then taken, in the back of a jeep, to an interrogation facility where they were placed in solitary confinement. After approximately six hours they were taken back to the police station. They were not interrogated on this day. The following day, the appellant and his brother were again taken in a similar fashion to the interrogation centre. On this occasion the appellant was threatened with assault to force him to admit that it was his brother's fault for starting the fight. On the fifth day the appellant was released although, his brother was kept in detention. The appellant then set about trying to get his brother released. He decided that he should contact DD to see if he could use his authority and connections to secure his brother's release. DD agreed to do so and a couple of days later his brother was released.

[23] The appellant returned to his employment. In about mid-2008, DD began to ask the appellant whether he would be interested in working with him and the prince. At first the appellant thought DD was joking but DD persisted. DD began referring to the assistance he had given to the appellant in securing the release of his brother. The appellant, realising that DD was serious, asked what he had to do. DD told him that the work would be in addition to his current job and that, depending on his effort, he could earn between 2,000 and 10,000 *rials* per month. The appellant asked what sort of work this involved. DD proceeded to explain that there was a group of people seeking to corrupt and destroy the country. The

appellant thought that DD was at this point referring to a terrorist group or drug smugglers. As a loyal Saudi citizen the appellant expressed his readiness to help.

[24] DD then proceeded to give the appellant the names of four individuals about whom he wanted information. He told the appellant to find out what these people were doing during Ramadan, who they met with and what they were planning to do. The appellant was shocked to discover that the people DD had named were all drawn from the Shiite community and were people who had visited his father regularly at the *hosseiniya*. The appellant had no desire to inform on these people who had been his father's friends and whom he believed would never do anything to harm Saudi Arabia. While he felt he could not act against people of his own faith, he also now believed DD to be working for Saudi intelligence and felt unable to refuse DD without exposing himself to danger. There had been previous campaigns by the state against persons involved in performing Shiite rituals in *hosseiniyas* and his own father had suffered because of this. Anxious to extricate himself, the appellant merely remarked that he would try to the best of his ability.

[25] He began thinking about leaving Saudi Arabia. He approached an agent who told him that he should try and go to Canada. The appellant gave the agent all the necessary documentation. However, the application was rejected because the Canadians did not think that he would leave the country. The agent suggested that he try New Zealand because New Zealand was visa free and the appellant resolved to do this. During this time DD contacted him on two occasions. Each time the appellant told DD that he was in the process of gathering the information and that it would be transmitted in due course.

[26] He left for New Zealand shortly afterwards. Since the appellant has been in New Zealand, DD has been enquiring after him. In late 2008, DD came to the family home. DD has contacted the family on two occasions by telephone each time wanting to know where the appellant is and when he can be expected to return home. Although his family knew he was coming to New Zealand they did not know of his problems with DD and told him that the appellant had gone to New Zealand for the purpose of study. In early to mid-2009 he received a number of telephone calls to his mobile phone. The caller does not show up on his caller identification. He believes the calls are from DD.

[27] In February 2009 his mother and sister were visiting a tomb of the Prophet in Medina when they, along with other pilgrims were attacked. The appellant

believes this is symptomatic of a resurgence in anti-Shiite violence in Saudi Arabia.

[28] The appellant fears that if returned to Saudi Arabia he will be subjected to ongoing discrimination and harassment as he has suffered in the past. He believes he may be placed under increased pressure to become an informant on the Shiite community and if he refuses, he may be detained and mistreated.

Submissions and documents received

[29] On 2 October 2009, the Authority received written submissions from counsel dated 29 September 2009. Attached to these submission were the following items of country information:

- (a) T Matthieson "The Shi'a of Saudi Arabia at the crossroads" *Middle East Report Online* (6 May 2009);
- (b) Mai Yamani "Saudi Shia are standing up" *The Guardian* (15 March 2009);
- (c) Human Rights Watch *Denied Dignity: Systematic Discrimination and Hostility toward Saudi Shia Citizens* (3 September 2009).

[30] At the conclusion of the hearing counsel was given 21 days to file further submissions and, in particular, country information confirming the identity and existence of the member of the Saudi royal family for whom it is claimed DD worked. On 16 November 2009, the Authority received a letter dated 12 November from counsel making further submissions and enclosing:

- (a) A copy of an undated but leaked internal telegram from the Main Security Committee of the Saudi administration for the Eastern area informing the regional directors for the General Security, Police and Intelligence agencies that "some citizens belonging to the Ismaili sect" (a branch of Shi'a Islam) have unlawfully and secretly converted family resting places and function halls into *hosseiniyas* and that this is forbidden. The telegram refers to another document dated 26 September 2009 and the Arabic version gives the website the telegram was located on;
- (b) A copy of entries in Wikipedia relating to the person said to be the prince for whom DD worked and the grandfather of the prince.

THE ISSUES

[31] 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."

[32] 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

[33] As will be seen, the appellant's account of discrimination and harassment in Saudi Arabia is consistent with country information. The principal credibility issue which emerged was the identity of the member of the Saudi royal family and, by extension, DD.

[34] The appellant gave the lineage of the prince by reference to a well known member of the Saudi royal family (AA). The prince (CC) for whom DD worked was said to be this person's grandson and aged in his thirties. This lineage would mean that the person DD worked for would be CC bin (son of) BB bin AA. To further complicate matters, both AA and CC are said to share the same first name (N1). The father of CC (AA's son) has the name N2. This means that CC's name should be "N1 bin N2 bin N1". However, research by the RSB, the Authority, or indeed counsel, could not identify the grandson of AA by that name or the age the appellant indicated. The further material submitted by counsel, under cover of his letter dated 12 November, is said to relate to this person. Yet this person's name is N2 bin N1 bin N2. In other words, the names are the reverse from that which the appellant gave in his oral evidence. Also, this person is aged in his mid to late twenties.

[35] As to these differences, the Authority finds that nothing much turns on the ages as they are approximations only and are of a close enough match. As to the differences in name, the Authority notes the appellant's evidence was that his knowledge of the identity and lineage of CC came from other staff at the resort as a result of passing conversations only and not DD. The Authority is left in some doubt as to this aspect of the appellant's evidence. Taking into account the fact that the appellant's evidence was generally consistent with what he had said previously, his credible demeanour, and the fact that available country information has established the identity of the prince who originally offered the job at the resort, it is appropriate that he be given the benefit of the doubt in accordance with usual principles in this jurisdiction.

[36] His account is therefore accepted in its entirety.

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

Country information on the Shi'a of Saudi Arabia

[37] The Authority has not heard many appellants from Saudi Arabia. Those cases which it has consider Saudi society as it relates to the position of apostates – see *Refugee Appeal No 76385* (19 September 2009); women – see *Refugee Appeal Number 76250* (1 December 2008); and marriage outside Islam – see *Refugee Appeal No 74825* (11 March 2004). There has been no cause for the Authority to examine in any detail the situation for Shi'a in Saudi Arabia. Fortunately, there are a number of books and reports available which make clear that Shiites in Saudi Arabia do face discrimination and harassment. The assessment which follows will draw heavily, but not exclusively, on three, namely:

- (a) International Crisis Group *The Shiite Question in Saudi Arabia* (19 September 2005) (“the ICG report”);
- (b) Human Rights Watch *Denied Dignity: Systematic Discrimination and Hostility toward Saudi Shia Citizens* (3 September 2009) (“the HRW report”); and
- (c) United States, Department of State *International Religious Freedom Report 2009: Saudi Arabia* (26 October 2009) (“the IRF 2009 report”) available <http://www.state.gov/g/drl/rle/irf/2009/127357.htm>.

General background

[38] Shiism in the Arabian peninsular is longstanding, dating back to the founding of Islam when inhabitants of the region took opposing views as to the legitimate holder of the Caliphate following the death of Mohammad. Although no accurate figures are available, estimates of the number of Shiites living in Saudi Arabia range from 5 to 20 percent out of an estimated population totalling 28.5 million. Of the Shiite population, an estimated 80 per cent belong to the “Twelver school” (a Shiite movement which believes that the succession to the prophet passed legitimately among the descendents of Ali until the 12th in line) and live overwhelmingly in the east of the country – see ICG report at p1; IRF 2009 report at p2. In order to understand something of the appellant’s predicament, it is necessary to have some regard to the circumstances in which the Kingdom of Saudi Arabia came into existence.

[39] In the mid-1800s an itinerant preacher, Mohammad bin Al-Wahhab found refuge near Riyadh with a local chief, Mohammad bin Sa’ud. The two agreed that they would embark on a shared enterprise whereby Al-Wahhab gave bin Sa’ud religious legitimacy and approval for his ambition of territorial expansion. In return, bin Sa’ud agreed to rid his territories of those deemed by Al-Wahhab to be infidels and ensure that Al-Wahhab’s interpretation of Islam was followed in the territories conquered by Al Sa’ud. The significance of this arrangement is that Al-Wahhab’s interpretation of Islam belongs to what is commonly called a ‘fundamentalist’ interpretation. He preached strict obedience to the Koran and the Sunna as interpreted by senior scholars in each generation. In this context Al-Wahhab was virulently anti-Shiite. As early as the first years of the 19th century the armies of the Saudi state had expanded and sacked Shi’a shrines in south-western Iraq and occupied the holy city of Hejaz. By 1913 Al-Sa’ud finally conquered the eastern province from Ottoman rule and in 1932 established the Kingdom of Saudi Arabia. Since that date, the Kingdom has pursued a multi-pronged strategy to pacify and marginalise its Shiite minority. Thousands of Sunni settlers moved into areas with majority Shi’a populations and non-Shiite business and trading networks were established. Simultaneously, religious Shiite observance was heavily circumscribed. This included injunctions against publicly broadcasting Shiite calls to prayer, bans on publishing and distributing religious or political texts, destruction of shrines, the dismantling of Shiite centres of religious learning and the prosecution of Shiites observing religious festivals including *Ashura* and grave visitation – see the ICG report at pp1-2; HRW report at p5; Albert Hourani “*A history of the Arab people*” (Faber & Faber 1991) pp257-258; Guido Steinberg “The Shiites in the eastern province of Saudi Arabia (Al-Ahas), 1913-1953 in R

Brunner and W Ende (eds) *“The Twelver Shi’a in modern times: religious culture and political history* (Cologne, Brill 2001) pp237-248.

Continued discrimination against Shi’a

[40] In March 2005, Saudi Arabia held its first national elections in over four decades. However, only minor local government positions were being contested and, even then, only half were open for election with the King appointing the other half. While Shiite participation was generally high and Shiites won positions on these councils giving them oversight of tasks such as infrastructure maintenance and rubbish collection (see IGC report at p7), over three-quarters of a century since its foundation, Shi’a remain discriminated against and marginalised in many important aspects of everyday life in Saudi Arabia. As the IGC report at p10 observes:

“Anti-Shiite principles outlined by Muhammad bin Abd al-Wahhab in the eighteenth century retain much of their force in the twenty-first.”

[41] The IRF 2009 report lists the following instances of discrimination currently faced by the Saudi Shiite community:

(a) Education

The government discriminates against Shi’a in the selection process for students, professors and administrators at public universities. It is estimated that Shi’a constitute two per cent of the professors at a leading university in Al-Ahsa – an area with a population that is at least 50 per cent Shi’a. Religious education teachers often tell students that Shi’a practices are ‘un-Islamic’ and that Shi’a students must follow Sunni traditions to be ‘true Muslims’. Other teachers tell students that Shi’a are not Muslims but rather infidels, unbelievers, or rejectionists. These teachers are not reprimanded despite government policy to the effect that they should be, although on some occasions they were transferred to other schools – see IRF 2009 report at pp6-7.

(b) Employment

Shi’a face considerable employment discrimination in the public and private sectors. A very small number of Shi’a occupy high-level positions in government-owned companies and agencies. Shi’a generally believe that openly identifying themselves as Shi’a will have

a negative impact upon career advancements. Anecdotal evidence suggests that in some companies, including the oil and petrochemical industries, a “glass ceiling” existed for well-qualified Shi’a – see IRF 2009 report at p7.

(c) Religion

The government, via the Ministry of Islamic Affairs, Endowment, Dawa and Guidance (MOIA) (established in 1993), controls the religious infrastructure and teaching in Saudi Arabia with the exception of the two holy Mosques in Mecca and Medina. The MOIA does not provide finance for the construction or maintenance of Shi’a mosques although it does for Sunni mosques. Shi’a are required to obtain official permission from local and government agencies although this is not required for the construction of Sunni mosques. Shi’a mosques in mixed neighbourhoods are required to recite the Sunni call to prayer. The government does not officially recognise several centres of Shiite religious instruction located in Eastern Province, provide financial support to them, recognise certificates of educational attainment for the graduates or provide employment for them – all of which it does for Sunni religious training institutes – see IRF 2009 report at p2 and p8.

(d) Broadcasting

The government continues to exclude Shi’a perspectives from the state’s extensive religious media and broadcast programming – see IRF 2009 report at p8

(e) The Judicial System

Shi’a court powers are limited by the fact that a litigant with an unfavourable ruling can seek a decision from a Sunni court which can void the rulings of a Shi’a court. Government departments can choose not to implement judgments rendered by Shi’a judges – see IRF 2009 report – p7.

[42] Seeking to explain the systemic discrimination and hostility towards Shi’a in Saudi Arabia, the HRW report notes, at p12:

“State discrimination against the Shi’a stems from the official Wahhabi creed and its manifest in the state’s religiously infused education system, state sponsorship of official religious worship, and a judiciary which draws its legitimacy from Sunni

Wahhabism. It is this umbrella of religiously legitimised or religion-infused state institutions under which prominent Islamic thinkers and clerics, often state officials, continue to propagate incitement to hostility against the Shi'a. The Saudi government tolerates such speech, sometimes even by silencing its critics ...”

A history of Shi'a radicalism and militancy in Saudi Arabia

[43] The suppression of their cultural and religious practices was, for the first decades of the Kingdom's existence, contained by the dominant Shiite tendency towards non-interference in political matters – a policy known as “quietism”. However, by the late 1970s, the prominence of this approach had become seriously challenged, in no small part by the success of the Shiite revolution in Iran in 1979. Radicalised Shi'a activists began establishing an underground Shiite reform movement which advocated a more politically minded brand of Shiism. Saudi activists focused on social, religious and economic discrimination against Shiites in Saudi. This heightened militancy gave way to mass protests in 1979 when thousands of Shiites defied a government ban and turned out to commemorate *Ashura*. The state's response was forceful and some 20 Shiites were killed by the security forces. The leadership of the underground Shiite reform movement fled in exile. While in exile the Shi'a radicals began openly criticising the Saudi government and questioning its legitimacy. By the mid-1990s the Saudi government and the exiled leadership of the Shiite reform movement reached a compromise whereby the government agreed to improve the situation of Shi'a in Saudi Arabia through releasing political prisoners, curbing anti-Shiite teaching in the educational system and lifting travel bans in return for the return to Saudi Arabia of the Shiite leaders and a cessation of political attacks on the Saudi government – see generally ICG report at pp3-5. Not all Shiite political groups support this policy of *rapprochement*. *Hizbollah-al Hijaz*, the second largest Shiite opposition group, rejects this position arguing instead for an Iranian-style political system of *vilayet-e-faqih* under which government is controlled by a ‘supreme jurist’. In the wake of the Khobar Towers bombing in 1996, many of its members and supporters were arrested forcing it to adopt a lower profile – see IGC report at p7; Toby Matthieson “The Shi'a of Saudi Arabia at the crossroads” *Middle East Report Online* (2009) www.merip.org/mero/mero050609.html at p4.

[44] Since 2006, there has been an increase in tensions between Shi'a and Sunni Saudis fuelled in part by developments in Iraq and the perceived growth of Iranian influence in the region. These internal factors stymied domestic initiatives to improve relations between the two communities – see HRW at pp4. Tensions came to a head in February 2009, when pilgrims at the Al Baqi' cemetery in

Medina clashed with police over a suspected government agent secretly filming women. This incident led to mass protest by Shi'a at the cemetery resulting in further clashes between the government security forces and Shi'a pilgrims. Protests continued for a number of days thereafter. Repeated clashes between security forces and protestors resulted in many arrests. Since that time, the authorities have imposed a ban on communal prayers and placed pressure on those owning and running places in which communal shared prayers are being held – see HRW report at pp19-23.

[45] Commenting on this incident, Toby Matthieson (*ibid*) notes that this incident has occasioned a response from more radical but more recently dormant Shiite groups such as *Hezbollah al-Hijaz*. In what he describes as a sign of “the rising militancy”, commentators and activists have striven to link the confrontation at the Al Baqi' cemetery with the *Ashura* incident in the late 1970s. Matthieson observes that some commentators believe the protests surrounding the cemetery at Al Baqi' were staged by radicals within the Shi'a community acting with the support of Iran and who were dissatisfied with the lack of progress in achieving equality with the more moderate tone adopted by the previous generation of leaders in the Shi'a community – see pp6-7.

The Saudi intelligence services

[46] Saudi Arabia has a well-funded, multi-layered security and intelligence apparatus which relies heavily on informers. This is detailed in a useful report, A Cordesman and N Obaid *The Saudi Security Apparatus: Military and Security Services – Challenges and Developments*, Geneva centre for the Democratic Control of Armed Forces Working paper No 147, Geneva (August 2004) (“the DCAF report”) www.dcaf.ch/_dics/WP147.pdf. Describing the system Cordesman and Obaid state:

“Saudi Arabia’s security apparatus now deals with these issues using a complex mix of paramilitary and internal security forces, and an equally complex legal system for dealing with civil and security cases. This is a truly massive effort. Some sources estimate the total internal security budget for 2003, including both security services and police to have reached some seven billion dollars (including security and intelligence), with a virtually open-ended capability to spend on any internal security purpose ... the formal Saudi security forces involve a mix of elements in the regular armed forces, and the national guard, and a range of internal security and intelligence services most of which are under the Ministry of Interior.

... The Ministry of Interior now maintains a sophisticated centralised computer system at the national information centre in Riyadh. This computer network, links some 1,100 terminals, and maintains records on citizens identity numbers and passports, foreigners residence and work permits, hajj visas, vehicle registrations,

and criminal records. **Reports from agents and from the large number of informants employed by the security services are also entered.** Officials of the GSS and GIP have authority to carry out wire taps and mail surveillance. The Ministry of the Interior also has a large electronic intelligence operation with a separate budget that it estimated at over 500 million per year.” (emphasis added)

Application to the appellant’s case

[47] Should the appellant return to Saudi Arabia there is a real chance that he will continue to face social discrimination and economic marginalisation. Importantly, the appellant has fled the country after coming under pressure from the Saudi intelligence services to become an informant for them on the activities of persons who were associated with his father.

[48] The Authority notes that presently there appears to be a period of heightened tension between the Saudi government and its Shi’a minority, particularly in the wake of the Al Baqi’ cemetery incident. The person who tried to recruit him clearly saw his father’s friends as being persons who were regarded as “dangerous to the state”. His family are historically prominent in the area for providing a place for the local Shi’a community to observe their religious rituals and practices. Against this background, the possibility that in fleeing the country, the appellant may be seen as having something to hide and come under increased pressure from the Saudi intelligence services is not something that can be dismissed as being implausible or far-fetched.

[49] He himself possesses minor celebrity status in Saudi Arabia and his return would quickly come to the attention of the Saudi authorities and, in particular, DD. Weighing everything, the Authority is satisfied that should the appellant return to Saudi Arabia he is likely to again be approached to become an informer. Recalling previous campaigns against Shiites who acted to promote and preserve their religion under which his own father was detained and (he suspects) mistreated, he has no desire to do so. He will be placed in an impossible position. His refusal is likely to be viewed suspiciously by agents of a state which takes a highly discriminatory attitude towards Shi’a generally. There is a real chance he may be detained to place pressure on him to comply or to see if he has given warning to those of interest to the Saudi intelligence services.

[50] The United States Department of State *Country Reports on Human Rights Practices for 2008: Saudi Arabia* (25 February 2009) at section 1(c) notes that, although prohibited by law, reports have been made that authorities systematically subjected their prisoners and detainees to torture and other physical abuse. At

section 1(d) it notes that because of ambiguous implementation of laws surrounding arrest and detention, the Ministry of Interior maintained broad powers to detain persons indefinitely without judicial oversight or effective access to lawyers. It notes that in practice persons were held for weeks or months and sometimes longer.

[51] In summary, country information establishes that should the appellant be detained, there is a real chance that he may face some form of mistreatment in detention. This, taken with the social and economic discrimination that he can be expected to encounter on his return means that the Authority is satisfied that this appellant has a well-founded fear of being persecuted. The first principle issue is answered in the affirmative.

Is there a nexus to a Convention reason?

[52] This must also be answered in the affirmative. The appellant's predicament is plainly being contributed to by his Shi'a religion.

CONCLUSION

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

"B L Burson"

B L Burson
Member