REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND	Application No 76138
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	C M Treadwell (Member)
Counsel for the Applicant:	C Curtis
Counsel for the Respondent:	K M Howard
Dates of Hearing:	10 March and 15 May 2008
Date of Decision:	23 September 2008

DECISION

INTRODUCTION

[1] This is an application by a refugee status officer, in accordance with s129L(1)(f)(ii) of the Immigration Act 1987 ("the Act"), for a determination that the Authority should cease to recognise the respondent, a married man in his early thirties from Turkey, as a refugee on the ground that recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information (hereafter referred to collectively as "fraud", for convenience).

PROCEDURAL HISTORY OF THE REFUGEE CLAIM

[2] The respondent arrived in New Zealand in March 1998. He applied for refugee status on 7 April 1998 and was interviewed by a refugee status officer on 30 August 1999. His application was declined on 30 November 1999.

[3] The respondent's appeal was heard by the Authority (a different panel) on 23 March and 6 April 2000. A decision granting him refugee status was delivered on 5 October 2000. See *Refugee Appeal No 71771* (5 October 2000).

[4] In reliance on the grant of refugee status to him, the respondent subsequently applied for permanent residence in New Zealand. It was granted to him on 12 March 2001. He became a New Zealand citizen in 2003.

[5] A refugee status officer made the present application to the Authority on 11 September 2007, some seven years after the respondent was recognised as a refugee. It was served on the respondent on 9 October 2007.

[6] Before setting out the grounds upon which the respondent was granted refugee status and addressing the grounds of this application, it is appropriate to explain the jurisdiction of the Authority in respect of such applications.

JURISDICTION

[7] A refugee status officer may apply to the Authority, under 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, forgery, false or misleading representation, or concealment of relevant information.

[8] The jurisdiction of the Authority to hear such applications is set out in 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 s129L(1)(f) as to whether –
>
> (a) ...
>
> (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; or

(c) ..."

[9] It is a two-stage test. The Authority must first determine whether the refugee status of the subject of the application "may have been procured" by fraud or the like. If so, it must then determine whether to "cease to recognise" the person as a refugee. That latter consideration (in effect, whether to cancel the recognition of refugee status) does not automatically follow, since it will depend on whether the person currently meets the criteria for refugee status. This second stage is the Authority's orthodox forward-looking enquiry into whether a claimant – at the date of the fresh determination – satisfies the terms of the Refugee Convention. See ss129P(1) and 129S(b) of the Act and *Refugee Appeal No 75392* (7 December 2005) at [10]-[12].

[10] As to the first limb – whether refugee status "may have been" procured by fraud – responsibility for adducing the evidence to support such a finding rests with the Department. See, for example, *Refugee Appeal No 75989* (14 May 2007), at [6] and also *Refugee Application No 75891* [16 April 2007], at [7].

[11] Against this procedural background, it is now necessary to address the facts of the respondent's claim to refugee status and the present application.

THE RESPONDENT'S REFUGEE CLAIM

[12] The account given by the respondent at his appeal hearing in March/April 2000 is set out in the decision of the Authority in *Refugee Appeal No 71771* (5 October 2000) at [2]-[11], of which the following is a summary.

[13] The respondent is Kurdish, one of eight children of a shepherd from a remote village in a mountainous region of eastern Turkey.

[14] In 1992, the respondent was expelled from secondary school following a fight between Kurdish and non-Kurdish students over anti-Kurdish comments. Various students were detained by the police. Non-Kurds were released but the Kurdish students (including the respondent) were detained for two days. The respondent was beaten by the police and later expelled from school.

[15] In late 1992, the respondent's friend MH introduced him to the pro-Kurdish HADEP political party, for whom he then worked as a volunteer, delivering letters and pamphlets and putting up posters.

[16] In 1995, MH directed the respondent to purchase basic foodstuffs, which were intended for the soldiers of the PKK who were fighting in the mountains. He did this once every two months from 1995 to 1997. MH also supplied the respondent with illegal pro-Kurdish literature from which he learned of the "true situation" of the Kurds.

[17] In 1996, when the respondent was about 20, he was called up by the Turkish authorities for military service. He did not report as required and began evading the police to avoid being caught in any round-ups. He did not want to join the army because he believed that he would be forced to fight against other Kurds.

[18] In 1996, the respondent became involved in a fight with rival political supporters. A friend of his, a cousin of MH, fired a pistol into the air. The police arrived and took them both to the anti-terrorist centre. They did not arrest anyone else. The respondent and his friend were detained in a dark cell which was kept wet by the guards. They were beaten and blindfolded and accused of belonging to the PKK. After a week, the local HADEP candidate organised their release.

[19] In October 1996, MH was captured by the authorities. He had still not been released when the respondent had last heard news of him in September 1999. His cousin took over MH's role and the respondent purchased food at the cousin's request, as he had done for MH, until February 1997.

[20] In August 1997, the authorities raided the family home and found the respondent's store of illegal pro-Kurdish literature. He was not home but they detained two of his brothers for questioning for two days. They admitted that the literature belonged to the respondent and a warrant was issued for his arrest.

[21] After the raid, the respondent fled to Istanbul, where he remained for five months. His family paid an agent $US10,000 for a false passport for him. On the passport, he left Turkey in 1998, eventually arriving in New Zealand.

[22] At his appeal hearing, the respondent relevantly submitted:

(a) the Turkish identity card, in a false name;

(b) a letter from the respondent's father;

(c) the arrest warrant, dated 31 August 1999, stating that he had been sentenced to five years four months and ten days' imprisonment; and

(d) a document from the respondent's brother AA (a lawyer in Turkey) recording the background to the charges against the appellant (concealing and distributing unlawful publications, being actively engaged in separatist propaganda and, by sheltering and assisting one BB, aiding and abetting the PKK) and recording his conviction. Although there is some uncertainty, this document is probably the court's decision.

The decision of the Authority

[23] The Authority allowed the appeal. After finding the accounts of the respondent to have been credible (it could not determine whether the arrest warrant was genuine or not, and so extended the benefit of the doubt to the respondent), it held that he faced a real chance of being persecuted in Turkey, because of his activities for HADEP and the PKK. The risk would be heightened, the Authority noted, by the respondent's evasion of military service. Such persecution, it found, would be for the Convention reason of political opinion.

[24] Against this history of the respondent's refugee claim, it is now necessary to set out the grounds of the present application.

APPLICATION IN RELATION TO LOSS OF REFUGEE STATUS

[25] The Department now applies for an order that the respondent cease to be recognised as a refugee, on the ground that such recognition may have been procured by fraud. The crux of the application was stated to be that, since he was granted refugee status the respondent:

(a) has obtained a lawful Turkish passport in his own name;

(b) returned to Turkey for a period of at least three to four months in 2005-2006, without encountering any difficulty with the Turkish authorities, either in entering, remaining in or leaving Turkey; and

(c) was married while in Turkey, in a substantial ceremony, with the marriage being registered.

[26] In essence, the notice suggested that it is implausible that a man for whom an arrest warrant is extant should be able to obtain a passport and return to his

home country without being apprehended on any of the multiple occasions on which he must have had contact with the authorities.

[27] In support of the application, evidence was given orally and by way of a written statement dated 5 March 2008, by a refugee status officer, G M Young.

THE CASE FOR THE RESPONDENT

[28] The respondent rejects the assertion that his refugee status may have been procured by fraud and says that the evidence he gave in his refugee claim in 1998-2000 was truthful. As to the concerns at [25](a)-(c) above, he says:

(a) He obtained his Turkish passport from the Embassy in Australia, where he was living at the time, by pretending to have lost a non-existent earlier passport;

(b) His return to Turkey occurred during an amnesty which had been declared by the Turkish authorities, absolving anyone who had assisted the PKK or similar groups in a minor way from any blame; and

(c) The fact that he was a military service evader was resolved by him obtaining, before he left Australia, permission to defer his military service on the ground that he was working overseas.

[29] In brief, the respondent says that he knew of the amnesty from about 1999 onwards, because his family told him about it. In particular, his brother AA, a lawyer, researched it for him. He told the respondent that it was known as “Law 4616” and that it would apply to the respondent.

[30] Even so, the respondent did nothing about it for some years. By 2004, he was living and working in Australia. He knew that his father was unwell, with a heart condition and that he needed surgery. The respondent resolved to try to visit him and so approached the Turkish Embassy in Sydney, to see if he could get a passport.

[31] The first person the respondent saw at the Embassy was a woman who, when she learned he had no existing passport, accused him of being an asylum-seeker. He lied and denied it but she refused to help him further and he left the

Embassy. After lingering outside in a state of uncertainty for some 20 minutes, he decided to try again. The woman again rebuffed him but, as he went to leave, a man called him over and, on learning that the respondent had no identity card (a prerequisite for a passport) suggested that he make a bogus 'lost property' claim to the Australian police, which he could then produce to support the issue of a passport.

[32] The respondent did as advised and a passport was eventually issued. The man discussed with the respondent the fact that his records showed that he had not done his military service. He told the respondent that it was possible to get a deferral of his military service if he was working overseas. The respondent was working as a chef at the time and duly made the appropriate application. It was accepted and he received a letter informing him that his military service was deferred until a given date in 2008.

[33] The respondent left for Turkey in July 2005. On arrival, he was delayed at immigration for some time while his papers were inspected but was eventually allowed to proceed.

[34] In the six months he stayed with his family in Turkey, the appellant married a Turkish woman in an arranged marriage.

[35] The appellant and his wife did not experience any problems leaving Turkey. Since arriving here, the appellant's wife has applied for residence which is presently 'on hold' pending the outcome of this application.

Documents

[36] In support of his explanation, the respondent produces a number of documents.

Identity documents

(a) A copy of the respondent's birth certificate.

(b) The respondent's Turkish passport, issued by the Turkish Embassy in Sydney in March 2005.

(c) The respondent's Turkish Certificate of Residence.

Relevant documents from the original refugee file

(d) A copy of the Turkish arrest warrant produced to the Authority in 2000, including the charges on the reverse.

(e) A letter dated 3 December 1999 from the respondent's father, corroborating the respondent's account of his difficulties with the Turkish authorities.

(f) An undated letter, written in 1999, from one CC, a Turkish resident in New Zealand, corroborating aspects of the respondent's original refugee claim.

(g) An undated letter, written in 1999, from one DD, a Turkish resident in New Zealand, advising that he tried to visit the respondent's parents in Turkey in 1999 but found that his father was being detained at the police station at the time "the reason being the trouble in which his children were involved".

Documents from the respondent's brother AA

(h) A copy of the respondent's brother's Turkish Bar licence.

(i) A copy of the respondent's brother's Bar registration.

(j) A letter dated 3 November 2007 from the respondent's brother, stating:

> "1. I am a registered lawyer at the Turkish Bar, registration number [given]. I am registered at [X city] Bar, and work as a freelance lawyer within the boundaries of the Republic of turkey.
>
> 2. [The respondent] was sentenced to a total of five years four months and ten days of imprisonment with hard labour, by [Y city] Government Security Court of the Republic of Turkey. The Act is 154,312 and 169. To execute the punishment, the head prosecutor of Z town, W City, issued a warrant. If I am not mistaken in what I remember, my cousin EE (who died [in 2003]) had to bribe in order to obtain a copy of that issued warrant in September 1998. He told me that himself.
>
> 3. On 12/10/2000, on the basis on Act 4616, the Conditional Release Act which was passed by the Office of the Prime Minister of the Republic, [the respondent's] punishment was withdrawn from the records. This law is an amnesty law. It covers the crimes that were committed against the government as well. For instance, the maximum punishment of 10 years is included in this law as well.

> 4. Because [the respondent] could not go abroad with his own passport, he used FF identity data in 16/10/1997 by getting a passport issued, valid for two years. By paying a gang, he got out of the country on 29/03/1998. As he used information of another person's identity, he was sentenced. Based on the Republic of Turkey Adiyaman Criminal Court file number XXXXXX, decision number XXXXXX and the Act of 18/11/2003, the sentence of FF and [the respondent] was suspended because five years have passed, pursuant to the Republic of Turkey Criminal Act 102/4.
>
> 5. [The respondent] could not come to Turkey for a long time for the reasons I mentioned in paragraph 4. In 2005 my father had an operation related to the heart arteriosclerosis. But [this] did not take place because he was scared. When [the respondent] came to Turkey at this time, he also could not convince my father to have an operation, but my father eventually had an operation [at X city Hospital].
>
> That is all the information I have in writing. I swear on my honour and dignity as a professional that the information which I have provided is true."

(k) A further letter from the respondent's brother AA, undated but posted on 3 April 2008, translating the provisions in Turkish law relating to military service, misuse of identity documents and a number of aspects of criminal law. The letter also relevantly states:

> "Under condition no. 4616 of the Release Law, my uncle's son EE, born in 1966 and deceased [in 2003] administered a bribe of 2000 USD from my father (my uncle's son EE used to carry my father's accounts, i.e. his money) and had my brother's penalty wiped off the records. We don't obtain any dossiers in the Criminal Law and we have no experience with criminal cases."

(l) A copy of a Turkish court decision dated [in 2003], considering a charge against the respondent (*in absentia*) of obtaining a false passport in the name of FF in 1997 and using it to leave the country in March 1998. The charge was dismissed as being more than five years old.

(m) Copies of medical records from [X city] Hospital in Turkey, dated in October 2007, recording the admission of the respondent's father for "SSK Heart and Artery Operation".

Military service documents

(n) A copy of the respondent's application to the Turkish Embassy in Sydney in May 2005, seeking deferral of his military service on the ground that he was working overseas.

(o) A letter dated in June 2005, from the Turkish Embassy in Sydney to the respondent, advising him that his military service is deferred until October 2008.

(p) Two letters dated in 2007, from the Turkish Consulate in Wellington to a Turk, one GG, declining to defer GG's military service as a student but advising him that he could defer it under article 35/G of Military Service Law No 111 for two years if he is working overseas and explaining to him how to apply.

Letters

(q) A letter dated 21 November 2007 from the respondent's younger brother HH, recording that he went to the airport to meet the respondent in August 2005 but that it took two hours for the respondent to emerge from customs and immigration.

SUBMISSIONS

[37] For the applicant, Ms Howard has submitted opening submissions dated 10 March 2008 and closing and supplementary submissions, both dated 15 May 2008. For the respondent, Ms Curtis has tendered opening submissions dated 8 November 2007 and closing submissions dated 12 May 2008.

ASSESSMENT

[38] The first issue to be addressed is whether the refugee status of the respondent may have been procured by fraud.

[39] "May have been" does not require the Authority to find that refugee status *was* procured by fraud. As observed in *Refugee Appeal No 75563* (2 June 2006), at [20]:

> "…the term 'may have been' signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise."

[40] Ms Howard enlarged upon the factors seen by her as going to the 'may

have been' threshold in her closing (and supplementary) submissions. Totalling some 29 pages, she invites the Authority to consider the following:

The arrest warrant

(a) The respondent was given leave to locate the original arrest warrant but has been unable to do so.

(b) The original panel of the Authority did not reach a conclusion on the authenticity of the arrest warrant, giving the respondent the benefit of the doubt that it was genuine. It did, however, note that there appeared to be an area of the warrant (including the subject's name) which looked as if it might have been altered.

(c) The respondent has given a number of accounts as to the fate of the original arrest warrant. At first, he said that he had never had it and had never asked for it. He then said that his brother had sent it only by fax and would not send the original because it would be too dangerous to do so. Later, he said that he *had* been sent it, but he had given it to his then immigration consultant. Later still, he said that it had been given to his lawyers (who, on being contacted, confirm that they do not have it).

(d) The respondent failed to mention that the arrest warrant also recorded his conviction for harbouring a known terrorist – a surprising omission given that that charge was the most serious.

Evidence of AA

(e) The evidence of the respondent's brother AA is unsworn and has not been subject to cross-examination.

(f) AA provided "little documentary evidence" and what he did provide should be accorded little weight "given the absence of supporting documentation or contradictory evidence".

(g) With a brother in Turkey who is a lawyer, the respondent is better placed than most to obtain evidence, yet he has failed to do so.

The amnesty

(h) The respondent claims to have been covered by an amnesty known as “Law 4616”. However, country information suggests that the “Law 4616” amnesty required persons to apply within a month. The respondent did not do so.

(i) Up to, and including, the first part of the hearing of this application in March 2008, the respondent relied upon the “Law 4616” amnesty. By the resumption of the hearing in May 2008, however, he had received the 10 April 2008 letter from his brother and had amended his explanation to include the claim that his cousin had also paid a bribe to have the criminal record expunged.

(j) The respondent has provided a copy of Law 4616, with only part of it translated.

(k) The respondent has produced no evidence of the bribe said to have been paid by his cousin, form his father’s funds.

(l) The respondent has produced no evidence of the expunging of his criminal record.

(m) It is unclear when the bribe was paid. A further amnesty came into existence in 2003. There would have been no need to pay a bribe after that point in time.

Military Service

(n) The respondent claims to have regularised his military service status in 2005, for the first time. There is no explanation from him as to why he appears not to have been penalised for the failure to obtain deferments between 1998 and 2005.

Return to Turkey

(o) The respondent was vague about the nature of his father’s ill-health, even though it had been the key reason for his return to Turkey.

(p) The respondent claims not to have wanted to draw attention to himself, yet presented himself to the Turkish Embassy in Australia.

[41] It is necessary to address each concern in turn.

The arrest warrant

[42] It is correct that the original panel of the Authority expressed reservations as to the authenticity of the arrest warrant. It did not specify why, however, beyond commenting that "its format and appearance raise some questions", before giving the respondent the benefit of the doubt.

[43] Ms Howard points to the fact that the warrant is typewritten, has not been verified by a notary public as forming part of a larger court decision and does not refer to the respondent by name. She also submits that areas with dotted lines (indicating fields to be filled in) show evidence of dots having been inserted by hand, with the line of dots wandering in and out of parallel.

[44] With respect to Ms Howard, the concerns are overstated.

[45] First, the document was not produced on a typewriter. The pre-printed parts of the form appear to be the product of a professional printing process. It is only the inserted details which are typewritten. As to those, the arrest warrant is stated to have emanated from the Public Prosecutor's office in the city of W – a traditional, agricultural centre of some 178,000 people – in 1998. It does not excite suspicion that such a document should be completed by typewriter in such a place at that time. It can be added that the document bears the stamp of the W city Public Prosecutor's office and also its seal.

[46] Second, contrary to the suggestion that the warrant is not "part of a larger Court decision", it does in fact bear a file number.

[47] Third, the submission that it does not bear the respondent's name is also incorrect. It bears his full name (and address) and, as a further identifier, his mother's and father's names.

[48] Perhaps of most concern, the warrant (of which there is only now a copy to hand) does have areas in which the dotted lines appear to have been poorly repaired. One such area is under the respondent's first name. Another is under his father's name and the first half of his mother's name. At a glance, it might

appear that the names have been tampered with.

[49] There is no doubt that patches of the dotted lines have been repaired. What cannot be assumed, however, is that it happened at the time the warrant was drawn up. Before computers, it was not uncommon for *pro tem* copies of a pre-printed form to be made by photocopy. Where the last copy of a form had been used, it would be necessary to blank out the insertions in a used copy, in order to recreate a 'clean' example for copying, pending receipt of a fresh supply. If the blanking out of details had resulted in areas of the dotted lines having to be repaired, those repairs would then be visible on all future copies.

[50] That this was done here is reinforced by the fact that the repaired lines do not match the respondent's details. For example, the line underneath his first name (only six characters) has been repaired, but *not* the ensuing part of the line underneath his family name. As to his parents' names, the repaired part of the line ceases midway beneath his mother's name. As to the date of the document, the dotted line appears repaired underneath the "3" of "31", but not underneath the "1" and underneath the "199" of "1998" but not underneath the "8". There are also repaired areas which have not had any details inserted.

[51] Finally, the repairs are obvious. If the warrant is false, it is a sophisticated forgery in terms of the information it provides. It is improbable that such care would be taken over the falsification of information, but such a poor attempt be made simultaneously in respect of the document itself.

[52] We agree with the observations of the original panel of the Authority, that a document of this nature would be fairly easy to forge and that, ultimately, the decision-maker is driven back to the general credibility of the claimant in determining whether or not to give weight to such a document. Here, we are satisfied that the warrant is no more suspicious than it was at the time the original panel determined that it was appropriate to afford the respondent the benefit of the doubt. Indeed, had the panel had drawn to its attention the fact that the repairs do not match the inserted details (a point it did not discuss) it may well have had its concerns further assuaged.

The evidence of AA

[53] We agree with Ms Howard that AA's evidence is untested by cross-examination and is unsworn. The reality is, however, that refugee claims

frequently require decision-makers to weigh such evidence. The nature of flight from persecution means that the best evidence is rarely available. Again, the decision-maker is likely to be able to determine whether or not to give weight to such evidence only once the general credibility of the claimant can be assessed.

[54] Here, matters can be taken slightly further. There is little doubt, from the production of his Bar documents, that AA is a practising lawyer in Turkey. He does not give evidence on oath but he does assert that he puts his professional reputation at stake when he writes:

> "… I swear on my honour and dignity as a professional that the information which I have provided is true."

[55] It is not correct that AA provided "little documentary evidence".

[56] First, he provided evidence at the time of the original appeal hearing, including the arrest warrant and a document described by the Authority as "explain[ing] the nature of the charges referred to in the arrest warrant". In fact, from the small size of that document and its content, the Authority is inclined to the view that it is, in fact, the official record of the reasons for the conviction or an official document closely associated with it. It does not appear to be a document drawn up by AA because it gives a short but full account of the evidence on which the respondent was convicted and the reasons for convicting him, expressed in judicial terms.

[57] Second, AA has provided, in the course of the present proceedings, both the Turkish Court decision of [2003] (the 'use of a false passport' charge) and copies of the respondent's father's medical records. He also provided a copy, in Turkish, of Law 4616.

[58] Ms Howard's chief criticism is that AA has not provided a copy of the court decision in respect of the respondent's original conviction in 1998. She points to the fact that he has produced a copy of the 2003 'use of a false passport' decision and submits it is suspicious that the earlier decision is not also produced.

[59] The difficulty with impugning the respondent's credibility because his brother has not produced a ten year old court decision is that he has, it seems, done so. The court decision (as it is probably is) is short but it gives full particulars of the reasons for the entry of the convictions. Given that the conviction was entered *in absentia*, one would not necessarily expect a longer document.

[60] In any event, it is difficult to know what else is to be expected. We simply do not know whether a longer, more formal written decision would be produced by the court. Convictions are often entered in the District Court in this country, by way of a Judge's notation on the front of the file, or by oral record only, to appreciate that a full written decision may well not exist or, if it did, whether it would still be available, ten years later.

The Amnesty

[61] Ms Howard is critical of the respondent for his reliance upon "Law 4616" as the amnesty under which he was able to return to Turkey. In fact, Law 4616 is but one of many amnesties of varying types which have been offered by the Turkish authorities to Kurdish insurgents over the years. As early as 1985, a "repentance law" was enacted. Even in 1999, the year after the respondent came to New Zealand, a further such law was passed. See the United Kingdom Home Office *Country Assessment: Turkey* (September 1999):

> "**The Repentance Law**
>
> 4.22 Came into force in August 1985 and offered clemency to those convicted of certain crimes in return for turning State's evidence. The law was to remain in force for two years and gave full pardon to those convicted of only being members of illegal organisations provided that they had not taken part in other criminal activities and that their testimony led to the apprehension of their former colleagues and the ending of the organisation's activities.
>
> 4.23 At the end of August 1999 the Turkish parliament passed a repentence *(sic)* law with the following provisions. Only rebels who were not involved in the fighting will get an amnesty, while others can benefit from sentence reduction. Those seeking to benefit under the law must provide information about the rebel movement. Founders and high level executives of the PKK cannot benefit from the law. The law will be valid for 6 months. PKK members who benefit from the law and who are sentenced to death will have their punishment reduced to not less than nine years imprisonment, while those sentenced to life will have their punishment reduced to imprisonment for not less than six years."

[62] A further six month amnesty was granted on 29 February 2000 – see the United Kingdom Home Office *Country Assessment: Turkey* (October 2001).

[63] The "Law 4616" amnesty was promulgated on 8 December 2000. It finally came into force in May 2002. According to the Home Office's *Country Assessment: Turkey* (October 2002) report:

> "**5.42** On 8 December 2000 the Turkish Parliament adopted an Amnesty Law (Law Number 4616 on the conditional release and the suspension of trials and sentences for offences committed up until 23 April 1999). On 15 December 2000 President Sezer returned the law to be debated again in Parliament; his legal objections to the measure were set out in a six-page explanation. Parliament

again adopted the law, and on 21 December the President accepted the constitutional requirement to approve it.

5.43 The Amnesty Law provides that the perpetrators of certain offences committed before 23 April 1999 will have their sentences reduced by ten years and that those who have less than ten years left to serve will be released immediately. It also provides for the release of those in pre-trial detention for certain offences within one month and the conditional suspension of the charges against them, and for the conditional suspension of prosecution of those against whom charges have not yet been brought for those specific offences. Article 2 of the Law extends the scope of an earlier partial amnesty law to illegal public statements.

5.44 The scope of the law also includes Article 169 of the Turkish Penal/Criminal Code, affording assistance and support to an illegal organisation. This led to the release of 1,660 people convicted on the basis of that Article for support to the PKK prior to 23 April 1999 or to the dropping of charges on that basis. The Chief of Staff declared that this resulted in letting terrorists out on the streets, to which Prime Minister Ecevit responded that these were people who had often lent assistance or shelter under pressure or duress. The offences of "evasion of registration", "evasion of examination", "fraudulent evasion of military service" and "desertion" (Articles 63 to 68 and 70 to 75 of Law No. 1632 on the Military Criminal Code) also fall under the law, provided they were committed before 23 April 1999. Infringements of the Anti-Terror Law are not covered by the Amnesty Law because the constitution lays down that no amnesty is possible for such offences.

…

5.46 The Amnesty Law stipulates that fugitives from justice against whom proceedings are pending must report within one month of the entry into force of the Law. The deadline expired on 22 January 2001. According to the Ministry of Justice a total of 3,761 individuals had availed themselves of this opportunity as at 13 March 2001.

5.47 In response to a question about whether the Amnesty Law would be extended to cover crimes committed after 23 April 1999, a senior official at the Ministry of Justice informed the IND fact-finding mission that that he had no information on this and made the point that this was for Parliament to decide. He added that approximately 30,000 people had been released from the penal system under the existing amnesty (The US State Dept. report for 2001 states that 23,600 prisoners were released).

5.48 On 18 July 2001 the Constitutional Court expanded the scope of the Law, giving Parliament six months (in practice, until 27 April 2002) to amend the legislation in line with its ruling….

5.49 The law was resubmitted, unchanged to Parliament, and entered into force in May 2002. By September 2002 43,576 prisoners had benefited from this law."

[64] In August 2003, yet another amnesty came into being – this time labelled the "Win Back for Society Law".

"**The 'Win Back for Society Law' August 2003**

5.56 The so-called "win-back for society law" came into force on 6 August 2003 following approval from President Ahmet Necdet Sezer, and its publication in the Official Gazettee[r]. The law will remain in effect for 6 months from the date of promulgation (ie until the 6 February 2004). The Government hopes that it will pave the way for the surrender and return home of half of the PKK/KADEK armed militants based in northern Iraq. In addition to those that are still in northern Iraq,

> the amnesty was designed to reduce the prison terms of those militants who have already been convicted for involvement in the groups terrorist attacks in the past, in return for providing information to the security authorities.
>
> **5.57** The new law will grant a partial and conditional amnesty to the militants of the banned PKK/KADEK. Most of the members and sympathisers of the separatist movement will escape punishment, providing they have not taken part in violent acts. However, the partial amnesty does not apply to the leaders of the movement."
>
> **5.58** Although the law is aimed primarily at Kurdish separatist groups it also applies to left wing and militant Islamic terrorist organisations including members of Hezbollah.
>
> **5.59** The Turkish interior minister Abdulkadir Aksu stated that "Except for a very limited group, everyone will benefit. This is a new opportunity. Our goal is to bring social peace." Those "who have not committed any crime except for involvement in a terrorist organisation and who surrender will go home at once"
>
> **5.60** The provisions of the amnesty are as follows:
>
> **5.61** Members of terrorist groups that have not been involved in any terrorist activity will unconditionally be released and will not face trial, provided that they state that they are willing to benefit from the amnesty.
>
> …."

[65] The respondent has always referred to the amnesty under which he believed he was covered as "Law 4616". His brother AA has done the same. That is understandable, given that, in 2001-2003, when the respondent was first considering a return to Turkey, it was the latest amnesty. However, by the time the respondent did return, in 2005, the August 2003 "Win Back for Society Law" amnesty was also in existence. On the account given by the respondent, either amnesty might apply to him.

[66] Ms Howard submits that, under the Law 4616 amnesty, which the respondent says he has understood he is covered by, it was necessary to apply within one month – something the respondent clearly did not do. She relies upon an August 2001 *Amnesty International* article " The Amnesty Law – An Ambiguous Step", the 1999 United States Department of State's *Country Reports on Human Rights Practices: Turkey* (February 2003) and a *Gale Group* article "Amnesty? What Amnesty? Turkey and the Kurds" from *The Economist* of 30 August 2003.

[67] In fact, none of those reports record this. Amnesty International says only that "3,671 people has applied to the prosecutor's offices and had not been imprisoned". It does not say that an application was a pre-requisite for all people. As to the other two articles, both refer to the August 2003 "Win Back for Society Law" amnesty, not to the Law 4616 amnesty. Even there, neither document

clarifies whether formal application is a prerequisite or, if it is, to which categories of people it applies.

[68] In fact, it is the 2002 Home Office report which sheds light on the point. It notes that Law 4616 stipulated that "fugitives from justice against whom proceedings are pending" had to report within one month. The respondent was not a person against whom proceedings were pending, he having already been convicted. It is logical that those facing trial should have been required to report in, because guilt would need to be assessed before an amnesty would be applicable. For those already convicted, however, no such assessment would need to be made. On the evidence, there is nothing to say that those already convicted of minor offences had to make a formal application.

[69] Finally on this point, Ms Howard questions the appellant's willingness to return to Turkey on the strength of the amnesty, without having enquired expressly with his brother AA as to what had been done to ensure his protection. The appellant says, in response, that he did not know how the amnesty worked but AA had told him it was safe to return and he trusted such advice from his family. Bearing in mind that AA is a lawyer, the appellant's explanation is not implausible.

The late emergence of the bribe to expunge the record

[70] Ms Howard urges the Authority to view with suspicion the late emergence of the claim that the respondent's cousin EE paid a $2,000 bribe to have the respondent's convictions expunged. It will be recalled that this evidence did not emerge until the second letter from the respondent's brother AA, dated 10 April 2008.

[71] Ms Howard's concerns are:

(a) Initially, the respondent relied only on the amnesty and did not mention a bribe being paid.

(b) AA's first letter similarly referred only to the amnesty and not to any bribe.

(c) The bribe only emerged in the evidence from AA *after* the first day of hearing, in which the applicant had challenged the applicability of the amnesty to the respondent.

(d) Reliance on Law 4616 and paying a bribe are mutually exclusive.

(e) It is improbable that the respondent would have been unaware of the steps taken to secure his safety, including the payment of a bribe.

(f) AA attempts to stifle further enquiry by disavowing personal knowledge of the criminal law and stressing the illegality of paying a bribe, which prompts him to ask that it be kept confidential.

[72] The respondent's explanation for the late emergence of the evidence relating to the bribe is that he did not know of it. He says that he trusted his family to make the arrangements in 2005 and simply did not enquire further once his brother had assured him that he was now covered by the amnesty.

[73] As to the assertion by Ms Howard that the amnesty and the bribe cannot plausibly co-exist, the respondent disagrees. He says that the bribe was paid to ensure that his record was expunged pursuant to the amnesty. He does not know what was involved but understands that the bribe was paid to ensure that he was brought under the amnesty "in an illegal way".

[74] It is accepted that the late emergence of the evidence relating to the bribe is less than satisfactory, but a number of matters must be borne in mind.

[75] First, the respondent did not know of the applicant's challenge to his 'amnesty' explanation until the first day of the hearing. It was not a point raised in the application itself, or at any time before the hearing commenced. For him to use the adjournment to then enquire further of his brother, and thus learn of the bribe, is neither implausible nor suspicious.

[76] Second, if there were in fact conditions which the respondent could not meet (such as applying within a time limit), as Ms Howard asserts, then a bribe is explicable. And even if no conditions existed, a bribe might well still make sense, given the uncertainty of the respondent being seen as a low level supporter or as someone more important. It must be remembered that he was accused of, *inter alia*, sheltering and aiding BB, described as "previously a member of the PKK field brigade and a convicted terrorist".

[77] Third, institutionalised corruption is a feature of Turkish bureaucracy. The October 2003 Home Office report put it succinctly:

> "The Financial Times has noted that a Byzantine bureaucracy and a reputation for corruption have won Turkey the dubious privilege of being ranked the fourth least transparent economy in the world."

[78] Finally, the person said to have dealt with the matter, EE, has been dead for some years. It is explicable that the respondent – and AA – present as somewhat hesitant and speculative as to the finer details.

[79] Ultimately, given these parameters, the Authority is not confident that it can say that the evidence given by AA is untrue. Bearing in mind that the events happened some years ago, were undertaken by a person no longer able to give evidence and that the respondent has had no need to seek the information until recently, the Authority concludes that it is appropriate to give him the benefit of any doubt.

[80] For the sake of completeness, it is recorded that AA's disavowal of any personal knowledge of the criminal law and his emphasis of the illegality of bribery, do not heighten suspicion. The former reads as a somewhat embarrassed apology for his lack of knowledge. The latter is not an attempt to stifle enquiry at all – it is simply a request to keep the matter confidential.

Military Service

[81] Ms Howard expressed concern that the respondent was able to have his military service deferred in 2005, notwithstanding that he had not done so in the years since his departure from Turkey.

[82] First, the willingness of the Turkish authorities to consider deferral for people working overseas is supported by the correspondence from the Wellington consulate to the respondent's friend GG.

[83] Second, it is clear from the October 2002 Home Office report that the government intended the 'Law 4616' amnesty to also apply to "fraudulent evasion of military service" and "desertion" committed before 23 April 1999. In those circumstances, the decision of the Turkish Embassy in Sydney to give the respondent his deferral in 2005 is unsurprising.

[84] Mention must also be made briefly of Ms Howard's criticism of the respondent for not knowing when his deferral was due to expire. In fact, the letter from the Embassy to the respondent states expressly that it expires on 31 October 2008. Why the respondent's inability to recall this under cross-examination should

be suspicious is not apparent.

Miscellaneous concerns

[85] There are other concerns raised by Ms Howard, including the suggestion that it is suspicious that the respondent was vague about his father's health issues and the fact that the respondent seems to have had no qualms about presenting himself to the Embassy in Sydney.

[86] As to the former, the respondent has produced medical records from the hospital which treated his father and, in any event, the respondent does not profess to be a medical expert of any sort. Even so, he described his father's illness as being "a heart condition".

[87] As to his visit to the Embassy, he did not say that he visited it with confidence. Not only was his father's ill-health a compelling reason for him to try to arrange travel to Turkey, but he gave a detailed account of his visit to the Embassy, the difficulties he experienced with an unhelpful and intimidating woman, his feelings of panic and desperation, denying to the woman that he was an asylum-seeker and having to return to the Embassy a second time before he found a sympathetic man who assisted him to resolve the obstacle of his lack of a passport and the military service issue. There is no reason to doubt the veracity of this aspect of the respondent's account.

[88] Finally, if more need be said, the fact that the appellant registered his marriage in Turkey does not raise concerns. If he was able to have his convictions expunged and to defer his military service, as he has said, then no amount of contact with officialdom would be likely to put him at risk.

Conclusion on the first issue

[89] The Authority is grateful to Ms Howard for the care and thoroughness of her submissions. Having now seen and heard the respondent, however, and having had the chance to review a substantial quantity of evidence (the file fills four Eastlight folders), much of which was not available to the Department at the time the application was commenced, the Authority is satisfied that the respondent's explanations for his acquisition of a passport and his return to Turkey in 2005 are not suspicious. The evidence does not establish that his refugee status may have been procured by fraud.

[90] Given that finding, there is no jurisidiction for the Authority to consider the second limb of its jurisdiction and the application must be declined.

CONCLUSION

[91] It is concluded that:

(a) the evidence does not establish that the grant of refugee status to the respondent in *Refugee Appeal No 71771* (5 October 2000) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; and

(b) his refugee status should continue to be recognised.

[92] The application is dismissed.

"C M Treadwell"

C M Treadwell
Member