

AT AUCKLAND

Appellant:	AB (Saudi Arabia)
Before:	A N Molloy (Member)
Representative for the appellant:	The appellant represented himself
Counsel for the respondent:	No Appearance
Date of hearing:	10 & 11 May 2011
Date of decision:	28 June 2011

DECISION

INTRODUCTION

[1] The appellant is a national of Saudi Arabia. He appeals against the decision of a refugee status officer of the Department of Labour, declining to recognise him as a refugee under the 1951 Refugee Convention or as a protected person under either the Convention against Torture or the International Convention for the Protection of Civil and Political Rights (ICCPR).

[2] The appellant's claim is outlined in detail below. In summary, he claims that he is at risk of being persecuted in Saudi Arabia because he is Shi'a, because of activities in which he participated in Saudi Arabia in early 2010 and because he attended a demonstration in Auckland in early 2011. The appeal turns upon whether the appellant's participation in the demonstration places him at risk. For reasons which will be explained, it does, and his claim to refugee status must succeed.

[3] In order to address the statutory issues common to all appeals of this type,

the Tribunal will first outline the account presented by the appellant on appeal. It will then assess the appellant's credibility before making the findings of fact upon which the appeal is determined. The Tribunal will then outline the legislation governing such appeals before assessing the appellant's claim for refugee status and/or protected person status.

THE APPELLANT'S ACCOUNT

[4] The appellant is a single man now in his late 20s. He is a member of a large family from a town near City X in the east of Saudi Arabia.

[5] The appellant and his family are Shi'a Muslims and as such he has experienced ongoing discrimination by the Sunni majority in Saudi Arabia. Over the years the appellant has been unfairly treated by Sunni teachers at school, denied access to various educational institutions after leaving school and treated unfavourably in connection with job applications. Police officers imposed unjustified fines upon him on a number of occasions and he referred to a rort by which a corrupt local official cheated his father out of a valuable piece of land. He attributes all of this to the fact that his family are Shi'a.

[6] Despite these difficulties the appellant graduated from high school and completed an industrial training course. He managed to obtain various jobs from the time he left school until he came to New Zealand in mid-2008 on state-sponsored business with a relative, AA.

[7] The appellant was not permitted to work in New Zealand. He occupied much of his time helping a local charity that attends to the Shi'a community in Auckland.

[8] The appellant and AA returned to Saudi Arabia on holiday during the academic vacation at the end of 2009. During the month of *Muharram* the appellant participated in a local tradition, where food is cooked on the street and provided to passers-by in the evenings.

[9] The appellant thought nothing of doing so at the time. However, after returning to New Zealand the appellant heard that the Saudi authorities had detained some individuals who had participated in this ritual in City X. As a result the appellant did not return to Saudi Arabia when AA returned in mid-2010. The

appellant was concerned that he might also be detained by the authorities, and began to look for an alternative means of remaining in New Zealand.

[10] Members of the local Shi'a community suggested that he should apply for refugee status, which he did in late 2010. However, instead of disclosing why he did not think that he could return to Saudi Arabia, he claimed, falsely, that he had converted to Christianity in New Zealand. His confidants advised him that this was the most likely means of being successful.

[11] After interviewing the appellant, a refugee and protection officer of the Department of Labour issued a decision in December 2010. The appellant's claim to have converted to Christianity was rejected as contrived, contradictory and implausible. It is from that decision that the appellant appeals.

The Appellant relies on Different Grounds for his Appeal

[12] At the beginning of the appeal hearing the appellant admitted to the Tribunal that the claim he had advanced before the Refugee Status Branch was false. He explained that he had not previously disclosed the real cause of his predicament, because he was advised that the easiest way to obtain refugee status was to claim to have converted to Christianity.

[13] He referred for the first time to the activity he had undertaken during the month of *Muharram* the previous year. By the time of the appeal hearing his concerns had multiplied, following events in Tunisia and Egypt at the end of 2010 that gave rise to a series of demonstrations in various Arab states. The response of the various Arab governments has varied. Regime change in Tunisia and in Egypt has not been mirrored in Libya, where the state responded by using force against its citizens; nor in Bahrain or Saudi Arabia.

[14] In March 2011 a demonstration was held outside the Saudi Arabian Consulate in Auckland to protest against Saudi military forces entering Bahrain to quell unrest. The appellant attended the demonstration with a friend from the Shi'a community centre, BB, who is also a Saudi citizen. He explained that Shi'a from the east of Saudi Arabia, including City X, have an affinity with Shi'a in Bahrain. This arises from geographic proximity, shared religion and the fact that Shi'a in both places are dominated by Sunni.

[15] The demonstration was also attended by a number of Bahraini students studying in New Zealand and by several New Zealand citizens. It lasted about two

hours. Security guards from the Embassy stood outside until the police arrived. The police moved the participants back from the entrance to the building. Footage of the demonstration that was posted on the Internet shows a crowd of approximately 20 people, some of whom were holding placards with statements such as "Troops out now, freedom for Bahrain". Many are shown chanting "We want freedom, we want democracy" and "Revolution". Some, having dipped their hands in what looks like red paint, are shown chanting "blood on your hands" before slapping the Consulate wall, leaving red imprints of their palms.

[16] The appellant noticed that employees inside the Embassy appeared to be filming and taking photographs of the demonstrators. He has heard that several of the Bahraini students who attended have had their Bahraini government scholarships withdrawn, and believes that this must be because of interference from the Saudi government.

[17] Since coming to New Zealand the appellant had been to the Saudi Consulate on various occasions in connection with his relative's state sponsored business. He says he is known to consulate staff and that, if students from Bahrain had been identified, he will be. He believes that if he returns to Saudi Arabia now, the Saudi authorities will detain and mistreat him because of his participation at the demonstration.

The Evidence of BB

[18] BB is, like the appellant, a young Saudi national. He is also Shi'a. He is a New Zealand resident, having been recognised as a refugee by the Refugee Status Appeals Authority some years ago. In brief, his recognition was for reason of political opinion.

[19] The appellant and BB first met in New Zealand in 2009 through their joint activities at the Shi'a community centre in Auckland.

[20] BB said that he did not know the appellant particularly well and described him as reticent. He corroborated the appellant's claim to have attended the demonstration on 18 March 2011. He said that the demonstration had been organised out of solidarity for the people of Bahrain, after the Saudi government sent troops to help suppress demonstrations in Bahrain in 2011.

[21] BB met someone connected with the consulate by chance a few days after the demonstration. The person verbally abused BB for attending the protest. BB

believes that the person must have learnt of his attendance at the demonstration through employees of the consulate. He confirmed that consulate employees were taking photographs and video footage of the demonstrators and believes that the consulate officials will know precisely who attended. He said that the Saudi government does not tolerate dissent or protest and he believes that the appellant would experience difficulties if he was to return to Saudi Arabia.

[22] BB also referred to the Bahraini students who attended the demonstration, some of whom are close friends of his. He has heard that some have had scholarships withdrawn by the government of Bahrain following their attendance at the demonstration.

Material Received

[23] The appellant provided a document on which he had identified the web addresses for six Internet sites. Three of the sites show footage of the demonstration outside the Saudi Arabian Consulate in Auckland on Friday 18 March 2011. The appellant is identifiable from the footage. The other three items are articles in Arabic. The appellant did not provide translations.

ASSESSMENT OF THE APPELLANT'S ACCOUNT

Whether the Appellant's Claim is Credible

[24] In order to assess the appellant's claim it is necessary to determine the extent to which his evidence is credible.

[25] In making that assessment the Tribunal has not ignored the appellant's concession that he advanced a false account for the purposes of his application for refugee status. The appellant admits that he has not converted to Christianity, and the Tribunal finds that there is no credible evidence that anyone in Saudi Arabia would believe that he had done so. The analysis of the refugee status officer who rejected the appellant's claim was entirely correct.

[26] However the Tribunal is required to assess the appeal upon the basis of facts as found, not on the basis of assertions that have been rejected or from which the appellant has subsequently resiled.

[27] In that connection there is no reason to doubt that the appellant is a Saudi national from City X, or that he is Shi'a. He has a Saudi passport and there is evidence that the appellant and AA came to New Zealand from Saudi Arabia for a lawful purpose. His birth certificate refers to his place of birth as City X and there is evidence on file that the appellant has been involved with the the ABC charity in Auckland, an organisation that attends to the social and religious needs of the Shi'a community here. In addition, country information confirms that Shi'a are heavily concentrated around City X; United States Department of State *International Religious Freedom Report: Saudi Arabia (2009)* (17 November 2010) (the IRF Report) (p6).

[28] The appellant's claim that he experienced discrimination as a Shi'a in Saudi Arabia is consistent with country information indicating that Shi'a are discriminated against in many aspects of everyday life in Saudi Arabia. The historical development of Islamic tradition in Saudi Arabia was discussed in *Refugee Appeal No 76397* (8 December 2009), from [38]. In brief, the 'fundamentalist' interpretation of Al-Wahhab has held sway since the foundation of the Kingdom of Saudi Arabia in 1932. It requires strict obedience to the Koran and has sought to marginalise the Shiite minority. The systemic discrimination is neatly encapsulated by Human Rights Watch, *Denied Dignity: Systematic Discrimination and Hostility toward Saudi Shia Citizens*, 3 September 2009 (the HRW report) at p12;

State discrimination against the Shi'a stems from the official Wahhabi creed and is 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...

[29] Country information also confirms that Shi'a face systemic discrimination in education and employment, in both the public and private sectors. They lack proportional political representation, are disadvantaged in the legal and judicial systems and face discrimination in religious practice: the IRF Report (pp10-12).

[30] Against that background, the Tribunal accepts the appellant's claims to have been disadvantaged in school, to have been denied access to courses to which Sunni with equivalent grades may have been admitted, and to have been overlooked for jobs because of his religion.

[31] The Tribunal also finds that the appellant attended a demonstration outside the Saudi Consulate in Auckland in March 2011 in a spontaneous act of concern about the actions of his government against the predominantly Shi'a populace in Bahrain.

[32] The appellant's testimony concerning his attendance at the demonstration was measured and plausible. He spoke in detail about what happened at the demonstration and as to why he wished to attend. His attendance is corroborated by footage posted on the Internet, which also shows men inside the consulate who appeared to be recording the demonstration with cameras and video recorders. It is also supported by the oral testimony of his witness, BB, whose evidence appeared to be unadorned and frank.

[33] It is upon that basis that the Tribunal now turns to consider the appellant's claims for recognition under the Refugee Convention and as a protected person.

THE LEGISLATION

[34] This is an appeal under section 198 of the Immigration Act 2009 (the Act). It is from a decision of a refugee and protection officer of the Refugee Status Branch of the Department of Labour, declining to grant refugee status to the appellant.

[35] Pursuant to section 198 of the Act, on an appeal under section 194(1) the Tribunal must determine whether to recognise the appellant as:

- (a) a refugee under the Refugee Convention (section 129); and/ or
- (b) as a protected person under the Convention Against Torture (section 130); and/ or
- (c) as a protected person under the International Covenant on Civil and Political Rights (section 131).

[36] The Tribunal must first deal with the claim for recognition under the Refugee Convention.

THE REFUGEE CONVENTION – THE ISSUES

[37] 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.

[38] The Tribunal adopts the analysis of the body previously established to consider refugee appeals, the Refugee Status Appeals Authority (RSAA). In *Refugee Appeal No 70074* (17 September 1996), the RSAA identified that 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 under the Refugee Convention

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

[39] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of basic or core human rights, demonstrative of the failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996). Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection.

[40] In determining what it means that a fear be “well-founded” as referred to in Article 1A(2) of the Refugee Convention, the Tribunal adopts the approach set out in *Chen v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative chance of such persecution occurring. The standard is entirely objective.

The Level of Discrimination is not in itself Serious Harm

[41] The Tribunal has accepted that the appellant experienced a degree of discrimination in Saudi Arabia as a Shi'a. This had some impact on his education and his employment opportunities and exposed him to harassment. However, he obtained an education to high school level, completed a further vocational course after he left school and was able to obtain work appropriate to his qualifications. He was able to express and practise his faith. He obtained a passport and was subsidised by the Saudi government to accompany AA to New Zealand.

[42] Nothing the appellant experienced in Saudi Arabia was sufficiently serious to have engaged the Refugee Convention and, putting events in New Zealand to one side for the moment, the level of discrimination the appellant might have faced upon return would not, in itself, have amounted to being persecuted.

[43] However, the Tribunal's assessment focuses upon the prospective risk faced by the appellant, and his claim extends beyond what happened to him in Saudi Arabia. It is necessary to assess the potential consequences for the appellant of having attended a demonstration outside the Saudi Consulate in Auckland in March 2011.

Would the Saudi Authorities Know the Appellant Attended the Demonstration?

[44] The Saudi intelligence service was subjected to analysis in *Refugee Appeal No 76397* (8 December 2009) (from [46]). It was described as well-funded and multi-layered. According to one report, the Saudi security apparatus comprises a "complex mix of paramilitary and internal security forces, and an equally complex legal system for dealing with civil and security cases". Its budget was estimated, as long ago as 2003, to be seven billion dollars "with a virtually open-ended capability to spend on any internal security purpose": *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). That paper continues:

...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.

[45] It is apparent that BB was identified as a participant in the demonstration outside the Saudi Consulate in March 2011 and the Tribunal finds that it is likely that the Saudi authorities will also have identified the appellant. He will be known to Saudi consulate staff, given that his travel to New Zealand was sponsored by his government, and it is plausible that staff at the Saudi Consulate will have recognised him either on the day of the demonstration or subsequently on reviewing their photographs and video footage.

[46] In the context of recent events in the Middle East it is also plausible that the Saudi authorities will be particularly sensitive to such demonstrations. The Tribunal will expand upon this below.

Would it matter that the Appellant Attended the Demonstration in Auckland?

[47] The auto-immolation of a market stall-holder in the Tunisian town of Sidi-Bouزيد in December 2010 gave rise to a series of events that have led to regime change in Tunisia and Egypt, and have ignited demonstrations in other Arab states. By February 2011 that popular expression of political will had reached Bahrain, to the consternation of the Saudi government.

[48] A brief understanding of the tension between the Sunni majority and the Shi'a minority in Saudi Arabia, and the impact of that divide upon the affairs of its near neighbour, Bahrain, will serve not only to place the appellant's decision to attend the demonstration in context; it will also inform the risk he might face if he were to return to Saudi Arabia now.

[49] The Shi'a communities in Saudi Arabia and in Bahrain share a common faith and understanding of the oppression imposed by their respective Sunni governments. That common link is contextualised in the International Crisis Group report *Popular protests in North Africa and the Middle East (iii): The Bahrain Revolt* (6 April 2011) (the ICG report), at p8:

Many Eastern Province Shiites enjoy kinship ties to Bahraini Shiites, and their political movements in the past often have been integrated with Bahraini networks. Demonstrations in the Eastern Province inspired by events in Bahrain started on 17 February, although participants numbered only in the hundreds. However, after the deployment of Saudi troops to Bahrain, protests drew several thousand in support of the Bahraini people and urging the Saudi regime to withdraw.

A turning point appeared to be reached on 14 March, when Saudi Arabia dispatched around 1,000 army and national guard troops... into Bahrain. Formally,

these were brought in under the terms of the Gulf Cooperation Council's Joint Defence Agreement, signed during a 2000 summit in Bahrain. Central to this agreement is a clause stipulating that an external aggression against any one member would be considered an aggression against the GCC as a whole, requiring other members to provide military assistance. Although it would be difficult to depict the current uprising as an external threat, Saudi media in particular has been adamant in stressing that Iran is behind the Bahraini protests.

[50] The executive summary of the ICG report also sheds some light upon the common concerns held by the Sunni governments of Saudi Arabia and Bahrain over the hovering spectre of Iran:

Along with other member states of the Gulf Cooperation Council (GCC), Saudi Arabia purportedly is responding to dual fears: that the takeover would be tantamount to an Iranian one.

...it also is concerned protests might inspire similar movements among its own eastern province Shi'ites....

[51] Even before this unrest the Saudi government placed strict limits on public demonstrations and expressions of dissent. According to the United States Department of State *Country Reports on Human Rights Practices for 2009: Saudi Arabia* (11 March 2010) (the 2010 DOS report) the Basic Law does not provide for freedom of assembly and public demonstrations were prohibited. At section 2b it continues:

Security forces usually denied demonstration requests, and they disrupted, dispersed, and arrested demonstrators or would-be demonstrators during the year. There were no government-permitted peaceful political demonstrations during the year. It was a crime to participate in unauthorized public assemblies....

In late February and early March 2009, security officers arrested more than 50 Shia citizens, including children, in the Eastern Province for engaging in a peaceful demonstration in solidarity with Shia arrested in the Medina clashes.

[52] When demonstrations did spread to Saudi Arabia in March 2011, the overlay of the Iranian shadow upon the general intolerance of expressions of dissent ensured that they were stamped out quickly. The United Nations voiced concern about the "very tense" situation in the east after live fire was reportedly used against demonstrators, and a number of people were arrested, on 10 March: UN News Service *UN sounds alarm on human rights issues in Bahrain, Yemen and Saudi Arabia* (11 March 2011).

[53] Human Rights Watch reported the arrests of more than 110 people, including more than a dozen children, during protests in the Eastern Province on March 11, 17, and 18. Some of the arrests seemed arbitrary, mistakenly targeting

people who had not taken part in the protests; Human Rights Watch *Saudi Arabia: Arrests for Peaceful Protest on the Rise* (27 March 2011).

What Might Happen to the Appellant if he Returns to Saudi Arabia?

[54] According to the United States Department of State *Country Reports on Human Rights Practices for 2010: Saudi Arabia* (8 April 2011) (the 2011 DOS report) although it is prohibited by law, the authorities detain without charge “security suspects [and] persons who publicly criticized the government...” and the Ministry of the Interior maintains broad powers to arrest and detain persons indefinitely, without judicial oversight or access to legal advice. It states that: “In practice authorities held persons for weeks or months and sometimes years” (section 1d).

[55] The 2011 DOS report also outlines other serious ongoing human rights concerns, including arbitrary arrest and lack of due process, incommunicado detention and poor prison conditions, torture and physical abuse, political prisoners and restrictions on freedom of speech, assembly and association (p1 and section 1).

Conclusion on Claim to Refugee Status

[56] It is likely that the appellant, a Shi’a, has been identified by the Saudi authorities as one of a small number of participants in a demonstration in New Zealand criticising the Saudi government and calling for “revolution”. If he were to return to Saudi Arabia now, it would be at a time of heightened sensitivity to the influence of Iran upon the appellant’s local Shi’a community. The Saudi government, never amenable to dissent at the best of times, has acted swiftly in response to demonstrations held in City X and elsewhere in March 2011.

[57] In all of the circumstances the Tribunal finds that there is a real chance that the appellant would be detained by the Saudi authorities and would face serious physical mistreatment if he were to return to Saudi Arabia now.

[58] The Tribunal finds that objectively, on the facts as found, there is a real chance of the appellant being persecuted if returned to Saudi Arabia. The first principal issue is answered in the affirmative.

Is there a Nexus to a Convention Reason?

[59] This must also be answered in the affirmative. The appellant's predicament would arise for reason of an imputed political opinion.

THE CONVENTION AGAINST TORTURE – THE ISSUES

[60] 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.

Conclusion on Claim under Convention Against Torture

[61] The appellant is recognised as a refugee. By virtue of section 129(2) of the Act (the exceptions to which do not apply) he cannot be deported from New Zealand. This is in accordance with New Zealand's non-refoulement obligation under Article 33 of the Refugee Convention. Accordingly there are no substantial grounds for believing that he would be in danger of being subjected to torture if deported from New Zealand.

THE ICCPR – THE ISSUES

[62] 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.

Conclusion on Claim under ICCPR

[63] For the reasons given, the appellant cannot be deported from New Zealand. Accordingly there are no substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. The appellant is not a person requiring protection under the ICCPR. He is not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

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

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

[65] Refugee status is recognised. The appeal is allowed.

"A N Molloy"

A N Molloy
Member

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A N Molloy
Member