

**AT AUCKLAND**

<b>Appellant:</b>	<b>AB (Syria)</b>
<b>Before:</b>	S A Aitchison (Chair) B A Dingle (Member)
<b>Counsel for the Appellant:</b>	D Mansouri-Rad
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	7 & 8 March 2011
<b>Date of Decision:</b>	29 April 2011

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**DECISION**

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**INTRODUCTION**

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

[2] This appeal was lodged with the Refugee Status Appeals Authority ("the RSAA") prior to 29 November 2010 but had not been determined by that body by that date. Accordingly, it is now to be determined by a member of the Immigration and Protection Tribunal. See subsections 448(1) and (2) of the Immigration Act 2009 ("the Act").

[3] Further, pursuant to section 448(2), the appeal is to be determined as if it is an appeal under section 194(1) of the Act.

[4] 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

- (b) as a protected person under the Convention Against Torture (section 130); and
- (c) as a protected person under the International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[5] The appellant claims that as a consequence of his supporting the Lebanese Forces Party (“LFP”) and attending protests in Lebanon he was tortured by the General Intelligence Directorate in Syria. He fears being persecuted at their hands and the Syrian authorities. The principal issue to be determined in this appeal is whether his account is a credible one.

[6] Given that the same claim is relied upon in respect of all three limbs of the Tribunal’s jurisdiction, it is appropriate to record it first.

### **THE APPELLANT’S CASE**

[7] The account which follows is a summary of that given by the appellant at the appeal hearing. It is assessed later.

[8] The appellant was born in Lebanon in the early 1980s to Syrian parents. The appellant has five siblings: two sisters and three brothers, who are living, variously, in Syria, Lebanon and Norway.

[9] Approximately a decade later, he moved with his family to Syria. He completed his education there. In 2000, he returned to Beirut and began working as an upholsterer. His parents remained living in Syria and have resided there continuously until now.

[10] In 2003, the Syrian authorities called the appellant to perform military service. After completing this service, he returned to Beirut, where he has lived and worked ever since.

### **Attendance at Protests in Beirut**

[11] During the early 1990s, when the appellant’s family were living in Beirut, his father supported the LFP because the party had a long history of supporting and protecting Christians. He attended protests they organised in the city, and on one occasion in 1995, the appellant joined him. His father never experienced any difficulties associated with attending the protests or supporting the LFP.

[12] In 2001, while living in Beirut, the appellant began attending LFP protests. He attended a large protest that involved some 500 to 600 protestors, including Assyrians and Lebanese. The protest was led by several government ministers, and travelled from the Sad Al-Bousharia area to the middle of Beirut. The group protested about the imprisonment of Samir Geagea (“Geagea”), the leader of the LFP, and pressed for his release.

[13] The same year, the appellant attended smaller gatherings of the LFP in the Assyrian Memorial Square. He attended these on approximately three to four occasions. These gatherings were attended by approximately 100 persons. They were peaceful gatherings and he never experienced any difficulties on account of his attendance.

[14] His brothers, AA, BB and CC, also attended some of the gatherings, although his eldest brother CC was less active.

[15] From 2005 to 2009, he attended approximately 13 to 15 protests in Beirut. The largest protests were held on 14 February each year, to commemorate the death of former Prime Minister Rafiq Hariri. The appellant attended this protest annually, in 2006, 2007, and 2008. These protests were attended by parties belonging to the March 14 Alliance – effectively a party grouping that engaged in protests over the death of Rafiq Hariri.

[16] Four to five parties were represented at the 14 February 2006 protest. During the protest, they accused Syria of Rafiq Hariri’s assassination the year before. Approximately five to eight thousand people attended. The protest began at 10am and ended at 4pm. Protestors gathered in the Assyrian Memorial Square and walked to Al Haman. The appellant attended with his brother BB, and other Assyrian and Lebanese friends. Protestors held party flags and photos of Geagea. Geagea and his wife spoke at the demonstration, as did a government minister. The Lebanese Army provided a security presence, although the protest was peaceful.

[17] The following year, thousands were again present at the 14 February 2007 protest the appellant attended. It took place in Al Haman and speeches were delivered by Geagea, Waleed Junblat, Saad Al Hariri, Dori Shamun and Piere Jameail.

[18] The appellant did not experience any difficulties as a consequence of attending these protests.

[19] In approximately August 2007, the appellant met DD, who was travelling from New Zealand to Syria and Lebanon, on vacation with her father, EE. The appellant and DD became engaged in Beirut, and celebrated their engagement in Syria. DD then returned to New Zealand. The appellant planned to join, and marry, DD later in New Zealand.

[20] On 27 September 2007 the appellant was issued with a Syrian passport valid until 26 September 2013. He then lodged an application for a visitor's visa to New Zealand which INZ received on 11 December 2007.

[21] On 17 January 2008, the appellant attended a protest against Syria's threats to Bishop Sfeir of Lebanon. The protest took place in Meziara Al Matan, and continued from 10am to 4pm. Approximately 300 to 400 people attended. The appellant joined in the protest until 2.30pm. Geagea and his wife, along with various government ministers, spoke at the event. The appellant attended with two of his friends. There were approximately forty to fifty Assyrians present.

[22] On 14 February 2008, the appellant attended the annual protest in Beirut, which included approximately a million people. The protest was held from 12pm to 5pm. The appellant's brother BB attended with him, together with their friends. This was the last protest that the appellant attended.

[23] On 1 April 2008, the appellant visited his family in Syria to celebrate the Assyrian New Year. He usually visited his family several times each year, for the Syrian New Year, Easter and Christmas. He was also required to cross the border into Syria once a year to obtain an identity document permitting him to stay in Lebanon.

[24] INZ issued the appellant a visitor's visa on 18 December 2008 valid until 18 June 2009.

### **Arrest by General Intelligence Directorate in Syria**

[25] Later in 2008, the appellant returned to Syria to celebrate Christmas with his family. He arrived in Syria on 23 December 2008 and stayed with his parents in their home. At approximately 10am to 11am on the morning of 25 December 2008, as he was preparing to attend church with his family, two men arrived at the home and arrested him. He knew the men to be members of the General Intelligence Directorate in Syria.

[26] The men escorted him to a government security building, blindfolding him on the way. He was placed in a room with four men dressed in balaclavas, who removed his blindfold and began questioning him. They asked why he had joined protests against the Syrian government in Lebanon, and what terrorist activities he planned in Syria. He was questioned for approximately six to seven hours. He denied any involvement in protests in Lebanon.

[27] An hour and a half after the questioning commenced the men started to assault him. He was punched in the face by two of them who stood on either side of him. The men used an electric cable to strike his body. As a result, he bled from the nose and mouth, and his lip and cheek became swollen.

[28] The appellant was then placed in a small, dark, cell, approximately one and a half metres square. He was left alone, and not fed for three days. Approximately once a day he was taken out of the cell, placed in a room similar to the one he was initially interrogated in, and ill-treated. This treatment occurred on approximately three to four occasions. He was punched, and forced to crawl over small rocks on a concrete floor. His clothing was removed, and he was struck over his body with an electric cable. His back bled as a result and small wounds appeared on his elbows. He also received bruising to his face. The men also threatened to force him to sit on a glass bottle.

[29] His father paid 50,000 Syrian Lihir for his release. He was released on 28 December, upon the condition that he not leave Syria. He was told that he would be further investigated. His mother then treated his injuries.

### **Events since Arrival in New Zealand**

[30] In early January 2009, the appellant travelled to New Zealand. He was greeted by EE, her father, and their family at the airport. The family hosted a party for him the next day. The appellant was very happy to see his fiancée, and joined in the dancing and celebrations.

[31] He did not tell his fiancée or his father-in-law, about his arrest or torture in Syria. He came to New Zealand to experience a happy life and did not want to burden his fiancée with this information.

[32] He married DD in early 2009 and lived with her family in their home. They separated in late 2009.

[33] In September or October 2009, the appellant's brother BB attempted to travel from Beirut to visit their sick father in Syria. When the appellant received a call from his brother AA, some 12 to 13 hours after BB's departure from Beirut, AA advised him that BB had not yet arrived in Syria.

[34] Several days after this telephone call, members of the General Intelligence Directorate visited his parents and informed them that BB had been arrested at the border and held at Hasaka prison. A week later, the appellant called AA and was informed of this.

[35] When the telephone call terminated, EE, his father-in-law, asked him why he was sad. He told him that BB had been caught in Syria. EE did not ask him why he had been caught, or any other details.

[36] In approximately November or December 2010, the appellant received news that BB had been released on the condition that he not leave Syria. BB was not issued with any legal documentation during or after his detention. He told the appellant that the authorities accused him of joining parties along with the appellant and that he had been caught on account of the appellant's activities in Lebanon.

[37] The Syrian authorities are still looking for the appellant, and they have visited his parents on two occasions seeking his whereabouts.

### **Witness EE**

[38] The appellant called his former father-in-law, EE, as a witness. EE is a citizen of Syria, who has been living in New Zealand for nearly two decades. EE is also a relative of the appellant's father. He moved to Lebanon in 1970, and raised a family there, including his daughter, DD. Although his children were each born in Lebanon, he registered their birth in Syria.

[39] His daughter DD was introduced to the appellant in Beirut in 2007 and they became engaged during this visit. They married in 2009; then separated later the same year.

[40] When the appellant arrived in New Zealand, EE and DD, together with other family, greeted him at the airport. They held a party the following day to celebrate his arrival. It lasted approximately three hours, and included dancing. The appellant was very happy, and joined in the dancing. He looked physically well.

[41] Since coming to New Zealand, the appellant maintained regular contact with his family in Syria by telephone. On one occasion, EE returned home and found the appellant upset after earlier speaking to his brother AA in Lebanon. The appellant advised that AA had told him their brother BB had been “caught”. EE thought this had occurred in Lebanon. He did not know why he had been caught, nor did he ask.

[42] In July 2010, after the appellant and DD separated, EE and DD visited Syria on holiday. They met the appellant’s parents during this time. Upon discussing the separation of the appellant and DD, the appellant’s parents asked DD to stay with him. They asked her to help him complete his papers to remain in New Zealand. Later during this trip, EE ran into the appellant’s father in the street and he told him that his son, BB, would soon be released from detention.

[43] EE knew that the appellant was applying for refugee status but he did not know why. The appellant simply asked him to be a witness. He met with the appellant’s lawyer and gave an oral statement. The statement was recorded and the appellant later brought it to him to sign. He did not read the statement before signing. His daughter, DD, read it, and while not happy about her father being involved as a witness in the appeal, told him to sign it.

[44] Approximately three months before the Tribunal hearing, EE learned that BB had been released. He did not remember how he came to know this.

### **Counsel’s Submissions**

[45] Counsel filed written submissions with the Tribunal on 3 March 2011. These included a brief of evidence (“statement”) for EE, a supplementary statement for the appellant, and a work reference dated 19 December 2008 from his previous employer in Lebanon.

[46] At the hearing, the appellant submitted a copy of his military service booklet, Syrian passport and Syrian identity card.

[47] At the conclusion of the hearing, counsel sought leave of the Tribunal to file additional information, including original birth certificates or records belonging to witness EE’s children; a transcription of a portion of the RSB interview record; and medical evidence. Leave was granted until 24 March 2011.

[48] Counsel also submitted that given the appellant's political profile and the treatment he and his brother BB received at the hands of the Syrian authorities, it would be appropriate for the Tribunal to embargo its decision. Irrespective of the outcome of the appeal, counsel considered that basic details, such as dates included in the decision, could serve to identify the appellant. Counsel stated that he would provide written submissions to the Tribunal on this issue.

[49] The Tribunal granted leave to submit this additional evidence by 8 April 2011. On 1 April 2011, counsel submitted a family card for witness EE, together with an English translation; a medical report, dated 24 March 2011, for the appellant; country information; and sought an extension of time to submit evidence relating to the RSB interview record.

[50] At the date of delivering this decision, the Tribunal has not received any further submissions from counsel regarding his request to embargo the decision. Having borne counsel's concerns in mind, we nevertheless find that publication of this appeal would not be contrary to the provisions of section 151 of the Act. The Tribunal does not accept that an embargo is necessary.

## **THE REFUGEE CONVENTION – THE ISSUES**

[51] 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."

[52] 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 CLAIM TO REFUGEE STATUS**

### **Credibility**

[53] For the reasons that follow, the Tribunal concludes that the core of the appellant's claim for refugee status, including his attendance at protests in Beirut, his arrest and torture by the General Intelligence Directorate in Syria, is not truthful in any material respect.

#### *Circumstances of arrest*

[54] The appellant's evidence as to the timing of his arrest is inconsistent. The appellant told the RSB that he was arrested on Christmas Eve, 24 December 2008. In contrast, he told the Tribunal that he was arrested as he was getting ready for church on Christmas Day, 25 December 2008. When invited to comment upon this discrepancy, he told the Tribunal that he had arrived at his parent's home in Syria on 23 December, and got confused about the exact date of his arrest as it was Christmastime. He could not explain why he recalled in evidence to the Authority that he was getting ready for church when arrested but that detail or memory was not recalled at the RSB.

[55] He also told the RSB that he was released from detention on 26 December 2008, but told the Tribunal that he was released on 28 December 2008. When asked to comment upon this inconsistency he maintained his evidence that he was released on 28 December 2008. He stated that he might have been confused about the date because everything was "mixed up" at the time.

[56] The Tribunal does not accept this explanation and finds that the appellant's evidence before the RSB was unequivocal. He clearly stated in the interview that he arrived at his parent's home on the evening of 23 December 2008 and, on 24 December, between the hours of 11am and 12pm, two persons came to his home and arrested him.

[57] Inconsistencies also appeared between his accounts to the RSB and the Tribunal as to how he was treated in detention. Before the Tribunal, he claimed that when he was questioned there were four men present, dressed in balaclavas. He made no mention of the balaclavas at the RSB interview. Asked to comment about this he told the Tribunal that he had, in fact, told the RSB that the men wore a "head cover". He then went on to explain that, perhaps, he had not understood

the RSB when they asked him this question or, perhaps, they had not asked him whether the men wore anything on their head.

[58] The appellant claimed in his statement and to the RSB that, during questioning by these men, he was forced to sit on a glass bottle. He told the Tribunal, however, that he was only threatened with the bottle. When asked to explain the inconsistency he told the Tribunal that he did not tell the RSB that he was forced to sit on the bottle. He merely mentioned that he had been threatened that he would be forced to sit on the bottle.

[59] When the Tribunal drew his attention to the fact that he had claimed in his confirmation of claim, as in the RSB interview, that he was sexually assaulted with a glass bottle, he maintained his evidence before the Tribunal that he had only been threatened with the bottle. He stressed that the interview was recorded and that the Tribunal should listen to the recording of the interview which would support his explanation.

[60] The appellant has not sensibly explained this inconsistency. He clearly stated at his RSB interview and in his earlier, written statement that he had been assaulted with a glass bottle. At the RSB interview, responding to the question "Did you have to sit on the bottle", he responded, "there is no choice. I was very shy to tell you". In his statement he claimed, "They also assaulted me physically/sexually with a glass bottle". Further strengthening this view is the fact that he claimed in his confirmation of claim that: "They raped me with a bottle".

#### *Attending protests after completing military service*

[61] The appellant claimed in his RSB interview that, as an adult, he first became involved in protests in Beirut after performing his military service in 2005. However, to the Tribunal, he claimed that he had attended a protest in Beirut in 2001, prior to performing his military service. Commenting upon this inconsistency, the appellant told the Tribunal that the RSB had asked him whether he attended protests after performing his military service. The Tribunal invited the appellant's comment upon the following question and answer sequence in the RSB interview record, namely:

Q. Was it only after military service that you began actively being involved in protests?

A. Yes, after I finished military service, I am involved in this kind of protest. Because I love the LF, the way they are.

[62] In response, the appellant stated that he had attended some “small” gatherings in Beirut in 2001.

[63] The RSB invited the appellant to list the occasions when he attended protests in Beirut prior to January 2008. He told them that he did not remember the exact dates of the protests he attended prior to this time, adding that he had been involved in “so many protests”. Before the Tribunal, however, he gave detailed evidence about his attendance at a protest on 14 February 2006. When asked to comment upon this he stated that the RSB had simply asked how many times he had attended protests, and that they did not ask him about “big events”. He claimed they did not ask him specifically about events in 2006 or 2007. The Tribunal, in contrast, had asked him a lot of detailed questions. He added that he was confused.

[64] The RSB asked the appellant when he first attended a 14 February protest. He responded that it was in 2008. However, he told the Tribunal that he first attended a 14 February protest in 2006, and subsequently, in 2007 and 2008. When asked to comment upon this discrepancy, the appellant claimed that the RSB had asked him when he first “had a problem”, not how many times he had attended a 14 February protest, or when he had attended the first 14 February protest. In this respect, the Tribunal invited his comment upon the following question and answer sequence from the RSB interview record, namely:

Q. When was first time attended Feb 14 protest?

A. 2008.

[65] The appellant responded that he had told the RSB that he attended some 13 to 15 demonstrations in total.

#### *Joining father at protests in Beirut*

[66] Before the RSB, the appellant claimed that he joined protests with his father and relatives in Beirut when he was “young”. He claimed that “[w]hen they asked to go to protest, I always went to join this group”. Before the Tribunal, however, he stated that he had only attended one protest with his father in Beirut in 1995. When asked to comment upon this apparent inconsistency, he told the Tribunal that he had only attended one protest with his father in Beirut.

*Arrest of BB*

[67] The appellant's evidence to the Tribunal concerning his becoming aware of his brother BB's arrest was mobile.

[68] Early in the appeal hearing he stated that he received a telephone call from his brother AA who told him BB had been "caught". At that time he did not know when or where BB had been caught. He did not ask AA for this detail. Later in the hearing, however, he told the Tribunal that when he first spoke to AA about this event AA only knew that BB had left Lebanon some 12 to 13 hours earlier on his way to Syria to visit his sick father but did not know BB had been caught. When asked to comment upon this apparent discrepancy in his evidence, he maintained his later evidence.

[69] The appellant also claimed before the Tribunal that he had received this telephone call while EE was present in the living area at the time. Upon terminating this call he immediately told EE that BB had been caught. When advised that EE, in evidence before the Tribunal, had stated that he was not at home at the time the appellant received this call, he responded that maybe EE did not want to help him, impliedly asserting that EE was undermining his evidence.

*Credibility of witness EE*

[70] Before drawing conclusions on the appellant's credibility, the Tribunal will consider the credibility of witness EE, called by the appellant to give evidence in his appeal hearing.

[71] The Tribunal finds that the evidence of EE was internally inconsistent, and contradicted in several key respects the evidence of the appellant. While the appellant claimed that EE was at home when he received the telephone call from AA informing that their brother BB had been "caught", EE claimed that he had been out at the time and had only learnt this news later in the day when he returned to the house. EE also claimed that he had heard BB was caught in Lebanon, whereas the appellant claimed that he was caught in Syria.

[72] The Tribunal finds the inconsistent nature of EE's evidence indicative of the appellant having made a false claim, and witness EE being called to support it. In evidence before the Tribunal it became clear that EE understood very little about his written statement that was tendered to the Tribunal. He claimed that the appellant brought this statement to him at home to sign. He told the Tribunal that

the statement was prepared in English and he did not know its contents. It was not read to him in Assyrian, and he signed this only after his daughter had reviewed it and consented to him signing.

[73] The Tribunal finds the evidence of EE not only inconsistent with that of the appellant, but implausible. That EE knew nothing of the reason for BB's arrest, the circumstances that led to the appellant's departure from Syria, namely, his arrest and torture, in spite of his close family connections and living quarters, is difficult to believe. His claim to have never asked the reason for BB's arrest is, likewise, incredible, particularly given that both the appellant and the appellant's father had discussed the fact of BB's arrest with him. The Tribunal does not accept counsel's submission that cultural differences may account for this apparent lack of concern and inquiry.

[74] EE's account of his knowledge of BB's arrest was characterised by vagueness, as was his account of his knowledge of BB's release. He told the Tribunal that he learned of BB's release in late 2010; however, he could not say how he learnt of this, notwithstanding the fact that mere months had passed since he received this news, not to mention the significance of such news.

[75] The Tribunal does not accept counsel's submission that EE was suffering from memory failure, in explanation for these evidential concerns. EE gave clear evidence of events and details relating to his family in Syria and Lebanon. Further, no medical evidence has been tendered to support this submission. The Tribunal rejects, as not credible, EE's evidence concerning BB's arrest and his release from detention. However, it accepts his evidence that his children, born in Lebanon, had their birth registered in Syria, and that EE visited the appellant's parents in Syria in 2010.

#### *Other credibility concerns*

[76] The Tribunal invited the appellant to marry EE's evidence – that when the appellant first arrived in New Zealand he was very happy, well, and dancing at the party they held for him the following day – with his own evidence of being tortured mere days before. The appellant responded that God loved him and that his release from detention brought happiness. He was very happy when he saw his fiancée and only danced once at the party. The Tribunal finds this evidence surprising. Further surprising is the fact that the appellant never mentioned the fact of his arrest, detention and torture, to his wife or EE.

[77] The Tribunal notes, too, the fortuitous timing of the appellant's refugee claim having been made only after the appellant's residency application failed, and his avenues to remain in New Zealand narrowed.

#### *Conclusion on appellant's credibility*

[78] The Tribunal finds that the combined effect of the appellant's inconsistencies and contradictory statements stem from his having fabricated a claim for refugee status and inability, hence, to maintain a consistent story.

[79] It is not overlooked that the appellant produced a medical report to corroborate his account of ill-treatment, but this does no more than confirm the existence of small scars on his elbows and knees. It does not (as it could not) purport to explain how those scars occurred. No weight is placed upon this report.

[80] What remains of the appellant's claim is that he is a Syrian, Christian, man who has spent extended periods of his life living in Beirut. Such characteristics do not give rise to any well-founded fear of persecution at the hands of the Syrian authorities should he return to Syria.

#### **CONCLUSION ON CLAIM TO REFUGEE STATUS**

[81] Given the finding on credibility, it follows that the evidence does not establish that the appellant has a well-founded fear of being persecuted in Syria for any of the reasons enunciated in the Refugee Convention.

#### **CONCLUSION ON CLAIM UNDER CONVENTION AGAINST TORTURE**

[82] Given the finding on credibility, it follows that the evidence does not establish that there are substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand.

#### **CONCLUSION ON CLAIM UNDER ICCPR**

[83] Given the finding on credibility, it follows that the evidence does not establish that there are substantial grounds for believing that the appellant would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if

deported from New Zealand.

## CONCLUSION

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

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

[85] The appeal is dismissed.

"S. A. Aitchison"

S A Aitchison  
Chair

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S A Aitchison  
Chair