

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76559

REFUGEE APPEAL NO 76560

REFUGEE APPEAL NO 76561

AT AUCKLAND

Before:

B L Burson (Member)

Counsel for the Appellant:

I Chorao

Appearing for the Department of Labour:

No Appearance

Date of Hearing:

27, 28 & 29 September 2010

Date of Decision:

8 November 2010

DECISION

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

INTRODUCTION

[2] The appellant in *Refugee Appeal No 76559* is the husband of the appellant in *Refugee Appeal No 76560*. They will be referred to as “the husband” and “the wife” respectively. The appellant in *Refugee Appeal No 76561* is their infant son. The wife is the responsible adult for the infant son for the purposes of s141B of the Immigration Act 1987.

THE APPELLANTS’ CASE

[3] The husband claims to have a well-founded fear of being persecuted in Turkey at the hands of the Turkish authorities by reason of his participation in and support for demonstrations held by Kurdish political parties. Additionally, both the husband and wife each claim to have a well-founded fear of being persecuted at the hands of the wife's family who are members of an ultra-nationalist Turkish organisation who object to their Turkish daughter marrying a Kurdish man. The primary issue to be determined in this case is the credibility of the appellants' account.

[4] What follows is a summary of the evidence given on their behalf. An assessment follows thereafter.

Evidence of the husband

[5] The husband was born in the early 1990s in a small village in south-eastern Turkey. During the 1980s and early 1990s, the region was at the centre of a violent civil war between the Turkish military and security forces and fighters of the Kurdistan Worker's Party ("PKK"). To avoid the conflict, the appellant's family relocate to X when he was around three years old. The husband remained living in X until he fled to New Zealand. Upon reaching X, the husband's parents settled in a Kurdish suburb. They remain living there.

[6] The husband undertook his schooling in X. However, he did not complete his high school education. At high school he was discriminated against by his teachers due to his being Kurdish. Teachers often looked for reasons to fail Kurdish students and Kurdish students were severely punished. If they were caught speaking Kurdish at school they were punished including with suspension. At school, the Turkish students formed into groups which bullied and verbally abused the Kurdish students. The husband and his Kurdish friends often became involved in arguments with Turkish students about political issues including the rights of Kurds. Whenever the teachers intervened, only the Kurdish students were sent to the principal and suspended from school. In his last year at school, he was expelled as a result of his being suspended in such circumstances more than the allowable maximum and he was unable to complete his final examinations.

[7] After leaving school the husband obtained employment in X. In 2002, he received notification that he was required to report for a medical examination for the purpose of being conscripted into the Turkish Army. The husband disagreed

with military service and ignored the letter. Approximately one year later, three armed soldiers came to the family home in the early hours of the morning. After ascertaining his identity he was handcuffed and taken in the military vehicle to a military base. When the husband informed them that he did not wish to undertake his military service he was verbally abused.

[8] The husband was made to enlist in the military. Because of his intransigence and reluctance to serve he was not given a leave pass for seven months. The husband decided to desert. At this time he had been posted to a military base in another city in Turkey, some distance from X. Although he was forbidden to leave the city, he purchased a ticket to travel by bus to Y, a city near X, where his eldest brother was living. However, at a checkpoint outside the bus terminal the bus was searched by army officers. Upon ascertaining his identity he was arrested and taken back to the base. The husband was taken before a military court and, as punishment for attempting to desert, sentenced to three weeks' imprisonment in solitary confinement.

[9] The husband eventually completed his military service in 2004. Upon being discharged he was told that he was liable to be called up for further military service and if this happened, he was to report immediately to the nearest military base and if he did not do so he would be regarded as a traitor. The husband told the Authority that if this happened he would refuse to serve again.

[10] Between his discharge from military service in 2004 and the end of 2006, the husband undertook a variety of manual jobs in X.

[11] In mid-2006, the husband met the wife who was attending university in Y. They began seeing each other secretly. This was necessary because the wife's father and brother belonged to an ultra-nationalist right-wing group called *ulkuculu* (Idealists). The *ulkuculu*, an extremely violent youth wing of the Nationalist Action Party (MHP *Milîyetçi Hareket Partisi*), had been implicated in numerous instances of murder and physical abuse of Kurds. Indeed, the wife told the husband that she suspected her father and brother to be responsible for the murder of her elder sister's husband who had also been Kurdish. Although nothing had been proven, both she and her sister both strongly suspected that her family had killed him. Her elder sister had since fled to Belgium.

[12] By mid-2007 their relationship had developed and deepened to a point where they decided to marry. When the wife told her family about the husband and about their desire to marry, her father and brother reacted with violent

disapproval. She was shouted at and abused and beaten by both her father and brother. Once they heard that he was from the Diyarbakir area and a Kurd they immediately told her that she could not see the husband anymore and she was withdrawn from university.

[13] The husband and wife nevertheless continued to remain in clandestine contact. The couple decided that the husband should meet with her father directly and seek to persuade him that he should consent to their marriage. The wife told the husband that her father normally frequented a particular cafe that was situated not far from his home. Although the husband was apprehensive he went to the cafe and spoke to her father privately. The conversation was brief. When the husband indicated that he was the Kurdish man who had been seeing his daughter, the wife's father became extremely angry. He verbally abused the husband and stated that the only good Kurd was a dead Kurd. He slapped the husband's face and told him to stay away from his daughter. He threatened the husband that if he continued to see his daughter he would be killed. Concerned for his safety, the husband immediately fled and returned home to X. He found out later from the wife that, as a result of this incident, the wife was again beaten by her father and brother and suffered a broken finger.

[14] The husband discussed the situation with his parents and they told him that if he really loved the wife he should simply bring her to the family home and they could marry. Although the husband had told his family about the background of her family, he had not told them about their suspicion that her father and brother had killed the Kurdish husband of her elder sister. The husband believed that if he told them this news they would forbid him from having anything further to do with the wife and he did not wish this to happen.

[15] Approximately one month after the conversation in the cafe, the husband and wife arranged to meet in Y and the husband brought the wife back to his parents' family home in X. Approximately one month later they were formally married. As the wife was aged over 18 she did not need the consent of her parents.

[16] By this time the husband had his own shop and was saving sufficient money to be able to rent and establish his own house. In mid-late 2007, the husband and wife moved into their own rented accommodation and the husband continued developing his business.

[17] While growing up in X, the husband from time to time participated in public celebrations of *Newroz*, the Kurdish New Year celebration held in March. These celebrations were typically the source of tensions between the Kurdish communities and the state authorities. On a number of occasions the celebrations were broken up by the police. On none of these occasions was the husband arrested.

[18] The husband also participated in a demonstration on 15 February 2007, in respect of Abdullah Ocalan, the imprisoned PKK leader. This demonstration passed off peacefully and the husband encountered no particular difficulties. Things however changed for the worse in 2008. In mid-February 2008 the husband was approached in his shop by a group of Kurdish youths associated with the Democratic Society Party ("DTP") a pro-Kurdish political party. They told him that a protest demonstration was planned on 15 February, being the anniversary of the capture and arrest of Abdullah Ocalan. The DTP youths requested the husband to close his shop as a show of solidarity with the protestors. The husband told the men that while he supported the Kurdish cause, he was a newly married man and did not want to suffer retaliation from the police as the protest was unauthorised. The DTP youths verbally abused him and insinuated that if he did not close his shop he may face problems from the demonstrators. The husband was aware that the supermarket and other shops in his area had been firebombed and had had stones thrown at them by Kurdish youths for not closing upon request. The husband therefore agreed to close his shop and decided to attend the demonstration.

[19] During this protest, the protestors, who were chanting slogans and singing, were attacked by security forces in armoured vehicles. The police fired teargas and rubber bullets, causing the protestors to disperse. The appellant managed to evade being caught by the police and made his way home.

[20] The following day, the husband opened his shop as usual. That afternoon he received a visit from three plainclothes policemen who required him to accompany them to the police station to answer some questions about the closure of the shop the previous day. While travelling to the police station the husband was handcuffed and blindfolded.

[21] Upon arrival at the police station, the husband was placed in a cell. He was made to strip to his underpants and was then left alone for a number of hours. When the same officers returned to the cell, he was asked why his shop had been

closed the previous day. He told them that his mother was sick and that he had to take her to the hospital. The three policemen laughed and remarked that it was convenient that she had become sick on the very day of the anniversary of Abdullah Ocalan's arrest and the demonstration. One of the police officers began to beat him and said they would teach "a clever Kurd" a lesson. The officers began to punch the appellant. He was told that he was nothing but a terrorist. One of the police officers left the room and returned with a wet towel which was wrapped around the husband's feet. He was then beaten on the soles of his feet with a baton. After they finished beating the husband, they told him that if he closed his shop one more time they would make sure that he would not walk out of his next detention. He was then left in his cell on his own overnight, dressed only in his underpants.

[22] The following morning they gave his clothes back to him and drove him near to where he lived. As he was being released, he was threatened with death by the police officers if he mentioned what had happened in detention. Although his feet were sore, the husband walked home. When he entered the house the wife was crying. She informed him that two policemen had come to the house the day previously and searched the house thoroughly. They had been rude to her and abused her for marrying a Kurdish man. After discussing matters with the wife, the husband decided to move to another suburb in X and to move the site of his shop to a more centrally located area.

[23] However, after about two weeks of doing so the husband learnt that the floor above him was occupied by the X branch of a Turkish human rights organisation. Although this organisation did get involved in Kurdish issues, it was not strictly a Kurdish human rights organisation but involved in human rights work generally in Turkey. The organisation was kept under close surveillance by plainclothes policemen. The husband faced constant harassment from the undercover police who tried to pressure him into informing about visitors to the human rights organisation and about its activities. The undercover policemen also took goods without paying for them and demanded that he provide business services to them and their friends without paying. Apart from anything else, the mere presence of undercover policemen in his shop was bad for business.

[24] To escape this harassment, in late 2008 or early 2009 the husband and wife moved to another suburb in X which was populated mainly by Kurds. The appellant also moved into new shop premises.

[25] The husband explained to the Authority that, while the couple always lived in fear, he was hopeful that somehow he could persuade the wife's family to accept him and that at some point they might accept the marriage between him and their daughter. Shortly after their son's birth in mid-2009, the husband and wife telephoned the wife's family to inform them of this development in the hope that the news of a grandson's birth would cause her father to change his attitude. Their hopes were dashed. The wife's father told the husband that the wife's family wanted nothing to do with them or their son. Again, the wife's father threatened that if they found the husband and wife they would kill them.

[26] In late November 2009, the husband was again asked by a group of DTP activists to join a demonstration scheduled for 29 November. The husband told them that he had experienced trouble as a result of his attendance at a demonstration in 2008 and that he had been arrested and beaten. The activists threw pamphlets at him and insinuated that if he did not close the shop they could not be held responsible for what might happen to him and his shop. Worried that his shop might be fire-bombed by angry protestors if it remained open he decided to close his shop. Also, he wanted to support the demonstration which was to celebrate the founding of the PKK.

[27] On the day of the protest, different groups of protestors marched towards a particular police station from different areas. While the husband's group, however, was prevented from reaching the police station by a heavy police presence, other groups had managed to do so. At some point the protestors began throwing stones and Molotov cocktails. The police responded by firing live ammunition and tear gas. The husband and other protestors fled and the husband evaded capture.

[28] The husband ran home and told his wife what had happened. He informed her that they needed to go into hiding immediately. He telephoned his eldest brother and informed him what had happened. His brother agreed for them to hide at his home situated in another part of X. His brother met them at his home. The husband began discussed his predicament with his wife and they decided that for their safety they needed to leave Turkey altogether. He began looking at Internet sites about travelling abroad and came to learn that he could apply for refugee status. He also heard about New Zealand. After two or three days they made their decision that they would come to New Zealand and seek refugee status.

[29] After being at his brother's house for some five or six days the husband asked his younger brother to make inquiries about his shop. He did so and

reported back to the husband that his shop remained closed. The younger brother said that he had spoken to the husband's landlord who owned a nearby shop and who lived above the shop that the appellant rented out. His younger brother informed him that undercover police officers had visited the landlord and enquired as to the husband's whereabouts and how long the shop had been closed.

[30] At around this time they made an application to visit New Zealand on a holiday. The husband and his wife included their last registered address on their passport applications. Once the visa was issued, the husband made inquiries of the relevant courier company and ascertained that it was waiting to be delivered back to the New Zealand Embassy as the husband was not at the specified address. The husband made special arrangements to pick the passports up from the airport in Y.

[31] A few weeks after arriving in New Zealand in early 2010, the husband was contacted by his younger brother who said he had been informed by the husband's former neighbours and landlord and told that further inquiries had been made of them by the police as to the husband's whereabouts.

[32] The husband fears that if he is returned to Turkey he will be arrested for his participation in the demonstration in November 2009. He had already been tortured and severely beaten because of his participation in the February 2008 demonstration and fears that the treatment that he will suffer will be worse. He has learnt that a cousin, who lives in Diyarbakir, has been recently sentenced to a substantial term of imprisonment for participating in a pro-Kurdish demonstration. The husband is concerned that his cousin may have been tortured and given out his details. The husband travelled to Diyarbakir every year to visit relatives and this cousin was aware of his participation in the February 2008 demonstration and what happened in its aftermath.

[33] He is also concerned about the wife's family who remain hostile to him. He has offended their honour and if they find him, he believes they will kill him or cause him serious harm.

Evidence of the wife

[34] The wife was born in Y in the late 1980s. Y is situated approximately 80kms from X. She is the youngest child in her family which comprises 12 children. With the exception of a sister who lives in Istanbul and one who lives in a European country, her parents and siblings remain in Y.

[35] Her parents and her five brothers were all members and supporters of the National Action Party (“MHP”) – an ultra-nationalist party in Turkey. Throughout her childhood she and her siblings were constantly told that Kurdish people were traitors and terrorists. Despite growing up in this environment, one of her elder sisters married a Kurdish man in the late 1990s. When her sister announced that she was seeing a Kurdish man she was beaten by her father and brothers. She was pressured into giving up the relationship but refused to do so. Instead, she ran away with this Kurdish man. After that her father and family cut all ties with her sister. In his eyes the wife’s sister had disgraced the family name by running away with her Kurdish husband and marrying him against the family’s wishes. After her sister fled home, her father was particularly angry and was often remarking that he was going to kill her and her husband. The wife recalls that a few years later she came home from school and felt a particularly strong sense of anger around the house. She was told that earlier that day her sister had suddenly come to the house with an infant son. Her father refused to have anything to do with his daughter and her child.

[36] A month or so after her sister’s surprise visit to the family home, her sister’s husband was found dead in a park. Although nothing was ever proven, the wife and her sister strongly suspect both her father and/or her brothers had some hand in his death. Some years after that her sister married a Turkish national living in another country and emigrated. She has not been home since although she had remained in semi-regular contact with the wife.

[37] The wife explained that when she met her husband she told him all about her family background and that it would be very difficult for her family to accept him. However, the more they met up with each other the more they realised they had strong feelings for each other. The husband and the wife would arrange to meet secretly after she finished lectures at university. For example they would arrange to catch the same bus to talk. She would get off at her stop and he would continue on his journey before returning to X.

[38] The wife explained that her parents and brothers became suspicious about her behaviour but, at least initially, she hid her contact with the husband from them. However over time as their feelings developed she felt she could no longer hide these from her parents with ease. She and her husband had reached a point in their relationship where they wanted to get married. Soon after they had this discussion she was again pressured by her family to reveal who she was secretly texting and speaking to. She confessed that she was seeing someone. When

asked by her father who this person was, she explained that he was a Kurd from Diyarbakir.

[39] At this point her father immediately said he wanted to hear no more of this. He told her that she could not see this man and told her that she would be withdrawn from university so she could not see him. One brother, AA, was particularly hateful of Kurds. Upon hearing of her relationship with the husband, AA, picked up an axe and made a threatening gesture towards her. The wife does not think he meant to strike her but rather wanted to frighten her into abandoning the relationship

[40] After that her movements were restricted. For the next few months it was difficult for her and the husband to see each other but they remained in contact over their mobile phones. Whereas she had been doted on as the youngest child, particularly by her father, now she was now regularly assaulted by her brothers and father because she had transgressed the family's rule regarding relationships of any kind with Kurds. AA, in particular, used to beat her regularly. He often went out drinking and when he came back to the family home would check to see if she was sleeping. If she had gone out and was late home this would be used as an excuse to assault her. The beatings she received caused bruising and red markings on her body. On one occasion AA punched her in the face causing her nose to bleed

[41] Despite this, the couple eventually resumed seeing each other again. They decided that the husband should meet the appellant's father and seek to have him agree to their marriage. The wife had shown him a cafe her father frequented. She warned him that this cafe was patronised by men who tended to share the same anti-Kurdish sentiment of her father and brothers and who tended to support the MHP. Although the husband and wife were expecting there to be some resistance they held out some hope that her father might relent because of her hitherto close relationship with her father. Having already lost one daughter she felt that the bond she had with her father might just persuade him to accept her relationship with the husband.

[42] However, this did not work. When her father arrived home from the meeting he was furious that she had obviously continued to see the husband behind his back and against his express wishes. She was again beaten by her father. She was also beaten by her brothers. The beating she received from AA on this occasion resulted her suffering a broken finger.

[43] That evening she contacted the husband and told him that she could not bear it any longer and wanted to leave and be with him. An arrangement was made for him to pick her up the following morning. The wife's family chore was to fetch the family bread from the bakery in the morning. This had always been her job and she did it the following morning. The husband picked her up outside the bakery and together they travelled to X.

[44] After a month of being with her husband at the family home the couple were married. She did not need her parents' consent as she was over the age of majority. After the wedding they telephoned her father to ask for his forgiveness for running away. She shouted at them and told her husband that if he found them he would kill them. Thereafter the husband and wife have had no direct contact with the wife's family. The husband rang her father following the birth of their son in mid-2009. She had hoped that the birth of the grandson would make some difference. It did not. Her father told her husband that he wanted nothing to do with them or their child. He again threatened to kill them if he saw them.

[45] The wife told the Authority that the husband had been in trouble with the authorities for attending demonstrations. In mid-February 2008 he came home from work and, as part of their daily routine, they discussed the day's affairs. He told her on this occasion that some Kurdish men had requested that he go on a protest. He was worried that if he did not his shop might be attacked because this had happened to other Kurdish businesses that had not shut down as requested. He therefore shut his business and also went on the demonstration.

[46] He came home with red eyes and she understood that the police must have been using tear gas. He did not open the shop for the rest of the day but left for work the following morning. Later that day three policemen came to the house. When she opened the door, the police barged in and began searching the house. She was verbally abused by them from marrying a Kurdish man.

[47] The husband did not return home from work at his usual time. Worried, she went to the shop but saw that it was closed. No one in the locality knew where her husband was so she called his parents but they too had not seen him. The husband returned home the next day in the late morning. He looked tired and had difficulty walking and speaking. After resting for a while, he told her he had been arrested and detained by the police. He told her he had been tortured by them, that they had placed a towel around his feet and beat him.

[48] A month or so later they moved to another part of X and the husband relocated his shop to his new area. However, in this new shop he encountered problems from undercover policemen. He often remarked to her when he came home at the end of the day that the undercover policemen were taking goods without paying. The wife recalls that during this time the husband's state of mental health deteriorated. He often woke up in the night screaming. However the wife became pregnant in late 2008 and the husband did not say too much in order that she not worry. Eventually they moved house and shop yet again to another part of X

[49] The wife told the Authority that in late 2009 the husband told her he had been approached by some Kurdish men and told that he should attend a protest in a few days' time regarding the establishment of the PKK which happened to coincide with a particular religious festival. Again, the husband and wife discussed the matter. Although she was unhappy about the prospect of him possibly being arrested and detained, it was decided that he had no option but to go because of their concern that his business might be attacked by Kurds who objected to him not showing support.

[50] The husband went to the protest and was gone for a couple of hours. When he returned he had red eyes and looked like he had been running. The husband explained to the wife that the protest had become violent and the police were rounding up and arresting people. He told her that it was not safe and that they had to leave immediately.

[51] They rang his brother who lived in another part of X and after packing some belongings they went directly to the brother's house. They began discussing what to do. They did not feel safe staying in Turkey and her husband began searching the Internet for options. She recalls him telling her that he had learnt about applying for refugee status. He also told her about New Zealand which he said had a good human rights record. They decided to come to New Zealand and seek refugee status. They planned to do it at the airport on arrival. However, they were worried that if they did this then they would be refused a visa to travel to New Zealand. Therefore they decided to get a visitor's visa. Her husband made the application and had all contact with the visa office.

[52] As her passport was about to expire she had to go to a passport office and have it extended. Apart from this she did not leave the brother's house. Her husband only went out when necessary to get their survival necessities.

[53] After a couple of weeks the visitor's visa was granted. However they had used their last registered address as their formal address on the visa application in case it was checked by the New Zealand authorities. Her husband had to make a special arrangement with the courier company to have it delivered to the airport in Y. He travelled from X to Y to pick up the passport. She remembers him having to lie to the courier company by stating that the couple had already bought their tickets when in fact they had not.

[54] Although they had originally planned to claim refugee status on arrival they did not do so. The wife was pregnant at the time and feeling very unwell and frightened. They decided that they would enter as visitors and claim refugee status after arrival.

[55] Approximately a week after they arrived in New Zealand they were contacted by one of the husband's brothers. He told them that he had been informed by the husband's landlord, who was questioning why there had been no rent payment, that the authorities had again been around to the shop enquiring as to the husband's whereabouts. The landlord had told the police that the husband was sick and did not know where he was.

[56] The wife told the Authority that she was living in constant fear of her family. Being young and naive she had hoped that she might be able to change her father's mind particularly given their close bond. She is particularly distressed that he not only wishes to have nothing to do with her but also her son. She is constantly living in fear that their whereabouts would be discovered. Her family know nothing about her husband being from X. They think he is from Diyarbakir. Even so, she is afraid to live openly with him.

[57] To protect herself and the husband she has given up all contact with her family (with the exception of this sister in the European country) and friends. They socialise only within the husband's family network. She fears that if she were to live an open life in X, news of their whereabouts may filter back to her father and/or brothers. Always in the back of her mind is that her sister's husband was killed many years after the marriage and she believes the passage of time since her marriage to her husband would not in any way lessen the risk to her and her husband should their whereabouts be discovered.

Documents and submissions

[58] On 1 September 2010 the Authority received from counsel a written memorandum of submissions of the same date. Attached to this were copies of:

- (a) D McDowall & Ors *“Asylum seekers from Turkey II”* (a revised, updated edition of the report of a mission to Turkey October 2000) Asylum Aid UK October 2002; and
- (b) United Kingdom Border Agency *Country of Origin Information Report: Turkey* (9 August 2010).

[59] On 24 September 2010, the Authority received a further letter from counsel enclosing a statement from the wife’s sister living in the European country together with three documents relating to her residence there.

[60] On 27 September 2010, the Authority received from counsel a partial and uncertified translation of a statement that had been received from the husband’s brother who had been in contact with the husband’s landlord. During the course of the hearing the Authority served on counsel country information relating to the incident in November 2009. The Authority received from counsel further country information relating to this event.

[61] At the conclusion of the hearing counsel made oral submissions to the Authority. Counsel submitted that the appellants’ accounts remained generally consistent with each other and with what they had said previously as regarding their core aspects. She submitted that such credibility issues which have arisen have been plausibly explained by the husband and wife.

[62] On 18 October 2010, the Authority received from counsel a further memorandum of submissions of the same date. Attached to this was a certified copy of the court proceedings relating to the husband’s cousin and a certified translation of the statement from his brother.

THE ISSUES

[63] 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.

[64] 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 APPELLANTS' CASE

CREDIBILITY

[65] The Authority agrees with counsel's submission that, in general terms, the accounts of the husband and wife have been consistent with what they have said previously and with each other. While a number of credibility issues arose at the RSB and at the Authority hearing, the husband and wife have provided plausible explanations for these issues. While the Authority continues to have some reservations about the evidence relating to where the husband received the passports endorsed with New Zealand visas, it notes the appellants have provided a consistent explanation for this which cannot be dismissed as inherently implausible. In any event, this is not an issue at the core of the appellant's claim, the particulars of which have remained consistent. In the end the Authority is left in some doubt as to this issue. To the extent necessary, the Authority extends to the husband and the wife the benefit of the doubt on this point. Their accounts are, therefore, accepted in their entirety.

[66] The Authority accepts that the husband and wife have married against the wishes of her family who are members of an ultra nationalist group with a hatred of Kurds. The wife has been beaten up by her father and brother for defying their wishes before fleeing the family home to live in another city with the husband and his family. The wife and her elder sister strongly suspect that the wife's family were responsible for the murder of the elder sister's husband, who was also Kurdish and whom the elder sister married against her father's wishes. The wife has not seen her family since their marriage in 2007 and has not travelled to her city of former residence out of fear of being discovered. She has abandoned all contact with her friends.

[67] The Authority further accepts that the husband was subjected to an unregistered overnight detention following his participation in a pro-PKK demonstration in February 2008. During this detention he was subjected to torture in the form of *falaka* (being beaten on the soles of his feet) and was beaten by the officers who detained him. He participated in a subsequent pro-PKK demonstration in November 2009 which turned violent. The police have been searching for him since that demonstration at his former home and place of business.

[68] Their claims will be assessed against this background.

Objectively, on the fact as found do the appellants have a well-founded fear of being persecuted?

Country information

Treatment of Kurds who engage in protest activity

[69] The arrest and detention of Kurds who participate in pro-PKK demonstrations organised by other pro-Kurdish parties continues to remain commonplace. The United States Department of State *Country Report on Human Rights Practices 2010: Turkey* (11 March 2010) (“the DOS report”) notes, at section 1d, that throughout 2009 the police “routinely” detained demonstrators for a few hours at a time including as many as several hundred members of the former DTP and its successor Peace and Democracy Party (BDP) on various occasions. It notes that police also “continued to detain persons on suspicion of membership in an illegal organization” and for “promoting terrorist propaganda”. At section 2a, the report notes severe restrictions placed on freedom of speech, including in relation to “Kurdish nationalist or cultural viewpoints”. The report continues:

Throughout the year police and the judiciary increased pressure on members of the pro-Kurdish former DTP and BDP. Human rights activists claimed that more than 1,000 cases had been opened against former DTP and BDP members during the year. Most were investigated and prosecuted for speaking in the Kurdish language or for making statements critical of the government. Many were also arrested for alleged ties with the KCK, the political branch of the terrorist PKK organization, including a group of more than 40 between December 25 and 31 that included elected mayors and BDP officials.

On April 21, the Diyarbakir criminal court sentenced two Kurdish politicians, Diyarbakir Mayor Osman Baydemir and former DTP leader Nejmet Atalay, to 10 months in prison for publicly spreading terrorist propaganda by referring to the PKK

as "guerrillas" instead of "terrorists" in a public speech. Baydemir continued to serve as mayor.

Baydemir continued to face more than 100 charges and investigations for use of the Kurdish language. At year's end he faced three cases for sending Kurdish language holiday cards in 2008. The Diyarbakir penal court acquitted Baydemir in September for the 2007 cases against him for referring to the PKK as the "armed Kurdish opposition".

In October the Ankara prosecutor opened an investigation into the DTP's national convention for alleged support of terrorism through speeches and slogans delivered at the convention. The investigation also examined alleged ties between the DTP and PKK. The closure of the DTP in December rendered moot any outstanding cases against the party.

In October a Sanliurfa court sentenced seven DTP members to two years in prison for participating in an unauthorized rally in October 2008 to protest the prison conditions of Abdullah Ocalan.

[70] As to the treatment of detainees, the Human Rights Watch report *Turkey: Human Rights Concerns in the Lead Up to July Parliamentary Elections* (July 2007) observes, at page 20 that, while reports of torture and ill-treatment remain much lower than in the 1990s "when torture was pandemic in police stations throughout Turkey, and especially in Turkey's anti terror units", the ill-treatment of detainees at the time of arrest and outside official places of detention "remains a worryingly and wide reported practice". Similar observations are reported in the Amnesty International report *Turkey: Impunity Must End* AI Index EUR 44/008/2007 (7 July 2007) ("the AI Impunity report") at page 4; the Commission of the European Communities *Turkey: 2009 Progress Report* Sec (2009) 1334 Brussels, (14 October 2009) at page 16; and at the Kurdish Human Rights Project Submission to the UN Universal periodic review of the Republic of Turkey (9 November 2009) ("the KHRP UPR submission") at page 1.

[71] The Amnesty International Impunity report notes a reduction in the instances of torture and ill-treatment by officers in the Anti Terror department and Security Directorate of the ruling Justice and Development Party's (AKP *Adalet ve Kalkinma Partisi*) "zero tolerance for torture" policy, in place since 2002. This report, at pp4-6, sets out a number of legal reforms instituted under this policy, aimed at reducing the hitherto institutional propensity to torture or otherwise mistreat detainees. Like the Human Rights Watch report and the European Commission report however, the Amnesty International report cautions that progress is uneven. There remains a concern over impunity from past acts of torture and ill-treatment. More significantly for present purposes, the report notes at p4:

However, changes in regulations and legal reform will never on their own be enough. Stamping out torture and ill-treatment in other contexts – during unofficial detention, during and in the aftermath of demonstrations where there are mass

detentions, in prisons, and during prisoner transfer – is proving a greater challenge.

[72] Similarly the KHRP UPR submission also states:

6. The above reforms are part and parcel of the Turkish government's self-declared 'zero tolerance' policy on torture. However, concerns remain that despite procedural and legislative changes which in theory increase accountability and discourage rights violations, implementation remains ineffective, meaning that in practice the problem of impunity for rights violations against prisoners continues.

7. A KHRP fact-finding mission to Istanbul, Ankara, Mardin and Diyarbakır in December 2008 to investigate the situation of prisoners' rights confirmed that torture and ill-treatment remain a problem in detention centres across the country. The mission heard frequent reports of casual violence, including routine beatings of prisoners during their transfer from one location to another, and on arrival at a new prison. KHRP remains concerned about conditions of detention, including unprecedented overcrowding, unsatisfactory access to medical care for prisoners and arbitrary and unfair disciplinary proceedings. The mission members also noted an acute lack of transparency, accountability and independent oversight within the prison system.

8. The most apparent change observed by KHRP's mission was the shift which had taken place 'from flagrant to more subtle forms of ill-treatment, leaving few traces or long-term physical signs, as well as an increase in incidences of ill-treatment outside official detention centres'.

9. Despite the procedural reforms set out above, it is clear that in most cases of torture committed by state agents little, if any, investigation is carried out. An investigation generally undertaken only in cases where the torture has had serious consequences, for example it has led to the death in custody of the victim.

[73] A recent example of this phenomenon referred to in para 9 of the KHRP UPR submission can be found in the recent conviction and sentence of substantial imprisonment of nine prison and police officers for the torture and death of Engin Ceber, an activist with the Rights and Freedom Association in Turkey – see Human Rights Watch *Turkey: Landmark Convictions in Torture Case* (3 June 2010).

[74] The mistreatment of Kurdish detainees is symptomatic of a wider pattern of excessive use of force in dealing with demonstrations generally including gatherings of Kurds at cultural events such as *Newroz* (New year) or demonstrations by public sector trades unions – see Human Rights Watch *Turkey: Combat Police Killings and Violence* (20 April 2010).

A lingering climate of impunity for perpetrators of human rights abuses

[75] An absence of independent and effective investigations into complaints of police misconduct results, combined with rare prosecutions or disciplinary measures being instituted against perpetrators, has contributed to police violence,

creating a lingering climate of impunity for human rights abuses despite the various legal reforms instituted by the AKP. For detailed discussion see the 2007 AI Impunity report and Human Rights Watch report *Closing Ranks against Accountability: Barriers to Tackling Police Violence in Turkey* (December 2008). After detailing various domestic policy, legislative and regulatory reforms implemented since 2002, and the General Assembly Resolution adopting the *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* General Assembly resolution 55/89 para 3 (4 December 2000) (“the Istanbul Protocol”), Human Right Watch state, at p31:

The persistence of police violence in Turkey, despite legal changes, despite knowledge on the part of authorities, international monitoring, and detailed advice and recommendations from bodies such as the European Court of Human Rights and the European Committee on the Prevention of Torture as to what needs to be done, is particularly concerning. However, at the heart of the persistence of the phenomenon is that those who perpetrate ill-treatment can reasonably expect that they will not be held accountable not because the law does not say that they shouldn't be, but because over an extended period Turkey's criminal justice system has institutionalized a system of impunity. Knee-jerk denials, flawed investigations, biased attitudes amongst law enforcement and prosecutors, and ultimately a studious failure to take on board the calls for reform of practices from bodies such as those mentioned above has ensured that for decades the chances of being held to account for acts of ill-treatment or torture have been remote.

[76] Commenting on security forces personnel generally, the DOS report, at section 1c, notes that a 2008 report by the Turkish Parliamentary Human Rights Investigation Commission found that, between 2003 and 2008, only two percent of the 2,140 personnel who were investigated due to accusations of torture or mistreatment were given disciplinary sentences. Similar observations as to a persistent climate of impunity for police and security force personnel who commit human rights abuses against detainees are made in the EU Commission 2009 *Progress report* (*ibid* at page 16). The 2007 AI Impunity report, at pages 10-13, sets out a number of factors contributing to the continuing climate of impunity. The Amnesty International briefing note *Turkey: Briefing to the Committee against Torture* Amnesty International Index: EUR 44/023/2010 (October 2010) records, at page 5 concern that impunity for torture and other human rights abuses remains a problem.

As to the existence of an ultra nationalist group called the ‘ulkuculu’

[77] David McDowell “*A Modern History of the Kurds*” (I B Tauris, London 2000 at p411) notes the rise of far-right groups in Turkey in the 1970s. The expansion of the university student population in the late 1960s, combined with substantial

unemployment attracted many youth to far-left and far-right political parties. Commenting on the far-right end of the spectrum McDowell observes:

Substantial numbers were attracted to far-right groups, for example the 'Idealists' (ulkucular), also known as 'Grey Wolves', (bozkurtular) who were associated with the National Action Party of Alparslan Turks. The Idealists were extremely hostile to Kurds and communists, believing in the words of their ideology Nahal Atsiz, "one who does not have Turkish blood is not Turkish even though he does not speak any other language except Turkish" while communists were people "who were racially degenerate, villains, whose origins were not known to be Turkish". The Grey Wolves believed it their duty to expunge "the enemy within".

...

It was not long before left and right groups clashed, with fights on campus leading to fights elsewhere as ideological feuds spread across Turkey. In a number of cases these overlaid older clan or religious ones which students had brought with them to university. Thus left-right ideology, dangerous as it intrinsically was, also constituted a vehicle and camouflage for other contests: Turk versus Kurd, Sunni versus Alevi, Sunni versus secularist, artisan – trader class versus rural migrant and urban proletariat.

...

During the second half of the 1970s urban and rural violence steadily increased as rightist groups noticeably the Grey Wolves, clashed with leftists. Apart from university campuses and the shanties of Istanbul and Ankara, Kurdistan was the focus for these conflicts, in the areas of ethnic mix like Erzerum, Maras, Malatya, and also deep in Kurdistan where Sunnis and Aghas feared the social and economic challenge of the leftists.

[78] In the 2002 Asylum Aid report, McDowell *et al* also comment on the extreme right ideology of the MHP. They observe that many MHP adherents often have "a visceral loathing of leftists, particularly Alevi Kurds". They note, at page 62, that like the MHP the Grey Wolves enjoyed intimate relations with the police and that a substantial number of police officers supported MHP generally or were active in its youth wing while off duty. They argue that the intimate connection of MHP with the police continues, noting that in a 2000 demonstration by police over low pay, many of the demonstrators showed their colours as supporters of the Grey Wolves. Although the authors state that the MHP was "banished from the scene in the November 2002 elections, the attitudes it represented are unlikely to have disappeared".

Honour killing and other forms of violence against women in Turkey

[79] This issue was examined in some detail in *Refugee Appeal No 76044* [2008] NZAR 719. Although the case concerned a Kurdish woman, the Authority observed at [44] that "violence against women, including honour killings and rape continue to be a widespread problem in Turkey. At [45] the Authority observed that while:

many of the murders occur in the Kurdish provinces where there is a deeply entrenched patriarchal and feudal system... honour crimes are not a uniquely Kurdish phenomenon nor are they properly associated with any particular society or religion.

[80] In support, the Authority cited, amongst other sources, Dr Dicle Kogacioglu, "The Tradition Effect: Framing Honour Crimes in Turkey" (2004) 15 *Differences* 118, 130, who at pp129-130 observes (emphasis added by this panel):

The single clear fact about the suicides is their location: south-eastern Turkey. Since honor killings are thought to be most prevalent in the Southeast, the JDP [Justice and Development Party] collapses the two. In this way, the party contributes to the mainstream view that honor crimes are a phenomenon contained in the Southeast, a view held by people of various political orientations. In the absence of national and regional statistics about honor crimes, it is difficult to assess this assumption, although media reports in other parts of the country make it seem hardly realistic. **And even if killings per se are more prevalent in the Southeast, other practices that can be placed under the rubric of honor crimes, such as the limits imposed on women's rights to travel or to receive education, and other forms of violence women face in the name of the protection of honor, are fairly commonplace even in cosmopolitan centers such as Istanbul, Ankara, and Izmir.**

[81] According to the DOS report of 2010, the situation is little different now. It states, at section 6:

Violence against women, including spousal abuse, was a serious and widespread problem. The law prohibits violence against women, including spousal abuse, but the government did not effectively enforce it.

Application to the facts

The husband's claim

[82] The husband is being sought by the Turkish authorities for his participation in an unauthorised demonstration in support of the PKK, a banned organisation in Turkey. He has previously been arrested and detained by the Turkish authorities for undertaking similar activity. During this detention he was held in an unregistered detention and subjected to torture in the form of *falaka* which consisted of having the soles of his feet beaten. A cousin of his has recently been arrested and convicted to a substantial term of imprisonment for undertaking protest activity in Diyarbakir. Despite some improvements in country conditions, progress to eradicate torture and mistreatment from the Turkish security and criminal justice system is uneven and substantial problems remain. The torture and other serious mistreatment of Kurds like the appellant who have engaged in protest in support of the PKK remains commonplace. There remains a general

climate of immunity for police officers who have or who are inclined to indulge in such practices

[83] The combination of these facts persuade the Authority that should the husband be returned to Turkey he faces a real chance of being arrested should he return to X. Should this happen there is a real chance that he would be subjected to serious harm amounting to his being persecuted. He has suffered torture in the past when detained.

The wife's claim

[84] As for the wife, the Authority observes that she has been subjected to a number of assaults by her family members after disclosing her relationship with the husband. Her father and brothers are members of an ultra nationalist group with a hatred of Kurds who consider that the family's honour is brought into disrepute by their daughters marrying Kurds. The wife and an elder sister strongly suspect that her father and/or brothers were responsible for the murder of her elder sister's Kurdish husband.

[85] Despite their objections, the wife has run away from home and married a Kurdish husband. They have threatened to kill both her and the husband as a result. While she has managed to avoid serious harm being inflicted upon her since she ran away from home, this 'safety' has come at a cost in human rights terms. Such 'safety' as the wife has secured from physical violence has been at the expense of her having to live a restricted private life. She has had to give up all contact with her family and her friends in Turkey. She has had to avoid her former city of residence and cannot mingle freely in X. Rather she has had to exist solely within the local Kurdish community. She has associated only with her husband's family since the marriage. In other words she has had to suffer some degree of cultural alienation and her rights to freedom of movement and association have been impinged.

[86] Although threats have been made to kill her, the Authority observes that on her own evidence, her elder sister was not killed by the family when she came home with her child in similar circumstances some years before. It is impossible for the Authority to predict with certainty how her family will react to the wife in this context. Nevertheless, the Authority cannot rule out the possibility that, given their background and that she is the second daughter to defy the family and bring the

family's honour into "disrepute", the treatment meted out to her may be more severe than was meted out to her sister some years previously.

[87] In the end it is not necessary to reach any firm conclusion on the precise degree of risk of her being subjected to an honour killing. Even if she were not to be subjected to an honour killing, she has been subjected to serious physical assaults by her family in the past on a number of occasions – including assaults which have resulted in a broken finger, bruising and a bleeding nose. There is a real chance that she would be subjected to assaults of a similar nature in the future. The Authority is satisfied that such assaults amount to serious harm.

[88] The Authority is satisfied that there would be no state protection afforded to the wife by the local police, given her status as a woman, and given the historic close relationship between the ultra-nationalist group to which her family belongs and the Turkish police force. It is no answer to her predicament to insist that she continue to lead a discreet life and curtail the exercise of her rights to freedom of association and movement.

[89] While the Authority accepts that ostracism by her family alone would not in itself amount to persecution, she faces a well-founded fear of being persecuted because of the real chance of some form of violence to her at the hands of her family for running away from home and marrying a Kurd.

The son's claim

[90] The son does not have a well-founded fear of being persecuted. Although the wife and husband both spoke eloquently of their desire for their son not to be brought up in a country as divided as Turkey, the risk of serious harm befalling him for a Convention reason is entirely speculative and remote. He is only two years of age. For this reason the first principal issue is answered in the negative in respect of the son.

Nexus to Convention ground

[91] Plainly the husband's predicament is being contributed to by his race, here his Kurdish ethnicity and his actual political opinions. The wife's predicament is being contributed to by her membership of a particular social group, here her own family and the family she has started with the husband. The second principal issue is answered in the affirmative for the husband and wife.

Internal protection alternative

[92] Because the husband and wife's particular predicaments arose in X only, an issue arises as to whether they have a viable internal protection alternative ("IPA") available to them in Turkey. It is to this issue that the Authority now turns.

[93] In *Refugee Appeal No 76044*, the Authority reconfirmed but modified its earlier jurisprudence on the approach to the application of the IPA. The Authority determined:

[178] In these circumstances the Authority affirms the "Hathaway/New Zealand rule", namely that once a refugee claimant has established a well-founded fear of being persecuted for a Convention reason, recognition of that person as a Convention refugee can only be withheld if that person can genuinely access in his or her home country domestic protection which is meaningful. Such protection is to be understood as requiring:

- (a) That the proposed internal protection alternative is accessible to the individual. This requires that the access be practical, safe and legal.
- (b) That in the proposed site of internal protection there is no risk of being persecuted for a Convention reason.
- (c) That in the proposed site of internal protection there are no new risks of being persecuted or of being exposed to other forms of serious harm or of *refoulement*.
- (d) That in the proposed site of internal protection basic norms of civil, political and socio-economic rights will be provided by the State. In this inquiry reference is to be made to the human rights standards suggested by the Refugee Convention itself.

All four requirements must be satisfied before a viable IPA can be found to exist and take the husband/or the wife outside the scope of the Convention.

[94] As for the husband, while requirement (a) is satisfied in that it is possible for the husband to return to Istanbul or Ankara, the Authority is satisfied that requirement (b) would not be satisfied in his case. It is a requirement under Turkish law for all residents to be registered with the relevant authorities. There is accordingly a real chance his whereabouts would be relayed back to the authorities in X with the same persecutory consequences for him.

[95] As for the wife, her situation is more complex. The wife's appeal has centred on her relationship with her husband. The facts as found by the Authority in relation to her must therefore include the facts as found to exist in relation to her husband. The factual matrix regarding the husband must necessarily include the fact that the Authority has found him to be a refugee. The significance for the IPA analysis is that, having recognised the husband as a refugee, the wife's predicament in the proposed sites of internal protection (Istanbul or Ankara) must be assessed on the basis that her husband could not live there with her without

exposing himself to a well-founded fear of being persecuted. What this means effectively is that his presence must be taken out of consideration and her predicament in the proposed site of IPA assessed on the basis she would be a woman without an accompanying spouse with a young child to support.

[96] As to the requirements themselves, as with the husband, requirement (a) is satisfied in the wife's case. There is no legal or practical impediment to her accessing the proposed sites of IPA. Similarly, requirement (b) is also met. The Authority is satisfied that the risk of the family locating her in such large metropolitan cities were she to live openly is remote.

[97] However, the Authority is satisfied that requirement (c) is not met in her case. There are two aspects to this. First, the Turkish police will have no idea as to the husband's whereabouts or that he is overseas as a recognised refugee. Like her husband, she too would have to register her presence and details, including marital status with the local authorities. There is a risk that pressure may be placed on her to disclose her husband's whereabouts or otherwise as a means of leverage against him to hand himself in. Secondly, unlike X where she was able to rely on the husband's family for support, in these cities, the wife would be without any meaningful support. She has no ties to the local Kurdish communities in those cities. Without an income, a husband or other community support, her only other option would be to turn to her family for support. However, to do so would expose her to the same risk of harm from her father and brother which drove her into hiding in the first place. Taken together, these factors mean that these proposed sites of IPA would expose her to new risks of being persecuted or of being exposed to other forms of serious harm or of *refoulement*.

[98] For the above reasons, the Authority finds that no viable IPA, as explained in *Refugee Appeal No 76044*, exists for either the husband or the wife.

Summary of findings in relation to the principal issues

[99] The Authority answers the first and second principal issues in the affirmative in respect of both the husband and wife. Objectively, on the facts as found for each, there is a real chance of each of them being persecuted if returned to Turkey. There is a Convention reason for that persecution in each case.

[100] The first principal issue is answered in the negative in respect of the son. The need to consider the second does not, for him, therefore arise.

CONCLUSION

[101] For the above reasons, the Authority finds that the husband and wife are refugees within the meaning of Article 1A(2) of the Refugee Convention. Their appeals are allowed. Refugee status is granted to both.

[102] For the above reasons, the Authority finds that the son is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. His appeal is dismissed. Refugee status is declined.

"B L Burson"

B L Burson
Member