

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76094**

**AT AUCKLAND**

**Before:** B L Burson (Member)

**Counsel for the Appellant:** S Laurent

**Appearing for the Respondent:** V Wells/J Hopkins

**Date of Hearing:** 18, 19, 20 March 2008

**Date of Decision:** 30 June 2008

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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), cancelling the refugee status of the appellant, a national of Syria pursuant to s129L(1)(b) of the Immigration Act 1987 ("the Act").

[2] The core of the proceedings revolves around two separate issues. First, that since being granted refugee status on 28 March 2000, the appellant has obtained New Zealand citizenship and a passport upon which he has made three trips to Syria. Second, the appellant gave a different account of his departure from Syria from that which he now states actually occurred.

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## **THE CANCELLATION JURISDICTION**

[3] The cancellation jurisdiction of the Authority comprises two distinct streams which may be called the appellate and application streams. This case is under the appellate stream.

[4] The appellate stream has its origins in s129L(1)(b) of the Act, which provides:

### **129L Additional functions of refugee status officers**

(1) In addition to their function of determining claims for refugee status, refugee status officers also have the following functions:

...

(b) Determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information, and determining to cease to recognise the person as a refugee in such a case if appropriate.

[5] Where a refugee status officer ceases to recognise a person's refugee status, that person may appeal to the Authority against that decision – see s129O(2) of the Act which provides:

“A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision.”

[6] Under both streams of the Authority's jurisdiction, there are two elements to the inquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information (hereinafter collectively referred to as “fraud”). If so, it must then determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority's usual forward-looking inquiry as to whether, on current circumstances, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the inquiry is engaged only if the first element – that the grant of refugee status may have been procured by fraud – is established – see *Refugee Appeal No 75392* (7 December 2005) at paragraph [12].

[7] Furthermore, as noted in *Refugee Appeal Nos 76068, 76069, 76070, 76071 and 76072* (18 April 2008) at para [12]:

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“[12] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of the burden or onus of proof. Nonetheless, it is the Authority’s view that, in “cancellation” proceedings, it is the responsibility of the DOL to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also our view that the term “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006).”

[8] To put the present appeal in context, it is necessary to record both the appellant’s original refugee claim and the granting of refugee status to him.

### **THE APPELLANT’S REFUGEE CLAIM**

[9] What follows is a summary of the appellant’s evidence as recorded in the refugee status interview report [...] prepared by the refugee status officer.

[10] The appellant is aged in his late 30s. He arrived in New Zealand in [...] and claimed refugee status at the airport.

[11] The basis of the appellant’s claim for refugee status was that he was an ethnic Kurd from X in Syria. While he had suffered isolated problems with the government during his period of education for failing to publicly declare an allegiance to the Syrian Ba’ath Party, including a brief period of overnight detention and ill-treatment at the hands of the intelligence department, the core of the appellant’s claim for refugee status related to his being arrested following a bomb explosion in X in [...]. At the time, the appellant was working in his uncle’s bakery along with two other uncles. Following the explosion, the appellant and all three uncles were arrested by the *Mukhabharat* (the intelligence services). The appellant and his uncles were detained for almost a year. During this time, the appellant was repeatedly tortured including being subjected to electric shocks. The appellant and two of his uncles were released after 10 months. Upon his release he learnt from his mother that the third uncle had died in detention as a result of the treatment he received.

[12] Approximately 15 days later he received a summons requiring him to present himself for questioning at the office of military security. He learnt that one of his uncles, with whom he had been detained, had received a similar summons. After discussing the matter with the appellant’s father, it was agreed that they

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should leave Syria and he and the uncle crossed illegally into Turkey with the help of a Kurdish agent. While in Turkey, the appellant met another agent who obtained for them a false passport and tickets to the United Kingdom. After approximately six months in Turkey the appellant and his uncle left for London where, after a period of approximately two weeks, they departed for New Zealand.

[13] The appellant claimed that three of his relatives had been imprisoned in the late 1970s as being suspected members of the outlawed Muslim Brotherhood. The appellant had never met any of these relatives of his father. Two were released after 14 years' imprisonment and the whereabouts of the third relative were still unknown. Beyond this, he stated that his family had encountered many instances of discrimination on the basis of their Kurdish ethnicity. He gave as examples the denial of electricity and the poor maintenance of roads in the area of X.

### **THE GRANT OF REFUGEE STATUS**

[14] In its decision dated 29 March 2000, the RSB concluded that the appellant had a well-founded fear of being persecuted. The refugee status officer noted the generally poor human rights record of Syria at the time which included reports of extrajudicial killings, the widespread use of torture in detention, arbitrary arrest and detention and fundamentally unfair trials. The RSB noted that the appellant was the subject of interest by the Syrian security and intelligence forces and had illegally departed the country soon after being summoned to attend an interview.

[15] The RSB concluded that, having left the country illegally, the appellant would be questioned on arrival in Syria and it would be discovered that he had fled the country in response to the summons. It was further decided that the familial connection with the Muslim Brotherhood and Kurdish ethnicity would contribute to the negative profile of the appellant and contribute to his risk of being persecuted.

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**NOTICE OF INTENDED DETERMINATION CONCERNING LOSS OF REFUGEE STATUS**

[16] On 20 April 2006, the appellant was served with a notice of intended determination concerning loss of refugee status. In brief, the notice advised the appellant that the refugee status officer intended making a determination which might result in the loss of his refugee status. The grounds relied upon were that it had been discovered that the appellant had returned to Syria on a New Zealand passport issued in his own name on three occasions, [...].

[17] In reply, the appellant filed an affidavit dated 11 May 2006. He accepted he returned to Syria as the respondent alleged, but maintained he had made a genuine application for refugee status. He stated that in respect of his returns to Syria in [...], he only did so after receiving documents obtained by his father through bribery, guaranteeing that he could safely enter and depart from Syria. The originals of these documents were submitted.

[18] By letter dated 7 July 2006, the refugee status officer advised the appellant that they had received new information from the United Kingdom authorities which appeared to contradict the appellant's assertions that he had departed Syria illegally and that his Syrian passport was at home with his parents. By letter dated 2 August 2006 the appellant lodged a statement dated 31 July 2006. In this statement he stated for the first time that he had returned to Syria from Turkey at the request of his father who had managed to obtain for him, through payment of a bribe, a Syrian passport and documents relating to a fictitious business which allowed him to obtain the British business visitor visa. His father thereafter paid further bribes to secure his safe passage from the airport.

[19] On 17 November 2007, the respondent advised the appellant that the documents he filed relating to his returns to Syria had been examined by an expert document examiner who had concluded that the documents were not originals but colour copies of documents submitted by the appellant's brother, B1. By second affidavit date 12 April 2007 the appellant replied. He submitted a letter written by his father explaining the steps he took to obtain the documents in order to facilitate the safe re-entry to Syria of both B1 and the appellant. Further information and documents relating to the profile of, and problems faced, by the appellant's father were also submitted.

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[20] After considering all the information, the RSB concluded that his grant of refugee status may have been procured by fraud. Following that finding, it then held that it should cease to recognise the appellant as a refugee. The appellant appeals to this Authority against that decision.

### **THE CASE FOR THE RESPONDENT ON APPEAL**

[21] The Authority heard from two witnesses in support of the respondent's case, Dougal Ellis, the refugee status officer who made the decision cancelling the original grant of refugee status and Bernard Maritz, a document examination expert in the employ of Immigration New Zealand.

#### **Evidence of Mr Ellis**

[22] Mr Ellis is a refugee status officer employed by the respondent. He confirmed to the Authority that the decision dated 28 June 2007 contained all the evidence upon which Immigration New Zealand had relied to cancel the grant of refugee status to the appellant. In particular, the appellant had concealed his departure from Syria on his own passport which he had used to secure illegal entry into the United Kingdom. This contradicted his claim at the time that he had travelled illegally to Turkey and departed to the United Kingdom from there using a false passport. Mr Ellis considered that the failure by the appellant to disclose his true mode of departure precluded a more detailed inquiry of his claim at the time by the officer concerned and that his return to Syria from Turkey was inconsistent with his having a genuine fear of the Syrian authorities. On this basis alone, the officer concluded that the grant of refugee status may have been procured by fraud.

[23] Mr Ellis went on to consider the subsequent returns by the appellant to Syria on three separate occasions. He observed that the letters supplied by the appellant appeared to bear a close resemblance to letters submitted by his brother B1 in the context of an intended cancellation proceeding against him. He therefore forwarded them to Mr Maritz. He subsequently received Mr Maritz's expert report which stated that the stamps on the documents did not display any characteristics of genuine wet stamps but rather appeared to display distinctive characteristics of machine printed stamps.

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[24] Mr Ellis, under cross-examination from Mr Laurent, agreed that he was not in a position to comment on the procedures and practices of the Syrian government departments and that he was not able to definitely establish that they were not in fact produced by the government department concerned. In response to questioning from the Authority, Mr Ellis stated that he had been told orally by Mr Maritz that two of the documents allegedly issued by the Political Security Department of Syria in relation to the appellant's first and second entries into Syria were laser or similar copies of a document which had been submitted by B1.

### **The evidence of Mr Maritz**

[25] Mr Maritz is an immigration officer employed by Immigration New Zealand. He has been trained in document examination by New Zealand, Australian and other foreign immigration services and participated in a number of courses over the years. Mr Maritz is responsible for delivering training to Immigration New Zealand staff, staff from other immigration agencies and private sectors. Mr Maritz estimates he has examined over 1,000 documents both in New Zealand and overseas to determine authenticity.

[26] Mr Maritz confirmed that he received from Mr Ellis documents relating to the appellant's and B1's returns to Syria which he examined using specialist equipment. Mr Maritz's investigation revealed that round red stamps and green Arabic script on two of the documents were identical in appearance: they both had the bottom cut off the stamp and the angle of the stamp and imperfections were identical. This is, he said, highly unlikely with wet stamps due to the fact that wet stamps are applied by hand and are therefore susceptible to variations in pressure, force, angle and placement. Moreover, he observed there was none of the bleeding or flow that is a characteristic of wet ink. He concluded that these stamps were produced by machine printing, most likely an ink jet printer or colour photocopying process. Of these two possibilities, he stated that it was more likely that they were colour photocopies.

[27] Mr Maritz further observed that blue oval stamps on the remaining six documents also appeared to be identical in that they had the same angle, position of stamp and imperfections which also was highly unlikely with wet stamps for the reasons he had given earlier. There was a similar lack of bleeding or flow that is the characteristic of stamp ink. Mr Maritz also concluded that these stamps on

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these documents were not genuine wet stamps but rather the product of machine printing.

[28] Under cross-examination from the Mr Laurent, Mr Maritz stated that the documents may be colour reproductions of a genuine original. However, they may also have been reproduced from a non-original, in other words, a colour copy of a false or counterfeit document. He was unable to tell which. Mr Maritz confirmed he has no knowledge of the practices and procedures used by the Syrian departments named in the letters.

[29] Mr Maritz confirmed that he had also inspected documents from Mr Ellis relating to B1. He confirmed he had spoken to Mr Ellis about the documents submitted by the appellant being copies of those submitted by B1. In his opinion, the documents submitted by the appellant and B1 may be individual copies of a blank template that has then had the particular details of each inserted prior to their being copied. Finally, Mr Maritz confirmed that the signatures on the documents in relation to B1 appeared machine printed whereas the signatures on the documents submitted by the appellant appeared to have been done by hand.

## **THE CASE FOR THE APPELLANT ON APPEAL**

### **The appellant's evidence**

[30] The Authority heard extensively from the appellant. What follows is a summary of the evidence presented by him.

#### *As to his original departure from Syria*

[31] The appellant explained that, following receipt of the summons requiring him to present himself for questioning at the office of military security, he contacted his uncle who confirmed that he also had received a similar summons. After discussing the matter with the appellant's father they travelled to another town in the Kurdish regions of Northern Syria where they met an agent who knew his father and who smuggled them illegally across the border into Turkey. They were taken to a village on the outskirts of Dayabakir in south-eastern Turkey.

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[32] His father had told the appellant that in the meantime he would also try and arrange something from Syria. His father said that if the appellant and his uncle were unable to make satisfactory arrangements he would be in further contact with them.

[33] While in the Turkish village, the agent assisting him told him that people were leaving Turkey by both land and sea routes and that something could be done. He was subsequently told that the first available means was for them to be smuggled over the land border into Iran. The appellant was not attracted to this idea being aware that Iran also treated its Kurdish population badly. Also, his name immediately identified him as a Sunni which might cause problems for him in an overwhelmingly Shi'a country like Iran.

[34] The appellant and his uncle decided to wait for an escape route to another country. In the meantime, the appellant's father telephoned him and told him that he had managed to make an arrangement to get the appellant to a third country and asked that he return to Syria. The appellant knew that returning to Syria was dangerous but he was living in constant fear in Turkey as he had no documents and was anxious to find a way out of this problem. The appellant returned to Syria accompanied by his uncle. They were once again smuggled over the land border into Syria. Instead of returning to X the appellant and his uncle went to Damascus.

[35] Once in Damascus the appellant stayed with a maternal uncle. He contacted his father and informed him he was there. The appellant's father came to see him the following day. His father brought with him a passport that had recently been issued in the appellant's name which contained his photograph and particulars. Already stamped in the passport was a business visitor's visa issued by the United Kingdom immigration authorities ("the UK visa"). The appellant came to learn that his father had obtained the services of a Syrian official who produced documents to enable the appellant to procure the UK visa.

[36] The appellant's father then set about finding an agent or person to assist the appellant to depart Damascus airport. He found an official to whom he paid US\$6,000. Approximately one month later, the appellant's father returned to Damascus. The appellant was provided with a piece of headed paper with the name, address and contact telephone numbers of the company which he was

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supposedly visiting for business purposes. He was required to show this at immigration control when he entered the United Kingdom. His father made him promise not to give any details about the name of the company used to secure the business visitor's visa or his mode of departure because the agent who obtained the business visitor's visa had some association with the company and this might lead to his exposure. The appellant had no contact with this company after arriving in the United Kingdom.

[37] His father came to the airport with him and made contact with the person to whom money had been paid to facilitate the appellant's safe departure. This person then accompanied the appellant and ensured that all necessary procedures were satisfactorily complied with. He did not show his passport to any other official.

[38] The appellant was in London for about six months. He did not want to apply for refugee status in the United Kingdom. He was distrustful of the Arab community in the United Kingdom. The Syrian government had a diplomatic presence there and he was concerned that there were spies in the Arab community. The appellant wanted to get as far away from Syria as possible. He began frequenting places in London where the Arab community congregated, looking for an agent to help him leave the country. He eventually made contact with a person who said he could help him obtain a false passport. This occurred approximately three or four months after he had arrived in the United Kingdom. Once he had obtained the false passport he disposed of his Syrian passport. He remained in London for another few months while this person arranged a suitable departure route for the appellant.

[39] The appellant left the United Kingdom for New Zealand, arriving in April 1998. After arriving in New Zealand the appellant had a number of telephone conversations with his family prior to his RSB interview. In one of these telephone calls his father again made the appellant promise that he would not disclose the identity of the person who had helped him secure the UK visa under any circumstances. Acting on his lawyer's advice, the appellant declined to do so when cross-examined as to the identity of this person by Mr Wells.

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*As to the returns to Syria*

[40] The appellant admits that he has returned to Syria on three separate occasions since obtaining his refugee status.

[41] The first visit took place [...] and he went to visit his mother who was sick. He had previously tried to arrange to see her in Kuwait in 2001 when she travelled there for treatment following a heart attack but, even after obtaining his New Zealand citizenship and passport on an expedited basis, he was unable to make the trip prior to her return to Syria. Prior to travelling to Syria [...], he spoke to his father who indicated that he would find some people who would help the appellant obtain the necessary papers to enter and leave Syria. He did not say specifically what these were. Subsequently, the appellant received two letters from the relevant immigration and political security departments in Syria which gave him permission to enter Syria for a short period. His father instructed him to only show these papers if he was asked.

[42] Also, the appellant returned to Syria to get married. An arrangement had been made by his family to marry a person who was known to his family. A small quiet ceremony was held some two or three days prior to his departure.

[43] On arrival at the airport in Syria, an official met the appellant at the plane. This person brought the appellant to the airport door and the appellant collected his luggage. This official then took the appellant to another official who stamped his passport and enabled him to leave. The appellant told the Authority that the same process was followed in all of his visits back to Syria.

[44] The appellant returned for a second time [...]. He had his father obtain similar letters to that which he had obtained to facilitate his entry [...]. The appellant wished to travel to Syria on this occasion because his mother was still unwell and by this time he and his wife (who was by now residing in New Zealand) had two small children whom he wished his mother to meet. He encountered no difficulties entering Syria. The appellant and his family stayed in Syria for approximately two weeks. From Syria, the appellant travelled to Algeria with his family to visit his wife's parents. While in Algeria, his father sent to him two further letters in order to show that his stay in Syria had been legal.

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[45] The appellant and his family stayed in Algeria for the next two months and returned to Syria for the third and final time. Once again, his father obtained letters from the same *Mukhabarat* officer, giving him permission to enter Syria. He stayed for approximately two months. Again, they encountered no difficulties entering and exiting Syria.

*As to his father's problems*

[46] The appellant told the Authority that his grandfather has been a [prominent figure] in the middle half of the twentieth century. He had been a well-respected Kurdish leader and, following his death, his father was nominated by the elders of that particular Kurdish tribe to take over his grandfather's role. His father did not, however, become a [...]. Nevertheless, in his capacity as tribal elder the appellant's father had regular interactions with the Syrian administration whenever members of their tribe encountered difficulties or disputes. His father also began giving assistance to groups overseas, in particular the AAA.

[47] The appellant has spoken to his father since he has been in New Zealand. He has also spoken to his youngest brother who remains in Syria. He has been told that his father has been summonsed to attend the local *Mukhabharat* and detained for varying periods of between one and two weeks. His father has been questioned about his movements and whether he is still in contact with other Kurds. He is also regularly questioned about the appellant and his brother's activities overseas. The appellant's younger brother has also been periodically detained and asked questions about his father's activities. The appellant's father's last detention occurred approximately six months prior to the cancellation appeal hearing. During this detention he was accused of trying to establish a Kurdish state.

*As to his activities in New Zealand*

[48] The appellant explained that he is active in the Syrian community in New Zealand. He has attended various meetings in New Zealand where the situation of the Kurds in Syria has been discussed. At these meetings, he and his brother distributed leaflets provided by the AAA. He is also in regular contact with EE, a prominent Kurdish exile and leader of the AAA, to whom he passes on information about what is happening in the Kurdish community here in New Zealand. He has also attended a meeting of a particular Kurdish association. However, the

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appellant is careful not to openly discuss Kurdish politics with the members of the Arab Syrian community here in New Zealand because he is anxious about the repercussions for his family if he does so.

### **The evidence of the appellant's brother B1**

[49] B1 filed a statement dated 16 January 1998. He is resident in New Zealand. Although he did not appear as a witness, in a written statement he provided details as to his involvement with the Syrian Kurdish movement and in particular with his involvement in the association established by EE in London. He referred to his grandfather's and father's prominent status due to their historic role in defending the rights of Kurds in Syria. He stated that both he and his brothers are also involved in that role. He confirmed that both he and the appellant were invited to attend the AAA's annual general meeting and attached an invitation in the appellant's name as an exhibit to his statement. He refers to various activities of their father and in particular to two books said to have been written by their father which were published by the AAA [...]. Also attached to his statement is the original summons issued to him in 1999 to attend the *Mukhabarat* offices following the appellant's departure for the United Kingdom.

### **The evidence of NN**

[50] NN is the appellant's niece. She is the daughter of B1. NN is a minor and did not give oral evidence. In her statement, she confirms that she remembers the time when the *Mukhabarat* detained her father. She noticed that on his return he was sick and had a sore back and that she could see marks on his back where they had hit him. She confirmed that since she has been in New Zealand she has been staying a few days each week at the appellant's house. She states that she, her mother, and the appellant's wife are all very scared that the appellant will be returned to Syria because he is in danger. She states that if the appellant is in danger then his family will be in danger.

### **The evidence of EE**

[51] Before setting out a summary of the evidence of EE, which took the form of a number of letters and an interview with an agent of the respondent in the AAA's

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office in London, it is necessary to record the process by which his evidence has come to be received.

[52] In his memorandum setting out the broad outline of the appellant's case on appeal, Mr Laurent indicated that he wished the Authority to hear from EE of the AAA which is based in London. By Minute dated 23 November 2007, the Authority directed that EE file his evidence in the form of an affidavit and thereafter to answer any written interrogatories issued by the DOL in relation to its content. By letter dated 17 January 2008 Mr Laurent filed two statements from EE, dated 10 October 2007 and 7 January 2008 respectively. He advised he was unable to file evidence in affidavit form as EE was reluctant to be seen to be appearing as a witness for any particular Kurdish claimant. Nevertheless, on 24 February 2008 counsel for the DOL filed a set of interrogatories to be answered by EE. As at the date of the hearing these interrogatories remained unanswered.

[53] At the conclusion of the hearing on 20 March 2008, directions were given relating, *inter alia*, to the filing of replies by EE to these interrogatories. This direction was subsequently recorded in Minute dated 28 March 2008. However, unbeknown to both the Authority and the appellant, after the conclusion of the hearing the respondent had an agent in the United Kingdom contact EE directly both in relation to the contents of the various letters submitted in his name and in relation to an issue which arose in the hearing as to the authenticity of two books said to have been written by the appellant's father and published by the AAA.

#### Summary of the evidence as recorded in EE's letters

[54] Five letters from EE on behalf of the AAA have been submitted, of which two dated 10 October 2007 and 7 January 2008 are particularly relevant. In the letter dated 10 October 2007, EE confirmed that the appellant's grandfather was [...] and that, following his death, leadership of the particular Kurdish tribe passed to the appellant's father. EE states that he and the appellant's father have worked together for a long time.

[55] He states that the appellant's family were always under the constant surveillance of the Syrian authorities because of their leadership roles. He states that the appellant's father's relations with the Syrian authorities were "up and down". While the appellant's family's high profile in their area means the state are

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sometimes cautious in their dealings with them, the family's safety is subject to the wider interests of the regime and that at present the situation of the family is insecure.

[56] He states he is aware that many members of the appellant's family had to leave Syria because of accusations they were involved with the Muslim Brotherhood. While the appellant's father remained and escaped execution during the seventies, he was banned from travel abroad. [...] the appellant's father was allowed to travel to London where he met EE. He further confirms that the appellant's father was arrested after returning to Syria following that trip.

[57] EE confirms that publication of books written by the appellant's father has been discussed at meetings of the Syrian Kurdish diaspora. EE refers to an enclosed copy of a book written by the appellant's father and refers to another book which is "under printing" and is said to include "contributions by his sons in exile".

[58] He states he is in close contact with the appellant's brothers B2 and B3 who are both in London and active with the AAA. The AAA assisted in providing B2 with "a safe haven". He further confirms that he was made aware of the visits by the appellant and B1 to Syria and that these returns were not free of risk. EE states many dissidents return to Syria through the payment of bribes but on the condition they stay only a short time.

[59] In a letter dated 7 January 2008, EE states that the appellant and his brothers are Kurdish activists who are involved with the AAA sometimes on a discreet basis. EE asserts that the appellant and B1 were contacted by many members of the Syrian opposition overseas to join their ranks and act as intermediaries between the AAA and another opposition group overseas. EE states that he was expecting both the appellant and B1 to attend the AAA's annual general meeting then to be held in March 2008. The letter refers to a special occasion being prepared for the presentation of their father's book.

[60] EE goes on to state that without families like the appellant's, the fight for Kurdish natural rights in Syria would be in vain. He concludes by stating that, considering the AAA's involvement with the appellant's family "our organisation strongly supports and recommends that [the appellant] not be deprived of your protection and support".

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The evidence contained in the notes of interview with EE in London on 28 March 2008

[61] The notes of the interview with EE by the agent of the respondent in London record EE as stating that, although he had not met the appellant personally, he had spoken to him occasionally on the telephone. EE stated that although the appellant had been a member of the AAA for the past six years it was only last year that they asked the appellant to make a financial donation because of financial problems the AAA was facing. EE confirmed that both the appellant and his brother attended meetings with the Kurdish community in New Zealand.

[62] EE further confirmed that five letters provided to the respondent by the appellant in support of his case had in fact been provided by him including the letter dated 10 October 2007 which he had not signed. EE confirmed that the appellant's father had given him four books [...] previously. He stated that the book entitled [...] had been printed and distributed [...] and that the author was the appellant's father. However, EE stated that a second book entitled [...] had not been distributed by the AAA. EE recognised the print contained in the copy supplied but he had never seen the cover.

[63] Finally, EE confirmed that he personally knew the appellant's father. [...]. He confirmed that he was a leader of Kurds.

**The evidence of Harriett Allsopp**

[64] On 3 April 2008, the Authority received from the RSB a letter dated 29 February 2008 from Harriett Allsopp regarding the appellant. She confirms she is the author of the Report *The Kurds of Syria: An Existence Denied*, published in 2005 by the European Institute for Kurdish Studies in Berlin and has another publication pending on Kurdish politics in Syria.

[65] Ms Allsopp states that [...] she travelled to Syria to undertake field work in relation to her PhD on Kurdish politics which she had commenced [...]. Ms Allsopp states that, while she had intended to meet the appellant's father during that trip, she was advised that she was unable to do so because she had been informed that at the time Syrian security forces were watching his movements and that arranging a meeting with him would involve too much risk for the appellant's father and herself.

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[66] She further states that in November 2007 in London she met with B1 who informed her about the political activities of the appellant's father, his own activities and about the Kurds in that part of Syria.

[67] As to the issue of the appellant's return to Syria, Ms Allsopp states that his possession of a New Zealand passport would have afforded some measure of protection as the Syrian government would not welcome the international attention that harassment of a foreign national would invite. Furthermore, it is common for people to pay bribes or to seek the intervention of a person connected to the authorities involved.

[68] Finally, Ms Allsopp asserted her opinion that to return the appellant to Syria without the protection for a New Zealand passport would expose him to a risk of arrest, detention and torture. He would be questioned on arrival and interrogated about the reason he had been abroad and activities there. The fact that he is a Kurd who has applied for asylum would serve to increase the risk he faced.

### **Submissions**

[69] Both counsel filed memoranda prior to the hearing. Following the conclusion of the oral evidence, the Authority issued a Minute giving further directions in relation to the filing of further evidence and submissions. On 3 April 2008, the Authority received from the DOL a bundle of documents relating to the interview that had been conducted with EE in London; Ms Allsopp's letter and a copy of a book written by EE and other documents relating to the AAA in London. On 4 April 2008, the Authority received from Mr Laurent a copy of the English text of the second book said to have been written by the appellant's father; a copy of the original printed Arabic text of that book; a further statement of the appellant and a copy of the handwritten notes of the DOL agent's interview with EE. On 10 April 2008, the Authority received closing submissions from Mr Wells for the DOL. On 14 April 2008, the Authority received closing submissions from Mr Laurent for the appellant.

### **ASSESSMENT OF THE APPELLANT'S CASE**

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**Stage 1 – May the original grant of refugee status have been procured by fraud?**

*The mode of departure point*

[70] The respondent submits that the appellant's failure to disclose at the outset a legal departure from Syria gives lie to the genuine nature of his claim. However, the appellant does not concede that he departed legally from Syria. Rather, he says that he left illegally as claimed, and then conducted (after returning to Syria) a further illegal departure secured via bribery in which the usual channels were circumvented.

[71] More significant is the non-disclosure of his return to Syria for the purpose of effecting this further illegal departure. The appellant admits that he did not make disclosure of this fact at the time he made his claim for refugee status. In terms of s129L(1)(b) of the Act, he admits the concealment of this information.

[72] As to what is relevant information in this context, some guidance can be had from the recent judgment in *Attorney-General v X and Anor* [2008] NZSC 48 (20 June 2008). In its judgment, the Supreme Court gave guidance as to when the functions of an employee of a Government department or other Crown agency required their knowledge of otherwise confidential information relating to a refugee claim for the purposes of s129T(3)(b) of the Act. The Court held at paragraph [14] that knowledge was 'required' when the information was "relevant, in the sense of being rationally linked to the function being performed".

[73] While not directly on point, this explanation of "relevance" is helpful in the present context. It points to the need for the information to have some potential utility in terms of the administrative task being performed by the officer receiving the information. In the context of s129L, 'relevant information' must mean no more than information which is rationally linked to the statutory function of the refugee status officer under s129F(1)(a) of the Act to determine the claim being put forward by the claimant. Provided, therefore, that the information concealed could have informed the decision taken as to whether or not to recognise the claimant as a refugee on the claim being advanced, it is 'relevant' to that function. It is also 'relevant information' for the purpose of the inquiry into the cancellation of refugee status.

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[74] In this case, there can be little doubt that the fact of his returning to Syria after having been summonsed was information that was relevant to his claim to possess a well-founded fear of being persecuted by agents of the Syrian state. This previously concealed information was capable of informing the inquiry being undertaken by the refugee status officer. The Authority is therefore satisfied that the appellant did conceal relevant information.

[75] The appellant explains that he did not reveal this information out of a culturally appropriate loyalty to his father's instructions. He explained that his father had clearly told him that the agent who facilitated the obtaining of the UK visa was intimately connected with the UK-based company used to secure the visa and that, if he disclosed the fact of his obtaining the visa, this might set in train an investigation which could expose the identity of the agent. Having seen and heard from him the Authority has no doubt that these are genuine explanations but this does not alter the fact that the appellant concealed information from the interviewing refugee status officer which was relevant to the grant of refugee status.

[76] The test of the relevancy of any concealed information is not, however, determinative of the stage 1 inquiry. Something more is also required. The Authority must also be satisfied that the concealment of the information may have procured the grant of refugee status – see *Refugee Appeal No 75977* (22 November 2007) at paragraphs [74]-[82]. Mr Laurent submits (see para 1.3 of his memorandum dated 11 March 2008) that it cannot be said the decision by the RSB to grant refugee status “would have been any different had the case officer known of the truth of the appellant's departure”. This is accepted. However, this is not the test the Authority is required to apply. The Authority does not need to be satisfied that the grant of refugee status to the appellant was procured by this failure, merely that it may have been. To put this into the language of Mr Laurent's submission, the Authority need only be satisfied that the decision to grant refugee status may have been different.

[77] Mr Laurent also submits (see paragraph 2.6) that “it should be obvious that the removal of the illegal departure would not have altered the officer's positive assessment of the claim”. Mr Laurent may well be right in that, had the appellant told the true position at the outset, the interviewing refugee status officer may also have formed the view that his evidence as to how he, in fact, left Syria was

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credible and plausible and, if so, the result may well have been the same. However, it is not obvious that this would have been the case. It is not so much the fact of the further illegal departure that is significant in this context but the knowing return to Syria after having fled to Turkey. The decision of the refugee status officer is predicated in substantial part on an understanding that the appellant fled Syria immediately after receiving the summons and a concern that he would be “immediately apprehended by the security and intelligence services, on return to Syria” (see page 11 of decision). This would expose him to further questioning including questioning about his family’s connections to the Muslim Brotherhood (see page 12 of decision).

[78] In other words, there is a substantial nexus between the appellant’s failure to disclose that he returned to Syria where he was in hiding for a further three weeks before effecting the second illegal departure and a central plank of the refugee status officer’s reasoning in granting refugee status. While the appellant’s evidence that he remained in hiding for these three weeks would also have had to been taken into account by the officer, the possibility that the officer may have found the implicit risks in returning to Syria from Turkey to be inconsistent with the veracity of the underlying claim is one that cannot be dismissed as sufficiently remote so as to break the required causal nexus between the concealment and the grant of refugee status. This low threshold of “may have been procured” is crossed in this case.

[79] While the Authority recognises the realities of irregular migration in which many genuine refugees are often counselled by persons who facilitate their irregular departure from the country of origin to keep hidden their actual modes of departure, this case illustrates the real dangers that refugee claimants run in making a conscious decision to conceal information relevant to their refugee claim. Those refugee claimants who fail to provide a complete, accurate and truthful account of their claim and all matters relevant to it, run the risk of having any recognition granted to them in absence of the full picture being presented cancelled at a later point in time.

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### *Conclusion on Stage 1*

[80] For the above reasons, the Authority is satisfied that the grant of refugee status made in favour of the appellant may have been procured by the appellant's concealment of relevant information.

### **Stage 2 – Should the Authority cease to recognise the appellant as a refugee?**

[81] This limb of the cancellation jurisdiction involves a *de novo* consideration of whether the appellant is a refugee as at the date of this determination.

### **THE ISSUES**

[82] 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."

[83] 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?

### *Credibility*

[84] It is true, as Mr Laurent submits on behalf of the appellant, that the respondent has no direct evidence to contradict the core facts upon which the appellant's original claim was based, namely that he was arrested, detained and tortured following a bomb blast and that he had fled following receipt of a summons to attend the local intelligence branch. This is true but the DOL attacks the general credibility of the appellant on the basis of:

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- (a) his concealment of the true mode of his departure from Syria;
- (b) his return on three separate occasions; and
- (c) the discrepancies surrounding his father's books

and invites the Authority to draw from these points the inference that the core facts are not true. These points will be considered in turn.

#### The concealment of the true mode of departure

[85] This can be dealt with briefly. The Authority has already recorded its acceptance of the appellant's evidence as to why he concealed this information. Therefore the fact he did so does not, of itself cause the Authority any concern about the appellant's general credibility. As for the length of his stay in London, the Authority finds the appellant's explanation to be credible. There is nothing in this point.

#### The returns [...]

[86] There is no dispute that the appellant returned to Syria on three separate occasions, [...]. The appellant says he could only do so by paying bribes. The appellant explained that, although he was travelling on a New Zealand passport and believed this afforded him a certain amount of protection, he was anxious that his father obtain these additional documents by way of additional protection. In his letter, the appellant's father confirms that he paid a sum of US\$14,000 to a member of the *Mukhabarat* in X who secured the issuing of a number of letters from two separate departments allowing the appellant to remain in Syria for a short period of time.

[87] As to the fact of return, Mr Laurent cites *Refugee Appeal No 76014* (30 May 2007) where the Authority noted:

"[78] Returning to a country from which one has sought refuge raises obvious questions as to whether, at the time of return, a risk of being persecuted exists. That, in turn, can incorporate the question whether such a risk in fact existed at the time refugee status was granted.

[79] The permutations are, however, manifold. It cannot be assumed from the mere fact of return that refugee status was incorrectly recognised, let alone that fraud was an ingredient. It might be, for example:

- (a) that the risk of being persecuted existed at the time refugee status was granted but has diminished, or been extinguished;

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- (b) that the risk did not exist at the time refugee status was granted but the grant was not procured by fraud; or
- (c) that the risk existed and continues to exist, yet the refugee elects to return in spite of it. In that regard, it must be remembered that the 'real chance' threshold for refugee status is a low one, appropriately categorised as being, on occasion, as low as a one in ten chance. Refugee status is simply not predicated upon a *certainty* of being persecuted. Nor is the harm assumed to occur immediately upon return. Given these parameters, a refugee with strong reasons to return for a short period may well adjudge the risk to be one which he or she should take. Every case will turn on its own facts."

Mr Laurent submits paragraph [79](c) applies in this case.

[88] The Authority notes here that there is medical evidence on file as to the existence of his mother's illness. There is no evidence to rebut the appellant's evidence that he returned to Syria to visit his sick mother or to get married. The only issue is whether he did so in spite of the risk he continued to face as Mr Laurent submits or knowing that he did not face and never had faced any risk of being persecuted as Mr Wells submits is the true position.

[89] Mr Wells submits that the documents tendered by the appellant in explanation for his unproblematic entry and departure from Syrian on these occasion are not genuine documents such that the appellant's underlying claim to have been and to be at risk is not true. The Authority notes and accepts the evidence of Mr Maritz as to the manner in which these documents purportedly issued by the various Syrian ministries have been produced. It finds the stamps on these documents are machine and not stamp printed. Although Mr Laurent emphasises, and both Mr Maritz and Mr Ellis rightly conceded, the actual methods employed by the Syrian state bureaucracy to produce genuine "official" records is unknown, the evidence of Mr Maritz goes beyond mere process and goes to the presentation of the stamps. In particular, each of the two sets of documents he inspected the documents displayed the same "class" characteristics: their angle, imperfections and presentation on the page were identical. While the stamps are machine printed, the documents in relation to the appellant all bore an original, handwritten signature.

[90] While the evidence of Mr Maritz is accepted, it only takes matters so far. This is because the appellant claims that these documents were secured via bribery and not through official channels. Mr Maritz stated that documents

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submitted by the appellant were most likely colour copies of another document – perhaps a template form in which the particulars of both B1 and the appellant have been entered. It seems plausible that a corrupt official might simply do just that – print out a template document with the imperfections Mr Maritz noted and insert the relevant particulars of the person who has paid the bribe. If so, the fact there is a match between the sets of documents relating to each entry by the appellant and B1 would establish no more than that the same machine and template form was used in each case. This is precisely what the appellant claims – that his father used the same official in respect of both of his and his brother, B1’s returns to Syria. A letter was filed by the appellant’s father in relation to the steps he took to secure the appellant’s brother’s return to Syria [...] which indicates that he met with the same *Mukhabarat* officer to secure both sons safe entry and exit.

[91] As to corruption in Syria, a seasoned and respected writer on Syria, Alan George *Syria: Neither Bread No Freedom* (Zed Books London 2003) at p13 notes:

“From top to bottom the system is riddled with informal clientelist networks, often based on family, tribe, region and religion. At one extreme, the Presidents immediate circle appropriates enormous wealth by dint of its ability to ‘broker’ major business deals...At the other end of the scale a lowly customs official might expect a modest tip for expediting documentation. A ministry clerk might expect payment for progressing a petty administrative measure. Public sector pay is so paltry that it is widely understood and accepted that civil servants cannot survive without illicit income or a second job. Eighty percent of government officials earn between \$40 and \$120 per month, nothing like the amount needed to support a family.” (Footnotes omitted)

[92] This corruption extends to military and customs officials. Carsten Wieland *Syria at Bay; Secularism. Islamism and Pax Americana* (Hurst and Company, London 2006) at p68 notes:

“Corruption pervades all areas of public life.

...

Corruption in the administration, judiciary, police, and customs, and the awarding of public contracts is one of the main reasons for the paralysis in the Syrian economy. The military is also affected. Officers and their soldiers have built up a parallel economy with little “military fiefdoms.” (Footnotes omitted)

[93] The idea that in an endemically corrupt system such as exists in Syria, a local *Mukhabarat* official might take bribes as claimed and simply machine print or colour copy such documents for payment of a large fee to supplement his income seems entirely plausible.

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[94] Moreover, the documents themselves are not obvious forgeries so as to render it implausible to suggest they could be used to effect entry into Syria in the manner the appellant claims. Under questioning from the Authority, Mr Maritz stated that, for any person used to looking at documents, it is immediately obvious that they are not genuine wet ink stamps. This, however, begs the question of whether an immigration official in Syria would be someone who was used to looking at documents in the way in which an expert like Mr Maritz is. This is unlikely. Indeed, identical documents had been accepted as genuine by a New Zealand refugee status officer who did not have Mr Maritz's expertise when the RSB investigated B1. Mr Ellis also told the Authority that the things which caused him to have concern were not to do with the stamps in themselves but rather the fact the stamps looked identical to the stamps used on documents tendered by B1 in respect of the investigation into his grant of refugee status. In other words, there was nothing obvious about the quality of those documents to arouse any suspicion.

[95] Mr Ellis also stated that it appeared unusual that the Syrian Ministry of Internal Affairs would need to write a letter relating to the appellant. However, as Mr Ellis rightly conceded, this is a matter of pure speculation on his part. The fact is there is no evidence before the Authority to establish that the Ministry of Internal Affairs would not write such a letter in a case of this kind.

[96] What this establishes is that there was nothing about the documents in themselves to suggest to a Syrian immigration official that they were anything other than genuine documents. The Authority finds the documents were capable of being used for the purpose the appellant claims they were.

#### His father's books

[97] The credibility issue surrounding the books written by the appellant's father arose for the first time during the hearing. During the course of the RSB's investigation into the cancellation of the appellant's refugee status, reference had been made to the appellant's father being the author of two published books on the situation of Kurds in their area. B1 stated in his witness statement that their father had two books printed. The first called [...] ("the first book") was printed in Arabic [...]. The second, [...] ("the second book") was printed in English [...]. This book contained pictures of his brothers B2 and B3. B1 stated in his witness

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statement that the second book was distributed by EE only to trusted people because “if the Syrian government discovers the book there could be very serious consequences for their father”.

[98] In relation to the second book, the DOL tendered evidence to establish that the ISBN number contained on it, in fact, referred to another book published by the AAA [...] by a different author. Furthermore, the introduction to the second book by EE appeared identical to the introduction in this differently authored book. When initially cross-examined on this point, the appellant could not initially offer any explanation. His brother B1 had travelled in 2007 and made all necessary arrangements and this was the first he knew of such matters. When the hearing resumed the following day, the appellant explained that he had spoken to the AAA overnight who told him that when B1 had been in London, he had put pressure on them to publish the book but that some mistake had been made. When the appellant asked for clarification as to what the mistake was, he was told that the AAA would send a letter explaining what had happened.

[99] Following the completion of the hearing, an agent of the DOL interviewed EE on 28 March 2008 about the various letters purportedly written by him that had been produced by the appellant in support of his appeal and the authorship of the two books claimed to be authored by the appellant’s father and published by the AAA. A written note of his response was taken and filed with the Authority on 3 April 2008. As for the books, EE confirmed that only the first book had been published by the AAA. EE explained that while the AAA had a copy of the text of the second book in the AAA’s computer, he did not know the cover. He further explained that the appellant’s father had given the AAA four books but the AAA had only been able to publish the first book. This happened in [...].

[100] In an undated supplementary statement received with Mr Laurent’s letter of 4 April 2004, the appellant explains that he had now spoken to both B3 and B1. B1 told him that when he went to London in 2007, EE had indicated that the AAA could not afford to publish the second book. B1 then decided that he could have only part of the book printed and supplied B3 with the original text, some pictures and money together with a copy of another book printed by the AAA. The purpose of giving this second book was to provide B3 with some graphic material to use. B3 then gave all this material to the printer but, somehow, the wrong cover had been put on the book. Whatever happened, the appellant explained that he was

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unaware of it and submitted the document to the Authority in good faith. He provided a copy of his father's manuscript for the second book in printed Arabic and an English translation minus any cover.

[101] The Authority notes that in his letters dated 14 March 2007, 10 October 2007, and 7 January 2008, EE refers to a visit by the appellant's father to the AAA [...]. He brought with him "his books" on the Kurdish community which were left with EE for checking prior to any printing taking place and that he had by 14 March 2007 printed one of them.

[102] As to where all this leads, the Authority has no doubt that the appellant's father has written a number of manuscripts including the original texts of both the first and second book that he left with the AAA [...]. Further, the Authority has no doubt that, contrary to the assertions originally made, the AAA has subsequently printed only one of them – the first book. If the second book has been printed at all, to which some doubt must attach, it has not been via the AAA as claimed by B1 in his witness statement and by the appellant when initially giving evidence.

[103] In relation to the second book, while the text of the manuscript of the second book submitted by the appellant on 3 April 2008 bears the same title and publication details as in the corresponding book presented as the second book in the witness statement of B1, the contents of the two are entirely different. At some point, then, it seems that the name of the father's book appears to have been transposed onto this other text. Having considered these matters, the Authority is satisfied this transposition does not adversely impact upon the appellant's credibility.

[104] First, it is clear that in 2002 the appellant's father had provided the AAA with a number of manuscripts including a manuscript for the second book. This is not a case where the appellant has attempted to portray his father as having written something when he had not written anything at all by that title.

[105] Second, other documentation he provided as to his father's political profile and authorship of various writings on the situation of Kurds has been demonstrably established as genuine and credible. There was no need for the appellant to knowingly manufacture evidence to establish these facts. This points to there being some truth in his protestations that he submitted the document in good faith.

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[106] Third, in two separate letters, EE states he was expecting both the appellant and B1 to be able to travel to London to represent their father upon “the special occasion for the presentation of his book”. An invitation to the appellant was issued on [...] 2007 which records that the AAA intended to hold a “press conference” during which a book written by the appellant’s father was to be presented. It is not clear to which book this relates, but the invitation has been confirmed as genuine. The appellant was, therefore, entitled to believe at the time he gave his oral evidence that it was possible that the AAA could have indeed published the second book [...] as he was advised by B1 was the case.

[107] In these circumstances, the Authority does not draw any adverse inference in relation to the appellant’s general credibility from the fact that the claim that the AAA published two books by his father is not true and that a copy of a book purporting to show that the second had published when it had not was tendered in evidence by the appellant.

#### *Credibility of the witnesses*

[108] The evidence of NN can be accepted but it adds little to this case. As for B1, prior to the hearing the DOL had indicated it wished to cross-examine him on the contents of his witness statement. However, when the hearing commenced on 18 March 2008 there was no appearance by him. Mr Laurent advised that he would not be attending as a witness and that he received a letter from B1’s doctor advising that he was depressed. The Authority inquired of Mr Laurent as to whether he wished the Authority to exercise its discretion to issue a summons to require B1’s attendance. After taking instructions from the appellant, Mr Laurent confirmed he did not wish the Authority to issue a summons to compel the attendance of B1 at the hearing. It later transpired from cross-examination of the appellant that B1 had departed the country for Australia some days prior to the hearing. Having regard to his failure to attend and the inconsistent evidence surrounding the publishing of the second book, the Authority finds that it can attach no weight to his evidence.

[109] That said, the evidence that is otherwise available is sufficient to enable the Authority to come to the firm conclusions about the credibility of the various assertions made by the appellant that he would be at risk of being persecuted if returned to Syria. In particular, EE is demonstrably a credible witness as to the

situation of this family. The documentary evidence clearly establishes that EE is a well known and respected figure of seniority in the Syrian Kurdish community. He has candidly explained that the second book was not published by the AAA. His evidence can be given weight. Also, Ms Allsopp is an independent witness with no personal interest in the outcome of these proceedings. She has provided an independent and credible insight into the profile of the appellant's father based on her aborted attempt to interview him in [...].

### **Conclusion on credibility**

[110] For the reasons given above, the Authority does not find that the matters relied on by the DOL provide any basis for the Authority to draw any general adverse credibility finding against the appellant and reject as untrue the core facts around which his original claim was based. The Authority therefore accepts that the appellant was detained and tortured in 1997 following the bomb blast in X and fled the country after receiving a further summons. He left via Damascus airport by having his safe passage assured by the person who arranged the UK visa.

[111] Further, the Authority also accepts that in light of all the documentary evidence and oral evidence presented, and, in particular, the evidence of EE, Ms Allsopp and the appellant himself, it has been established to the requisite standard that:

- (a) The appellant's grandfather was a prominent figure in the Kurdish community in [...];
- (b) Following his grandfather's death, his father assumed this position of leadership and is regarded as a political leader by the inhabitants of over [many] villages in the appellant's home region. He has been involved in defending the rights of Kurds for [a considerable period of time];
- (c) His father has written a number of manuscripts on the situation of the Kurds in Syria. In [...], he travelled to London and deposited a number of manuscripts for proof-reading and publication by the AAA. One has since been published. On his return, the appellant's father was arrested and a travel restriction placed on him.

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- (d) Two of the appellant's brothers B2 and B3 are in London and are engaged in political activities on behalf of the AAA.
- (e) The appellant has been involved in low level political activities on behalf of the AAA in New Zealand.
- (f) The appellant's father has been periodically summonsed to attend the offices of the *Mukhabarat* where he has been detained for up to two weeks. He has been interrogated about his own activities and about the activities of his sons (the appellant, B1, B2 and B3) who are overseas.

[112] The appellant's claim will be assessed against his background

*A well-founded fear of being persecuted*

#### Country information on Kurds in Syria

[113] The situation for Kurds in Syria was extensively considered by the Authority in *Refugee Appeal No 75779* (10 May 2006) at paragraphs [53]-[83]. The Authority concluded as follows:

"Conclusion on country information

[81] In light of the above information, there can be no doubt that the Kurdish population in Syria face social and economic discrimination at an official and popular level. They are denied their cultural and language rights. While some Kurdish political parties have been allowed to operate, their presence is at best tolerated by the regime on the basis that they confine their political platform to issues of domestic equality and do not advocate more radical positions on autonomy or independence. While tolerated, their members and supporters are liable to be arrested and detained, depending on the political space afforded to them by domestic and international dynamics. They cannot function as a matter of right.

[82] This tight control on the aspirations of Kurds for recognition of a separate identity can be traced back to the foundation of the Syrian state which was born amid an ideological divide between Kurdish and Arab elites. This tension has been played out alongside the emergence of the *Ba'ath* Party as the dominant political force in Syria and which, since gaining outright control in 1963, pursued a policy of suppressing the Kurdish population. The *Ba'ath* Party continues to control Syria through an extensive military-security apparatus in which basic civil and political freedoms are heavily circumscribed.

[83] While the policy of suppression of the Kurds in Syria has not reached the levels seen in countries such as Turkey or Iraq, in the current domestic and wider geo-political environment, any attempt to assert a distinct Kurdish political identity is likely to be met with significant force including arrest and detention, where the risk of death, torture and other forms of serious ill-treatment, cannot be ruled out."

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[114] More recent country information confirms this general picture – see A George (*op cit*) at 1-28 and 63-68; Eyal Zisser *Commanding Syria: Bashar Al-Asad and the First years in Power* (I B Taurus 2007) at pp 77-98; C Wieland (*op cit*) at 45-49. Wieland, describing “the Kurdish issue” as one of the major domestic policy problems facing Bashar Al-Asad, observes at p47:

“The majority of Syrian Kurds have not yet been radicalised in any direction. But time is running out for the regime in Damascus to address their concerns about citizenship. Unlike the issue of religious minorities, the pan-Arab Baath ideology cannot provide a solution to this case but is part of the problem. The balancing act between ethno-national pan-Arabism and Syrian nationalism appears increasingly paradoxical against the background of a growing ethnicization of the region following the Iraq War.”

#### Application to facts

[115] There is no evidence before the Authority to suggest that the Syrian authorities are aware that the appellant has been conducting low-level activities for the AAA in New Zealand. Nevertheless, his father is periodically detained for up to two weeks and interrogated about not only his own activities, but those of his sons. This suggests that the Syrian authorities are certainly suspicious that the appellant might be engaged in anti-government activities abroad. This is plausible. That the Syrian officials might harbour such a suspicion sits comfortably within his profile as a member of a well known Kurdish family of some leadership and standing in their region of Syria.

[116] It is possible that, if returned to Syria shorn of the protection of having a New Zealand passport, his father might be able to secure the appellant’s safe entry into the country. Thereafter, given his background and the profile of his family, his safety would be “subject to the momentous interest of the Ba’ath party” as EE terms it. There is no reason to believe the appellant would not continue to have some involvement in Kurdish political affairs if returned. This political activity appears part of his familial DNA. His brothers continue to reside in London where they are active with the AAA – a prominent Syrian Kurdish exile association. The Authority has no doubt that the appellant is therefore likely to be the subject of routine surveillance. This is likely to mean he also would be subjected to periodic but repeated detention and interrogation. If so, the likelihood of some form of ill-harm during these detentions cannot be ruled out as remote or speculative

**This is an abridged version of the decision. Some particulars have been removed from or summarised in the decision pursuant to s129T of the Immigration Act 1987. Where this has occurred, it is indicated by square brackets.**

[117] Weighing everything in the round, and noting the increased sensitivity to the “the Kurdish issue” in Syria following the Iraq war, the Authority is satisfied that the appellant, as a politically active member of the [...] family, has a well-founded fear of being persecuted if returned to Syria.

[118] In all the circumstances, the Authority finds that it is not appropriate to cease to recognise this appellant as a refugee.

### **CONCLUSION**

[119] For the reasons given above, the Authority allows the appeal. Refugee status is confirmed.

“B L Burson”

B L Burson  
Member