

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

**REFUGEE APPEAL NO 76183**

**AT AUCKLAND**

<b><u>Before:</u></b>	B L Burson (Member)
<b><u>Counsel for the Appellant:</u></b>	C Curtis
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	7 May 2008
<b><u>Date of Decision:</u></b>	13 May 2008

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**DECISION**

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[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 appellant, a Palestinian whose country of habitual residence is the Syrian Arab Republic (Syria).

**INTRODUCTION**

[2] The appellant claims to have a well-founded fear of being persecuted for two reasons. First, he has on a recent visit to Syria been detained and tortured by Syrian officials on account of his brother's failure to perform military service and secondly, he has been called up to do his period of compulsory military service, something he is opposed to performing on the grounds of his beliefs.

[3] What follows is a summary of the appellant's evidence. An assessment follows thereafter.

**THE APPELLANT'S CASE**

[4] The appellant was born in X in Syria in August 1980. His father, along with the appellant's grandparents and other members of the extended family, was

displaced to Syria in 1948 following the establishment of the state of Israel. The family group eventually settled in a refugee camp on the outskirts of X. Initially, living conditions were poor. There was no running water, electricity or sewage system. Over time the United Nations Work and Relief Agency for Palestinian Refugees in the Near East (UNWRA) made improvements to the living conditions in the camp.

[5] By the time of the appellant's birth, his family – then comprising his parents and an older brother, B1 – had moved into a suburb of X city itself. The appellant's parents subsequently had two more children, both girls. Other members of the wider family group had also moved outside the refugee camp and taken up similar residence. However, the appellant's family was often forced to move. Their displacement had left the family impoverished and they were forced to live in rental accommodation.

[6] His family were devout. He and his other family members observe Ramadan and undertake their required daily prayers. The appellant continues to do so. The appellant described his grandfather's belief structure as revolving around passages in the Koran which emphasise forgiveness and not inflicting harm.

[7] The appellant attended a state-run primary school in X. He encountered discrimination from some of the teachers on account of his Palestinian origins. Towards the end of his primary school years he transferred to another primary school but similar problems were encountered. When due to attend intermediate school, his father decided that the appellant should attend the UNWRA-run school situated in the refugee camp where his family had first lived in Syria, now situated some two hours from his home, to avoid the discrimination. At this school, all but five or six of the students were Palestinians and he encountered no problems.

[8] The appellant came to realise while growing up that the discrimination he suffered at school mirrored the discrimination his family faced in Syrian society generally. This, he understood, had always been the case. He can recall his grandfather talking about his own experiences remarking in one conversation that "when we first came to Syria the people looked at us as if we had tails". He explained that one particular Syrian family took umbrage at having a Palestinian family as neighbours. Members of this family, who lived on the top floor of the building, often threw eggs at the appellant's family home which was located in the basement. They also often left their rubbish outside the appellant's family's front

door. The appellant further recalls this family calling the police when he and other Palestinian children were playing football in the street. As a result of this harassment, his family was forced to move.

[9] The appellant's father also faced work-place discrimination. His father was, for a time, employed by a fruit and vegetable establishment. Although he was a married man and should therefore have been exempted from working at nights, he was made to perform night duties. Eventually his father left this employment and opened a shop. The shop was located near to a branch of the security intelligence services. On occasions, officers from this department who were Alawites (a minority Shi'a Muslim tribe from which the ruling Al-Assad family originates) took goods without paying for them. The appellant's father did not complain about this because he knew it was pointless.

[10] While at school, the appellant was subjected to the standard indoctrination by Ba'ath Party officials. The appellant explained that all pupils enrolled in primary school were automatically enrolled as Ba'ath Party "Pioneers" and would receive basic indoctrination as to the Syrian branch of the Ba'ath Party. In the sixth year of schooling pupils were automatically enrolled in the "Youth" section where detailed instruction took place. The appellant explained that by the eighth year of schooling pressure was placed upon students to join the main Syrian Ba'ath Party itself, albeit at the lowest level possible. The appellant and a number of other Palestinian students did not volunteer to join at this time.

[11] The appellant explained that, although joining the Ba'ath Party would undoubtedly have made his family's life easier, it was a matter of principle for his father that he and his sons should not join. The appellant recalls one conversation where his father recounted to him that during the time of union between Egypt and Syria there were many disagreements between the Ba'ath Party members in Syria and the Nasserist faction (after Gamel Abdul Nasser – the Arab nationalist leader in Egypt at the time). His father told him that Ba'ath Party members would often come to educational institution and attack Nasserite students. Although his father explained he was not a Nasserist at the time, many Palestinians supported Nasser and it made him angry that they were being attacked in this way. This, and the general treatment the appellant's father suffered in the course of his employment in Syria, meant that he was firmly opposed to having anything to do with the Ba'ath Party as a matter of principle and this was something he instilled in his sons. He

also encouraged his sons not to perform military service for the Syrian Ba'ath Party.

[12] As a result of his refusal to voluntarily join the Ba'ath Party at school, the appellant and the other Palestinian students who also did not join faced minor, but constant, harassment and discrimination from some of the teachers, particularly those who took them for military lessons. In the mid-1990s, when aged 14 or 15, the appellant entered into the stream of secondary school which specialised in a trade, a subject he studied for the next three years alongside core subjects such as Arabic, Religion and National Socialist Education as part of which military training classes continued to be conducted. However, the fact that the appellant had still not volunteered for the Ba'ath Party affected his grades. The appellant recalls on at least one occasion he questioned his teacher as to why he had been given a low mark when he was sure he had answered the question correctly. The teacher's response was that he should take this matter up his military service teacher.

[13] Nevertheless, in 1998, the appellant obtained his baccalaureate from the trade school. He finished in the top 10 and was therefore admitted to a state-run professional institute. By this time the appellant's father had travelled to Y, a Gulf State, to look for work. It was his family's intention that the appellant should ultimately join them in Y but his father told him that obtaining a qualification of this nature would assist him in finding work in Y.

[14] Also, by that time, the appellant was reaching an age where he was liable for military service. It was lawful for students to secure postponements of their military service obligations whilst they were studying and the appellant wished to avail himself of this option. Between 1998 and 2001, the appellant obtained the necessary postponements for his military service on the basis he was enrolled at the institute.

[15] In 1999, B1 left Syria to avoid his military service obligations.

[16] At the beginning of 2001, during his final year of study, the appellant travelled to Y for the first time to see his parents. By this time his mother and two sisters had moved from Syria to Y and the appellant had taken up residence with his grandfather who still lived in the camp. During the year, he had become aware that some Palestinians were receiving their military service call-up papers prior to the time when these were usually issued. This was not a new phenomenon. It

was therefore decided that the appellant should not sit his final exams because if he sat his exams and passed, this information would be automatically sent to the conscription office and there was a concern the appellant could receive an early call-up notice. It was therefore decided that he would not sit his exams but would travel to Y and join his family and, in late 2001, the appellant left Syria for Y. He travelled on a Refugee travel document which had been previously issued to him by the Syrian government.

[17] The appellant originally arrived in Y as a visitor. Under the relevant Y law, residence could be obtained only through sponsorship of an employer. The appellant therefore found work and obtained residence in 2002. The appellant remained in lawful employment with a number of employers in Y until mid-2007. During this time he obtained an extension to his residency permit which ran for only three years. He also obtained a further extension to his Syrian refugee travel document and, when this extension lapsed, obtained a new Syrian refugee travel document issued by the Syrian Embassy in Y.

[18] Moving to Y provided another avenue for postponing the appellant's military service obligation. Young males who were resident in Y and who were in full-time employment could obtain postponement of their obligations by submitting to the relevant embassy documentary proof of their residence status and employment. Indeed the appellant explained that one of the motivations behind the father travelling to Y when he did was to establish the family in Y in order that his sons could, if necessary, take advantage of these options for postponing military service. The appellant understood that the Syrian Embassy passed the information on to his conscription office in Syria and a postponement was obtained. Between 2002 and 2007 the appellant obtained lawful postponements of his military service obligations.

[19] The appellant explained there were two reasons why he was opposed to performing military service. Having regard to the Authority's findings in the case, it is not necessary to set them out in any detail. In brief, he objected to being conscripted into the army of a state which treated him and his family like second class citizens, treatment which carried over to military service with often fatal consequences for Palestinian conscripts and because performance of any kind of military activity offended the core beliefs he held as a result of religious teachings from his grandfather and father.

[20] Having lawfully postponed his military service, the appellant then returned to Syria on a number of occasions during his period of residence in Y. He encountered no particular difficulties until January 2007. On this occasion, he was taken aside for questioning by an official who asked him where he was coming from and what he was doing in Syria. To his surprise, the questions then turned to the whereabouts of his brother B1 and what he knew about him. The appellant told the person that he had no idea where his brother was. The appellant was then made to wait while further investigations were made. Left alone, the appellant telephoned his father in Y using his mobile phone and told him what was happening. He told his father that he would call him and keep him informed as to what was happening.

[21] Some time thereafter, two or three officials entered the room some of whom were uniformed. The appellant is unsure what department they were from. He was taken from this room and placed in a car. As soon as he was in the car the officers began beating him. He was taken to an unknown building where he was placed in a room and again beaten by the officers. He was again asked questions about his brother's whereabouts and what he was doing. Reference was made to the fact that the appellant had also not performed his military service. The appellant told his interrogators that he had postponed his military service in accordance with usual procedures. They demanded that he show them the necessary paper work even though there was no paper work that he needed to show as it was all done via the Syrian Embassy in Y.

[22] The appellant was then subjected to torture. He was made to sit in a tyre and whipped about his back with a cable. He was beaten on three or four occasions on the soles of his feet using a stick. During this time he was not given any food but only given water to drink. Also at various points different officers "confiscated" his mobile phone and watch both of which were expensive items he had purchased in the Gulf.

[23] The appellant was eventually released two days later. He later found out that his release had occurred through the intervention of some senior figures who had been bribed to ensure his release from detention and smooth passage from Syria. He learned that his father had become concerned when he had not heard anything further from him and had contacted two of his uncles to make the necessary arrangements.

[24] After his release, the appellant was met by his uncle who took him back to his house in the refugee camp. By this time his grandfather had died and this particular uncle had taken up residence in the former home of the grandfather. After dressing his wounds and changing the appellant into traditional Arab attire, the uncle took the appellant to the airport in X in order that he could obtain a taxi to Damascus where he could take a flight to Y. He did so and did not encounter any difficulties leaving Syria.

[25] After arriving back in Y, the appellant eventually resumed his employment with an airline. At around this time, a summons requiring the appellant to report for military service was issued even though his last lawful postponement ran until 2008. This notice had been received by his uncle in the refugee camp who forwarded it on to the appellant's father in Y. The appellant did not respond.

[26] In mid-2007, the appellant ceased working for the airline and obtained employment with a new employer. However, rather than start work immediately he wished to take a vacation. His new employer agreed. The appellant therefore applied for and obtained a visitor's visa for Australia. While in Australia the appellant decided to make a visit to New Zealand. He telephoned his employer who agreed to this. However, his employer asked him to return to the employer his Syrian refugee travel document. Because he had now ceased his employment with the airline, his old residency permit had expired and the new employer would need to confirm his employment with the immigration authorities in order that the appellant obtain a new residence permit to facilitate his re-entry to Y. The appellant returned the Syrian refugee travel document to his new employer.

[27] While in New Zealand, the appellant received advice from his new employer advising him that the company had been forced to undertake a restructuring programme which meant that they could no longer offer the appellant any employment. His residence visa Y was cancelled. Not having any means of securing entry to Y, he was stranded. If he returned to Y, Y officials would simply put him on the first plane to Syria and he would be taken into the army. The appellant therefore consulted a lawyer and lodged a claim for refugee status.

[28] Since the issue of the summons there has been ongoing interest in the appellant. His mother and two sisters returned to Syria for a family visit and were questioned on arrival as to his whereabouts and also the whereabouts of his brother. Furthermore, there have been repeated visits to his uncle's home in the refugee camp by officers looking to conscript him. The appellant understands that

each time the officers have been paid money by his uncle in an attempt to reduce the interest in him. This has been a frequent occurrence as far as he understands although his uncle does not go into detail in his discussions with the appellant. Nevertheless, in a recent telephone conversation he had with his uncle's wife, his wife was unusually curt with the appellant on the telephone and described them as being seen as "cows to get the milk from" by these officials.

### **The statement of B1**

[29] The Authority received a signed statement from the appellant's brother. He is a student in Canada and unable to attend the hearing in person to give evidence.

[30] In his statement, B1 states that their father faced discrimination during his employment including being asked to work night shifts. He further states that their father had some problems with the security police and that although his father talked about it to some extent with him as he was older it was not mentioned to the appellant who was younger.

[31] He further states that their father tried to keep him out of the Ba'ath Party system in Syria and for this reason he was "pushed around" and excluded from many educational programmes. He states that while at university he undertook minor political activities such as having discussions with friends about government and ways to improve the political system. This came to official attention and he was threatened with imprisonment and told that he would be conscripted into the army to "sort him out". As a result the appellant fled Syria. He eventually went to Canada where he applied for and obtained refugee status.

[32] B1 explains that in Syria, Palestinians do not have the full rights of citizens and are not treated as citizens. He explains that the family objected to performing military service. He also stated that Palestinians face discrimination in the army and he states they are often attacked and young boys are very badly treated. B1 states it is normal for military service to be "a risky time" for any Palestinian but for a Palestinian with some political background or from a political family "it is a very dangerous place".

[33] B1 goes on to explain that after he left the country he went to Y and worked there under sponsorship. However, after the sponsorship ceased, he travelled to Canada and claimed refugee status.



## **Other documents and submissions**

[34] On 29 April 2008, the Authority received a memorandum of counsel setting out her submissions. Accompanying these submissions were documents relating to the grant of refugee status to B1 in Canada in 2003, a number of medical reports relating to the appellant and a number of items of country information relating to military service obligations in Syria and the treatment of Palestinians in Syria.

[35] This material has all been taken into account in reaching this decision.

## **THE ISSUES**

[36] 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."

[37] 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 APPELLANT'S CASE**

### **Credibility**

[38] The Authority accepts the appellant as a credible witness. His evidence was spontaneous, detailed and given with a powerful sense of conviction. His recollection of intensely personal experiences had a palpable air of genuineness about them.

[39] During the hearing the appellant showed the Authority scarring to his back. A medical report on file dated 20 July 2007 from Dr Tony Wansbrough states that the marks she observed are consistent with the appellant's account and that the round marks she observed "could be consistent with localised skin damage from an irregular part of the whip". A psychiatric report dated 18 April 2008 from Dr Poole, a registered psychologist attached to Refugees as Survivors, confirms that the appellant has been admitted to a specialist programme funded by the United Nations Fund for Victims of Torture "because he displays the psychological features of PTSD (Post Traumatic Stress Disorder), torture history and a clinical presentation which is quite consistent with survivors of torture." A clinical assessment of his suicide risk is categorised as "high".

[40] Moreover, the appellant's underlying history is amply corroborated by documentary evidence on the file which contains:

- (a) the UNWRA registration cards of his parents as well as himself;
- (b) both his Syrian refugee travel documents;
- (c) his military service call-up papers;
- (d) the contract of employment and letter cancelling employment with his new employer.

[41] While the weight that can be attached to the statement of B1 would ordinarily be lessened by the fact he was not called as a witness, the Authority received from Ms Curtis a copy of the decision of the Refugee Protection Division of the Canadian Immigration and Refugee Board dated April 2003. In this document B1's oral evidence to that tribunal is summarised. This oral evidence, which pre-dates the appellant's refugee claim by some years and given at a time before the need for the appellant to claim refugee status arose, is consistent with the appellant's account of his family background. The Authority also received a letter from B1's lawyer confirming the basis of his claim. In light of this, the Authority finds weight can be attached to B1's statement in this case which corroborates the appellant's evidence.

[42] In other words, there is an abundance of pointers to the underlying veracity of his oral evidence. His account is therefore accepted in its entirety.

## A well-founded fear of being persecuted

### *Country information*

[43] In *Refugee Appeal No 75767* (9 March 2006) at paragraphs [45]-[48] the Authority noted country information at that time which established that there was a generally poor record of respect for human rights in Syria. In particular, those suspected of political opposition to the State are reportedly at risk of serious mistreatment; indeed country information was cited suggesting that torture was reportedly still routinely used by various security forces against political and non-political detainees. It noted that the independence and impartiality of the courts in Syria had been subjected to criticism.

[44] In *Refugee Appeal No 75779* (10 May 2006), a case involving objection to military service by a Syrian Kurd, the Authority noted in more detail:

[64] By 1963, the *Ba'ath* Party gained a position of political dominance in Syria. Initially driven by factionalism and internal division, by 1970 the then Defence Minister, Hafez al-Assad, gained control over all vital military and security apparatus. From this power base he initiated a coup and established himself as president, a position he held until his death in June 2000.

[65] In relation to the political structure established under Hafez Al- Assad the IGC report observes (p2):

"[Syria]s governed by an elaborate system of institutions. Assad meticulously built a hybrid: personalised rule co-existed with highly structured state and party institutions: a narrow Alawi, family and personal power base coexisted with a broader inter-religious coalition and social contract; and a sophisticated, omnipresent military – security apparatus coexisted with a strong political party and powerful social relays."

The report continues (p3):

"Politically, the regime mixed harsh repression and tight control by multiple security services with an almost obsessive adherence to institutional procedures and symbolic political gestures."

[67] As to the structure of the country's security services and intelligence, the IGC note a plethora of agencies which operate their own prisons and interrogation centres in near complete independence from the judicial and penal system and cite (at p2), a report which estimates that the number of people working for these agencies was one out of every 153 adult Syrians - see Alan George *Syria, Neither Bread nor Freedom* (London 2002) at p2.

[68] Following Hafez al-Assad's death, he was succeeded by his son Bashar, a development which in light of the younger Assad's education and experience of Western Europe had given rise to a hope of relative political liberalisation. The IGC report notes that initially Bashar al-Assad's government took steps to end some elements of state control particularly in the economic area. Emboldened by this, from June 2000 to August 2001, Syria's civil society began to call for a democratic opening. In what has become known as "The Damascus Spring" meetings, communiqués, forum for public discussion and informal groupings flourished.

[69] The IGC report notes, however, (at p7) that while the regime's initial response was encouraging, including the pardoning of some political prisoners, the

liberalisation drive came to a “rapid and sharp halt”. This manifested itself in the arrest and detention of those who had called for political liberalisation, the closures of newspapers and the imprisonment of journalists and writers – see also in this context Human Rights Watch *Dangerous Backlash in Syria* (7 September 2001); Human Rights Watch *Syria: Clampdown on Freedom of Expression* (12 February 2002); Freedom House *The Worst of the Worst; the World’s Most Repressive Regimes: Syria* (31 March 2005) (The Freedom House Report) at p84.

[45] Recent country information confirms that the position remains essentially the same in that Syria continues to be a country with a generally poor human rights situation. Indeed, Human Rights Watch *World Report Syria* (2008) asserts that:

“Syria’s poor human rights situation deteriorated further in 2007 as the government imposed harsh sentences on a number of political and human rights activists.”

This report further confirms:

“Syria’s multiple security services continue to detain people arbitrarily and frequently refuse to disclose their whereabouts for months – in effect forcibly disappearing them.”

It further notes that torture remains a serious problem in Syria, especially during interrogation. Similar observations can be found in the report by Amnesty International *AI Report: Syria* (2007).

#### *Conclusion on well-foundedness*

[46] The Authority finds that, having not responded to his call-up papers and not renewed his postponement of his military service following cancellation of his residency status in Y, should the appellant be returned to Syria there is a real chance that he would be questioned and detained at the airport. He would be sent to perform military service to which he is vehemently opposed.

[47] However, it is not necessary for the Authority to make any findings in relation to this issue. This is because the evidence before the Authority as to his torture in detention establishes that the appellant has been a victim of past persecution. The Authority has for a long time accepted that past persecution, while not a *sine qua non* for recognition under the Convention, can be a powerful indicator of the chance of future persecution without evidence of an improvement in the country conditions – see, for example, *Refugee Appeal 300/92* (1 March 1994); J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto 1991) at p88.

[48] In this case, country information establishes that there has been no material change in country conditions as regard the use of torture by state agents against detainees. Once his identity was established, there is a real chance that the appellant would be subjected to further interrogation as to his brother's whereabouts and his own refusal to respond to his call-up notice. Having regard to the country information establishing that torture remains common in detention there is no reason to suppose that the appellant's previous experiences of torture would not occur during his period of detention. By a great margin this amounts to a well-founded fear of being persecuted. The first principal issue is answered in the affirmative.

### **Convention ground and nexus**

[49] In *Refugee Appeal No 72635* (6 September 2002), the Authority noted that it was sufficient to found the nexus requirement if the Convention protection ground was a "contributing cause" to the risk of the claimant being persecuted.

[50] In *Refugee Appeal No 75378* (19 October 2005), the Authority held that the holding of a belief that renders it morally wrong for the individual to be forcibly conscripted into the armed forces is inherently political in that it is inherently expressing an opinion as to the boundaries of State power in relation to the individual – see paragraph [116].

[51] For these reasons the Authority finds that the predicament of this appellant is contributed to by the political opinion that is inherent in his act in refusing to perform military service. It is this which causes the real chance of the appellant being detained on arrival and upon which he was interrogated in his previous detention. His predicament would also be contributed to by his Palestinian origins which is a race for the purpose of the Refugee Convention.

### **CONCLUSION**

[52] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B L Burson"

B L Burson  
Member