

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76385

AT CHRISTCHURCH

<u>Before:</u>	M A Roche (Chairperson) C M Treadwell (Member)
<u>Counsel for the Appellant:</u>	A James
<u>Appearing for the Department of Labour</u>	No appearance
<u>Date of Hearing:</u>	7 September 2009
<u>Date of Decision:</u>	17 September 2009

DECISION

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

INTRODUCTION

[2] The appellant arrived in New Zealand on 30 July 2008 and claimed refugee status on 13 October 2008. On 6 November 2008, he was interviewed by the RSB and his application was declined leading to this appeal.

[3] The appellant claims to have converted from Shi'a Islam to Christianity. It must be determined whether his claim to be a Christian convert is credible and, if so, whether his status as a convert in Saudi Arabia would give rise to him being persecuted there.

THE APPELLANT'S CASE

[4] What follows is a summary of the evidence given by the appellant and a witness at the hearing. An assessment of this evidence follows later in this decision.

[5] The appellant is aged in his early 40s. He was married to two wives in Saudi Arabia and has several children. He and his wives were born into the Shi'ite faith and lived in a town where Shi'ite (who are a religious minority in Saudi Arabia) were the majority. After leaving school, the appellant undertook clerical work.

[6] Between August 1990 and February 1991, the appellant listened nightly to Christian radio programmes that were broadcast in Arabic from Monaco. He first came across these programmes when searching for news on the radio around the time of the Iraqi invasion of Kuwait. He had not previously been interested in other religions but what he heard about Christianity on the radio appealed to him, especially the prospect that as a Christian, he would have eternal life.

[7] In an attempt to establish correspondence with the programme makers, he sent three letters to the address in Monte Carlo that was advertised at the end of each radio programme. Several months later, in mid-1991, he was summoned by the religious police who had intercepted the letters. After reporting to the police, he was held and questioned for two days. He was required to sign an undertaking that he would not attempt to correspond with the radio station again and he was prohibited from operating a mailbox for 10 years. In addition, his passport was temporarily confiscated.

[8] By the time of his arrest, the appellant had ceased listening to the evangelical radio broadcasts because their time slot had been shifted to a less convenient one. He had no further encounters with the Christian religion for several years.

[9] In June 1998, the appellant travelled to London to attend a two-month English course that was run by a Catholic organisation. One of the organisers of the course gave him a Christian story to read and discussed Christianity with him. Although he did not become a Christian at this time, this was another step in the path that eventually led him to convert.

[10] Between December 2006 and April 2007, the appellant began to watch Christian television programmes. He also began conducting research on Islam through the internet and as a result of this research, learnt for the first time that stories from the Talmud (the Jewish holy book) were incorporated in the Koran. He had previously believed that they had been received from God by Mohammed and written in the Koran before being copied in the Talmud. He was by this point disillusioned with Islam and decided to become a Christian. He began to practise the Christian religion by praying, using the knowledge he had gained from the television programme and from internet sites.

[11] He told his second wife about his decision to convert to Christianity. She was initially sympathetic as she had reservations about Islam based on its treatment of women, however she later changed her attitude and become opposed to the appellant's conversion to Christianity. The appellant also discussed his developing views with a colleague at work. This colleague became angry with him and the two had an argument. The appellant believes that this argument was overheard by somebody who informed the authorities about him. Shortly afterwards, on 8 July 2008, he found a miniature plastic device attached to his *thobe* after collecting the garment from the laundromat. He believed that this was a listening device (a bug) which would allow the secret police to monitor him and to record his conversations. He removed it from his clothing and threw it away. After finding the bug, the appellant became fearful that he was under surveillance by the secret police. On two occasions while he was shopping, he noticed that he was being followed.

[12] The appellant's eldest daughter was getting married at the end of July 2008. The appellant took leave from his work, pretending that he required the time to attend the wedding. Instead, he travelled by bus to Bahrain because he was afraid that he would be arrested by the Saudi Arabian secret police for his conversion, and also because he wished to practise the Christian religion. While in Bahrain, he was approached by a man whom he believed was a member of the Saudi Arabian secret police. He decided that he was not safe there and decided to travel to New Zealand. He telephoned his family shortly before he flew out of Bahrain and informed them that he would not be attending his daughter's wedding. He was very upset about this.

[13] The appellant arrived in New Zealand and flew to Christchurch. He selected Christchurch as his destination because its name contained the word "Christ". After arriving, he stayed briefly in a hotel and then moved into a flat with

some Christian people. He began to attend church and to fully embrace Christian life.

[14] Very soon after his arrival, the appellant began to prepare a document about Talmudic stories in the Koran. He posted this document on the internet. It has since been published on a number of different Christian websites and there are links to it on a number of other Christian websites.

[15] In addition to attending a Methodist church every week, the appellant attends an Arabic church in Christchurch for Sunday evening services and twice-weekly bible classes. The classes and services are conducted in the Arabic language. Together with the minister of this church, he has spoken to a Christian community organisation about the beliefs of Muslims and how to attract Muslims to Christianity.

[16] The appellant is estranged from his family in Saudi Arabia. His first wife has refused to speak to him since October 2008. His second wife has remained in contact with him but is extremely angry with him for deserting her and his children in Saudi Arabia. Under Sharia law, his marriage to both of them is no longer permissible because it is not possible for Muslim women to be married to a non-Muslim man. His wives have been to a religious court where they have consulted a Shi'ite judge about their legal status arising from the appellant's apostasy. They wish to be divorced from him but the appellant is unsure whether they are able to achieve this. He would like to be reunited with his wives and his children but cannot return to Saudi Arabia because he fears that he would be executed as an apostate and, in any case, he would be unable to practise the Christian religion there. His religion and relationship with God is now the most important thing in his life.

[17] He believes the Saudi authorities are aware of his conversion. His research is available on a large number of internet websites and his wives have complained about his apostasy at a religious court. In April 2009, the appellant entered his own name for a search term on the internet and found an article on an Arabic website that named him and stated that he had converted to Christianity.

Evidence of AA

[18] AA flatted with the appellant for six months after he arrived in New Zealand. She has remained friends with him and is in regular contact with him. While he was flating with her, they attended different churches but would discuss their

respective church services with each other. They had many conversations about God and she considers that he had a depth of understanding of Christianity even when they met. They used to pray together regularly while they lived together.

[19] While he was flatting with her, the appellant spent much of his time in his room on a computer researching and preparing a document on Talmudic stories in the Koran. AA assisted him in translating the document into English and read and discussed it with him.

[20] AA has no doubt that the appellant's conversion to Christianity is genuine.

DOCUMENTS PRODUCED

[21] Counsel for the appellant filed written submissions. He also filed a number of documents in support of the appellant's case. These documents included:

- (a) country information about Saudi Arabia and conditions there generally, and for Christians;
- (b) a number of testimonials from Christians in Christchurch attesting to the appellant's deep Christian faith. Included amongst these were testimonials from church elders and pastors who personally knew the appellant;
- (c) a letter from the director of Arabic Ministry from the website *Answering-Islam.org*. In this letter, the director stated that the appellant began emailing a Christian counsellor at the website in April 2008, while still in Saudi, and told him about his conversion. He commented that the document published by the appellant on the website about the Talmudic origin of stories in the Koran would be considered to be heresy by Muslims because they hold the belief that the Koran came through Mohammed directly from Allah;
- (d) translated copies of email messages between the appellant and a friend in Saudi Arabia discussing the appellant's conversion and his research on the Koran;
- (e) a translated extract from a website which named the appellant and disclosed the fact of his conversion;
- (f) a transcript of a telephone conversation between the appellant and his wife on 3 August 2009; and

- (g) a transcript of a conversation by Internet between the appellant and one of his daughters on 17 April 2009.

THE ISSUES

[22] 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."

[23] 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

[24] Prior to determining the framed issues, it is necessary to make an assessment of the credibility of the appellant and his witnesses. The Authority accepts that the appellant and AA were credible witnesses. The appellant's account was consistent with the account he gave at his RSB interview and is corroborated by a number of the documents that he filed.

[25] The Authority accepts that the appellant had a long-standing interest in Christianity in Saudi Arabia and that he converted to Christianity shortly prior to departing from there in July 2008. It is accepted that the appellant subsequently published material on the internet concerning the Talmudic origin of stories in the Koran and that he is a practising Christian in Christchurch. It is further accepted that the appellant has disclosed his conversion to his workmate in Saudi Arabia and to one of his wives and that his wives have made a complaint about him to a Shi'ite court in Saudi Arabia.

[26] Given the appellant's profile on the internet and the fact that his family and friends in Saudi Arabia are aware of his conversion, which has been the subject of a complaint by his wives to a Sharia court, the Authority accepts that the Saudi Arabian authorities who monitor the religious activities of Saudi citizens (the religious police or *Mutawwa'in*), will be aware of his conversion.

COUNTRY INFORMATION

[27] King Abdullah bin Abd Al Aziz Al-Saud rules Saudi Arabia under the title 'Custodian of the Two Holy Mosques' which is a reference to his responsibility for Islam's two holy sites in Mecca and Medina. The government bases its legitimacy on its interpretation of Sharia and basic law. The law provides that the Koran and the traditions of the prophet Mohammed serve as the country's constitution. All citizens are expected to adhere to Islamic principles.

[28] A semi-autonomous government agency called the Commission to Promote Virtue and Prevent Vice (CPVPV) has authority to monitor social behaviour and enforce morality consistent with the Government's interpretation of Islam. This agency was reported in 2008 as having 5000 staff members including 3,227 *Mutawwa'in* or religious police.

[29] The public practice of non-Muslim religions is prohibited. Proselytising by non-Muslims, including the distribution of non-Islamic religious material such as bibles, is illegal. Although under government policy, non-Muslims are permitted to practice their religion within their own homes, religious police conduct raids on private non-Muslim religious gatherings leading to the arrest and detention and sometimes deportation of participants: Barnabus Fund *The Application of Apostasy Law in the World Today* (3 July 2007).

[30] Conversion by a Muslim to another religion is considered as apostasy and punishable by death. There have been no confirmed reports of executions for apostasy since 1992 although in the late 1990s, there were reports of prisoners who were beaten to death by government authorities for refusing to recant their alleged apostasy. Blasphemy is also potentially punishable by death. According to Human Rights Watch (HRW) there have been several prosecutions this decade for apostasy and insulting religions (the relevant report notes one such prosecution in 2004 and two in 2005). The HRW report also notes the predicament of a Shi'a Muslim who has been on death row in Saudi Arabia since 1993 for allegedly insulting the prophet Mohammed.

[31] More recently, in March 2008, a barber was sentenced to death after it was reported to the authorities that he had blasphemed God and the prophet in his shop. In May 2008, a Saudi national was charged with “setting up an electronic site that insults Islam”. Prosecutors were seeking a five year sentence. The defendant subsequently fled the country after receiving death threats: United States Department of State *2008 Country Report on Human Rights Practices: Saudi Arabia* (25 February 2009); United States Bureau of Democracy, Human Rights, and Labor *International Religious Freedom Report 2008: Saudi Arabia* (19 September 2008); Human Rights Watch *Saudi Arabia: Stop Trials for “insulting” Islam* (12 May 2008).

[32] There are no churches in Saudi Arabia. The Bishop of Arabia stated in an interview in January 2009, that normal Church activities are not possible there. In the same interview, he stated that Saudi Arabians are strongly advised against converting to Christianity as they would be unable to practice their faith and that if they did convert, their only option would be to emigrate: Heuman Paul “An interview with the Bishop of Arabia” *Pyjamas Media* (20 January 2009).

[33] It would appear from the above country information that it is unusual for Muslims in Saudi Arabia to convert to Christianity. Christians who are not apostates have difficulty practicing their religion and suffer harassment by religious police. Under law, Muslims who blaspheme or are apostates are liable for the death penalty. Reports of such penalties being imposed or carried out are rare. Given the number of active religious police in the Kingdom, the rarity of penalties being imposed on apostates seems to point to the rarity of apostates rather than any suggestion that a blind eye is turned in such cases.

IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IN SAUDI ARABIA?

[34] Persecution has been defined in refugee law as the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection (see Hathaway, *The Law of Refugee Status* (1991) 104 to 108, as adopted in *Refugee Appeal No. 2039/93* (12 February 1996) at 15).

[35] It has been accepted that the appellant is a genuine convert to Christianity. Should he return to Saudi Arabia he would have difficulty manifesting his religion. It would be impossible for him to do so in public and difficult to do so in private as he would have no ability to meet with other Christians except, perhaps, through

the internet. In any case, it is not necessary to make a finding on whether such interference with his ability to manifest his religious beliefs would, of itself, constitute an infringement of his rights sufficient to constitute persecution, because his conversion is likely to have already come to the attention of the Saudi authorities.

[36] On return, he is likely to be investigated regarding his conversion and the religious material he has posted on the internet. It is impossible to know what would then transpire but the Authority is satisfied that there is at least a real chance that as a consequence he would suffer serious harm in the form of arbitrary detention, serious physical mistreatment and long-term harassment.

[37] The Authority is satisfied that on return to Saudi Arabia there is a real chance that the appellant would be subjected to treatment amounting to persecution because of his conversion and subsequent religious activities. His fear of being persecuted is therefore well-founded. The relevant Convention ground is religion.

CONCLUSION

[38] For the above reasons, 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.

"M A Roche"
M A Roche
Member