

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

**REFUGEE APPEAL NO 76328**

**AT WELLINGTON**

<b><u>Before:</u></b>	B L Burson (Chairperson) A N Molloy (Member)
<b><u>Counsel for the Appellant:</u></b>	J Petris
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	19 May 2009
<b><u>Date of Decision:</u></b>	26 June 2009

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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 habitually residing in the Syrian Arab Republic ("Syria").

**INTRODUCTION**

[2] The appellant claims to have a well-founded fear of being persecuted by reason of the Syrian *Mukhabarat* (the Syrian Intelligence Service) placing pressure on him to become an informer.

[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 Damascus in Syria. He is an ethnic Palestinian. His suburb is largely populated by Palestinians who were displaced from Palestine in 1948 following the establishment of the state of Israel.

[5] The appellant was born into a middle class Palestinian family. His father had a tertiary education and worked in a professional capacity. The appellant has a number of siblings. The appellant described his family as a typical family who did their best to live a normal life within the circumstances in which they found themselves. The family was very much encouraged to make the best of their lives through education whilst at the same time never forgetting their status as displaced Palestinians. Politically, the appellant explained that his family were all supporters of *Al-Fatah*, the main administrative organ of the Palestinian Liberation Organisation. His family were all supporters of Yasser Arafat.

[6] Like many others in his suburb, the appellant became highly politicised by the events surrounding the first Palestinian *intifada* which began on 9 December 1987. There were daily protests in his suburb in support of the uprising. On many occasions the appellant took part in protests and demonstrations showing his support and solidarity for his countrymen inside the former Palestine. These demonstrations were commonplace and, in the context of life there, unremarkable. The appellant was in no doubt that his brothers may have taken part in various demonstrations but they were not the sort of things the family would talk about or necessarily confirm their participation in amongst family members. The appellant was sure that neither his mother nor sisters took part in demonstrations but they showed their support for the *intifada* by praying at home and offering prayers in support.

[7] The appellant encountered no particular difficulties with the Syrian authorities until 1993. Although the Syrian authorities kept tight control and surveillance on the Palestinians in his suburb, the appellant had up until this point escaped any arrests and detention. This now changed. The appellant was taking part in a protest/demonstration in support of the *intifada* when, as usual, this was suppressed by officials from the *Mukhabarat*. On this occasion, in early 2003, the appellant was unlucky enough to have been caught by the *Mukhabarat* and, along with others, forcibly taken into custody. He was transported back to the *Mukhabarat* headquarters in Damascus. He was placed in a room with others where he was subjected to a sustained period of punches, kicks and verbal abuse

from the *Mukhabarat* officers. The appellant was detained throughout the rest of that day. Throughout the day, from time to time, *Mukhabarat* officers would come into the room and kick and beat the appellant and other detainees. That night the appellant was taken back to his suburb in a car and told he had better not take part in any more protests.

[8] The appellant was not interrogated during this detention apart from having his name, address and other relevant biographical details taken.

[9] After his release the appellant continued to take part in demonstrations and protests in support of the first *intifada*. Approximately three to four months after his first detention the appellant was arrested in similar circumstances. Again, he and approximately six other Palestinians were taken in a vehicle to the *Mukhabarat* headquarters after being apprehended taking part in a demonstration. This detention followed the same pattern as the first. He was placed in a cell for an entire day during which time he was repeatedly beaten with punches, kicked and subjected to verbal abuse. Again, his name, address and details of his parents were taken. At the end of the evening, the appellant was spoken to by a *Mukhabarat* officer. This officer looked at his file and mentioned that the appellant had been arrested some months earlier for participating in a similar activity. He told the appellant that this was a final warning. He told him that if he undertook this sort of activity again the next time he was arrested he would not be released. The appellant was required to sign a written undertaking that he would not partake in any political protest or activity. The appellant signed the undertaking and was released.

[10] The appellant decided that he was in danger of being seriously harmed if caught again and that he should cease any further public political activities. It was common knowledge amongst the camp that the *Mukhabarat* had a system of informers in place who observed what was happening in the camp. In the words of the appellant the *Mukhabarat* were always listening under windows and trying to ascertain what was happening amongst the Palestinians. It was also common knowledge amongst the Palestinians that the *Mukhabarat* were particularly brutal and that people who were detained by them were often tortured and some were never seen again. Concerned about his safety, the appellant decided to devote himself to his study and his work.

[11] The appellant's father died in 1996. The appellant had to give up his studies to support his mother and family and obtained work in a restaurant. He had this employment until he came to New Zealand in 2006.

[12] The appellant undertook his period of compulsory military service in the late 1990s. In 2000, one of the appellant's brothers left Syria and claimed refugee status in Australia. The appellant does not know very much about his brother's claim but recalls persons coming to the house from time to time inquiring about him. The appellant's brother had some connection with the local mosque and wore a beard and the appellant thinks that this may have been the cause of his problems.

[13] The appellant encountered no particular difficulties with the Syrian regime until mid-2005 when he received a summons at the family home requiring him to report to the local branch of the *Mukhabarat*. The appellant had no choice but to attend. Reporting to reception, the appellant was approached by a *Mukhabarat* officer who took him into another room. He was required to wait for a lengthy period of time. During this time he heard the sounds of people being hit. He heard screams and a lot of abusive words being said which made him very frightened. After being made to listen to the screams of other detainees, *Mukhabarat* officers came into his room and removed his belt, shoe laces and wallet. He was blindfolded and handcuffed and then taken into an interrogation room.

[14] In the interrogation room, an officer then asked the appellant a number of questions, such as who his father, mother, brother and sisters were and where they lived. He then began asking the appellant about members of his extended family and what they were all doing. At this point, the officer asked whether the appellant knew why he had been brought in. The appellant replied that he did not know. The officer then advised the appellant that it would be better that he volunteered the information himself because it would be better for him in the long run. When the appellant again replied that he had no idea why he was being summonsed the officer told him that they had received information from an informer that the appellant had been running meetings inside his house where they were talking about political issues and support of *Al-Fatah*. The *Mukhabarat* officer repeated the allegation on a number of occasions and the appellant again denied any involvement in any meetings. The appellant was then told that he would be given the night to think about his position and they would ask him again

in the morning. He was again taken back to his cell where his blindfold and handcuffs were removed.

[15] The following morning the appellant was again blindfolded and handcuffed and taken to an interrogation room. Judging by the sound of the person's voice, the interrogator appeared to be the same person who interrogated him the day before. Again, the appellant was asked questions about his family and again the officer made an allegation that the appellant had been holding illegal gatherings at his house. When the appellant again denied any involvement he was taken to a downstairs room where he was subjected to torture in the form of *falaka* (being beaten on the soles of the feet). He was also punched, kicked and sworn at. Although unsure, the appellant believes this torture session lasted for approximately two hours and then he was taken back to his cell.

[16] The following day the appellant was again taken, blindfolded and handcuffed, to an interrogation room. This time he was questioned by a different officer. The officer asked the same questions as before and again the appellant denied any knowledge of the accusations. Again, the appellant was taken to a downstairs room where he was subjected to the same form of torture as he had been given on the previous day. He was then taken back to his cell where his blindfold and handcuffs were removed. On the fourth day the appellant was again taken to the detention centre and was asked the same questions about his family and about holding meetings. On this occasion, the appellant was not taken to a downstairs room for torture but was simply returned to his cell.

[17] On the fifth day of his detention the appellant was taken from his cell to another room. After a while, his blindfold and handcuffs were removed and he was informed by a *Mukhabarat* officer that he was to be released. The officer informed him that he would be under strict surveillance and that he was required to report to the office on a monthly basis and inform the *Mukhabarat* of anything that he heard Palestinians in the area talking about. The officer specifically mentioned things such as complaints about rising food prices. The officer told him that he had to report back to the police station and that he had to report to a particular officer called "Massan" and was told that the *Mukhabarat* knew where he lived and where he went and could 'get him' at any time.

[18] Following his release the appellant returned to his family home. He did not go to work immediately because he was still in some pain as a result of the treatment he had suffered during this detention. However, at the beginning of the

following month he reported to the *Mukhabarat* offices as required. On this occasion, the *Mukhabarat* officer was not available and after leaving his details the appellant was told to report back the following month. At the beginning of the next month the appellant reported back to the *Mukhabarat* officer and the officer asked him whether he had heard anything and had anything to report. The appellant replied that he had not heard anything and he had simply been going to his house and work and minding his own business. The *Mukhabarat* officer told him that he could leave but that they would send for him when they needed him.

[19] Later that month, the appellant travelled to Jordan. He had been planning to travel to Jordan prior to his detention because one of his cousins was getting married. However, because of his experiences during his detention the appellant was in a bad psychological state and his family encouraged him to go to the wedding in the hope that this would ease some of the pressure on him. The appellant explained that whereas previously when he travelled to Jordan he had been required to get an exit stamp endorsed in his Palestinian travel document that he had been issued with in 2001, the law had changed. While Palestinians were still required to get permission to exit the country, the permission was not endorsed in the travel document. Rather, Palestinians still had to go to the relevant Syrian department charged with looking after Palestinian affairs and request permission. This department would then make inquiries of the *Mukhabarat* and other officials. The appellant did this and after waiting two or three weeks was told that he was able to travel. The appellant went to Jordan using his travel document and he stayed there for a few days. Although he had been contemplating looking for work in Jordan, upon reaching Jordan he was told by his relative that they had had to place the title to the house as a bond to ensure the appellant returned to Syria. Not wanting to cause his relative any problems the appellant returned to Syria six days later. He encountered no difficulties on return.

[20] The appellant continued to live in daily fear in Syria. His experiences in detention had affected him and he was always wondering whether he would be called up by the *Mukhabarat*. He began looking for a way of escaping from this pressure. Eventually, via a relative, the appellant was introduced to a New Zealand citizen of Palestinian origin. The couple became engaged and were married. Thereafter the appellant applied for and obtained a visa to travel to New Zealand to take up residence as the spouse of a New Zealand citizen. He was concerned about whether he would again be given permission to leave and he approached a long-time customer of the restaurant he was working in whom he

knew to be a low placed official in the intelligence service. He asked this person to see whether there was a border alert against his name. The appellant paid this person a sum of money to do so. The person checked and informed the appellant there was no alert against his name. The appellant therefore left Syria using his Syrian travel document and arrived in New Zealand at the end of 2006.

[21] The appellant is concerned about his safety if he returns to Syria. The appellant explained that even though he had not been approached by the *Mukhabarat* following his detention in mid-2005 the position was that he was at risk of being summonsed by them at any time.

### **Submissions and documents**

[22] In May 2009, the Authority received from Mr Petris a letter dated 11 May 2009 enclosing submissions in support of the appellant's claim. Attached to these submissions was a copy of Human Rights *World Report: Jordan (2007)*. In particular, Mr Petris highlighted aspects of this report which noted concerns about the Jordanian regime for dealing with claims for refugee status and the protection it entails against deportation. Mr Petris also submitted two pages from the United States Department of State *Country Reports on Human Rights Practices for 2007: Syria* (11 March 2008) ("the 2007 DOS report") highlighting passages which referred to the arbitrary arrest and detention of individuals including "citizens who were apparently not involved in political activities".

[23] At the conclusion of the appellant's evidence Mr Petris made closing submissions. He noted that the appellant should be found credible and in particular, to the extent that the appellant's evidence which emerged at the RSB and the Authority was substantially more detailed than that which he provided in his original statement in support of his refugee claim, this was a function of the limitations in terms of legal aid funding and the reliance on the goodwill of informal interpreters. This should not impugn his credibility. Mr Petris also submitted there was good reason for the appellant's delay in filing his refugee claim namely the fact that he was here on marriage grounds and there was no need for the appellant to make this application.

[24] In terms of the risk to the appellant, Mr Petris submits that he does face a well-founded fear of being persecuted. He had been detained and he is "on their books". His fear has a "valid basis". Mr Petris submitted that the Authority should give some considerable weight to the poor human rights record in Syria and the

fact that torture and mistreatment remains widespread: in short, once it was accepted that there was a real chance of the appellant being at risk of being summonsed to the *Mukhabarat* there was a real risk of him being detained and subjected to torture.

[25] By letter dated 26 May 2009, the Authority served on counsel a bundle of country information relating to the issue of whether Palestinians were still required to obtain an exit permit prior to departing Syria. By letter dated 4 June 2009, counsel made submissions on this country information.

## **THE ISSUES**

[26] 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.”

[27] 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**

[28] A number of points emerged during the hearing but on the whole these were satisfactorily answered by the appellant. Whilst the appellant's account that emerged at the RSB and the Authority was substantially more detailed than that contained in his original statement, the Authority is prepared to accord some weight to Mr Petris' explanation for this. The Authority also notes that there were no discrepancies between what the appellant said in his evidence at the RSB and



to the Authority. His demeanour was consistent with someone recounting events which did happen.

[29] As regards the 2005 detention, whilst at a superficial level it may appear unusual that the appellant was summonsed in 2005 having had no political activity, his claim must be considered, as Mr Petris rightly submits, in the context of Syria. The 2007 DOS report filed by Mr Petris notes:

“There were also numerous reports from human rights organizations that security services arrested citizens who were apparently not involved in political activities. The security services provided no information on the reasons for the arrests and, in many cases, family and friends were unable to obtain information on the whereabouts of the detained at year’s end.”

[30] Add to this the fact that Syria maintains a highly centralised bureaucratic state with a strong security apparatus (as to which see para [37]), that relies on an informers’ network to keep a watch on its minority populations, it is plausible that the appellant could have been arbitrarily selected as a person to place pressure on to become an informer. After all, he worked in a restaurant and might hear conversations.

[31] The main credibility point that emerged related to his evidence that Palestinians were still required to seek formal permission to exit Syria, although this was not endorsed in their passport. Country information sourced by the Authority makes it clear that different rules apply depending on whether the Palestinian has the status of a refugee in Syria – see generally, A Khalil *Palestinian Refugees in Arab States: A Rights-Based Approach* CARIM research reports 2008/2009 European University Institute (2009) at para 3.1.4.; L A Reed’s “Sixty years in Limbo: the Duty of Host States to Integrate Palestinian Refugees Under Customary International Law” Vol 81 *New York University Law Review* 2006, pp351-376 at 374. Khalil makes the following observations of relevance for present purposes:

- (a) Law No 450 of 25 January 1949 established the Palestinian Arab Refugee Institution (PARI) which was the state agency responsible for dealing with the affairs of all Palestinian refugees in Syria. In 1999 it became the General Authority for Palestinian Arab Refugees (GAPAR) and like PARI became the dominant authority in the camps and in Syria’s Palestinian community;

- (b) Law No 260 of 10 January 1956 provides that Palestinians residing in Syria as at the publication of this law were to be considered as “originally Syrian in all things covered by the law and legally valid regulations connected with the right to employment, commerce, national service, while preserving their original nationality;
- (c) Citizenship Law No 276 of 1969 provides that despite otherwise fulfilling the conditions for naturalisation Palestinians cannot be granted citizenship in order to preserve their original nationality;
- (d) Law No 42 of 1975 regulates the departure of and the return of Syrian subjects and Palestinian refugees and the latter can leave and re-enter Syria using officially issued travel documents.

[32] In 2003, Ministerial Decision No 170-6 of 28 December 2003 amended the position so that adult Syrian citizens not employed by the state no longer need to obtain permission to travel – see “Syrian citizens no longer need exit visa to travel” *Asia Africa Intelligence Wire* (4 January 2004). Commenting on freedom to travel Khalil remarks, at p39:

“Palestinian refugees holding Syrian issued [travel documents] can leave and re-enter Syria but ‘freedom to travel’ outside Syria is a relative term, since it also depends on political considerations. Palestinian refugees in Syria need the same authorizations as Syrian citizens.” (citations omitted)

[33] What emerges is a picture of a *partial* relaxing of exit requirements. Certain classes of people are not able to take advantage of the Ministerial decision in 2003 relaxing the requirement to obtain official permission to exit the country. The exemption of state employees is instructive. Given the highly bureaucratic and authoritarian nature of the Syrian regime this exemption evidences a sensitivity in allowing to freely travel persons who might be deemed important to the state’s functioning or who are in a position to inflict political damage on the Syrian state by exposing its workings outside Syria. Furthermore, Mr Petris in his closing submission directed the Authority’s attention to section 1b of the United States Department of State *Country Report for Human Rights Practices 2007: Syria* (2008) which give details of a person who disappeared in April 2007 when going to the offices of the SMI (Syrian military intelligence) “to obtain a travel permit” and who had not been seen again by the end of 2007. While no details about his background or any other similar cases are cited, this episode also points towards there being a less than complete freedom to travel for Syrian nationals or those treated like them.

[34] Weighing all the country information, the Authority finds that the appellant's explanation of having to go to GAPAR and inquire as to whether he would be permitted to leave cannot be dismissed as implausible. It is not the case that all Syrian citizens and those treated like them could by this time freely travel outside Syria irrespective of their background. Given his account of previous arrests and detention by the *Mukhabarat* it is plausible that he may have taken this precautionary step.

[35] The Authority accepts the appellant as a credible witness as to his experiences in Syria. His account is therefore accepted in its entirety.

### **A well-founded fear of being persecuted**

[36] There can be no doubt that Syria remains a country with a poor human rights record. This has been referred to in a number of decisions of the Authority. It is also confirmed by the latest reports from reputable human rights sources – see United States Department of State *Country Reports on Human Rights Practices for 2008: Syria* (2009) which states by way of summary:

“Syria, with a population of approximately 19 million, is a republic under the authoritarian presidential regime of Bashar al-Asad. The president makes key decisions with counsel from a small circle of security advisors, ministers, and senior members of the ruling Ba'ath Party (Arab Socialist Renaissance). The constitution mandates the primacy of Ba'ath party leaders in state institutions and society. President al-Asad and party leaders, supported by various security services, dominated all three branches of government. In May 2007 President al-Asad was confirmed for another seven-year term in elections that were considered by international and local human rights advocates as neither free nor fair. Civilian authorities maintained effective control of the security forces, and members of the security forces committed numerous, serious human rights abuses.

The government's respect for human rights worsened, and it continued to commit serious abuses. The government systematically repressed citizens' abilities to change their government. In a climate of impunity, there were instances of arbitrary or unlawful deprivation of life. Members of the security forces tortured and physically abused prisoners and detainees. Security forces arrested and detained individuals without providing just cause, and lengthy pretrial and incommunicado detention remained a serious problem. Considered common practice since 2006, the government violated citizens' privacy rights and imposed significant restrictions on freedoms of speech, press, assembly, and association, amid an atmosphere of government corruption. Security services disrupted meetings of human rights organizations and detained activists, organizers, and other regime critics without due process. In addition, throughout the year the government sentenced to prison several high-profile members of the human rights community, especially individuals affiliated with the national council of the Damascus Declaration for Democratic National Change (DDDNC), an umbrella organization bringing together a range of reform-minded opposition groups.”

[37] In *Refugee Appeal No 75779* (10 May 2006) the Authority reviewed the governance structures in Syria and, in particular, its security/intelligence apparatus. The Authority noted:

"[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."

[66] 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."

### **Application to the appellant's case**

[38] Given that the estimated number of people working for the security and intelligence agencies is nearly one out of every 153 adult Syrians, the idea that informers are part of this complex web and continue to be heavily relied on is one that is very real.

[39] The question for the Authority is whether by having been placed under pressure, including being tortured, in order to become an informer, the appellant has a well-founded fear of being persecuted even though he was not summonsed again to the *Mukhabarat* between the two months after his release and his departure, over a year later, and he has now spent almost three years away from the country.

[40] After weighing everything in the round, the Authority has determined by a narrow margin that the appellant faces a well-founded fear of being persecuted. In coming to this conclusion the Authority has noted that:

- (a) Syria is still a surveillance society with a pervasive security intelligence apparatus and in which fundamental freedoms of expression and association remain tightly controlled;
- (b) The fact that he has been out of Syria might be something which might engender some local interest and could well result in the appellant being questioned as to his movements. Whilst he would be able to explain quite legitimately that he had left to come to New Zealand on marriage grounds, his interface with the Syrian authorities would at least open up the possibility that further pressure may be placed on him to become an informer;
- (c) The appellant was a victim of torture in the past when placed under pressure to be an informer. While the Authority's focus is on future risk, it is appropriate to give weight to the fact that he has been a victim of torture in the past in the Authority's assessment of that future risk;
- (d) Human rights abuse, including the torture and other mistreatment of detainees, remains common in Syria. There being no relevant change in the country conditions since his last detention, his past treatment is a helpful indicator of what may happen to him in the future should he be detained. There can be no doubt that the torturing of individuals to pressure them to become informers amounts to their being persecuted.

[41] Given these factors, the Authority is satisfied there is a sufficiently solid evidential foundation underpinning his claim such that the risk of his being persecuted is at the level of a real chance. He has a well-founded fear of being persecuted.

### **Nexus to Convention ground**

[42] There is no doubt the appellant's predicament is being contributed to by his ethnicity as a Palestinian which amounts to race for the purposes of establishing a Convention ground. The Syrian authorities obviously wish to monitor what the Palestinian community is doing and this contributes to his predicament.

**CONCLUSION**

[43] 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  
Chairperson