

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 72173/2000

AT CHRISTCHURCH

<u>Before:</u>	V J Shaw (Member)
<u>Representative for Appellant:</u>	The appellant represented himself
<u>Appearing for NZIS:</u>	No appearance
<u>Date of Hearing:</u>	31 August 2000
<u>Date of Decision:</u>	28 September 2000

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service, declining the grant of refugee status to the appellant, a citizen of Morocco.

THE APPELLANT'S ACCOUNT

[2] The appellant is a single man aged 32 years. His father is now retired from his position with a large state-owned Moroccan company. The appellant described his family as middle class and he and most of his brothers and sisters have been well educated.

[3] The appellant commenced his university education in 1988 studying for a degree in English literature. During his first two years at university, the appellant developed an increasing political outlook which resulted in his joining the National Union of Moroccan Students (NUMS) in 1990. This organisation, like many such student bodies, was concerned with promoting the interests of students, as well as pursuing a wider political agenda. The two main factions within the NUMS were the Islamists and the Socialists though the appellant was not aligned with either

faction. The early 1990s saw increased student political demonstrations especially in the major cities, calling for freedom of speech, the release of political detainees, and an end to torture and corruption. Such demonstrations were often attacked by the security police and many students arrested. The appellant was only ever an ordinary member of the NUMS although described himself as an “active member”.

[4] After his graduation in July 1993, the appellant took up employment as an English teacher. His positions were short term and over the following months he moved between several different cities though still maintaining his contacts with the NUMS at his old university. At the commencement of the academic year in September 1994, he attended NUMS meetings at his old university and involved himself in the NUMS campaign to put pressure on the university administration to re-admit students who had been unjustifiably expelled. It was also agreed around this time, that the appellant and four others would form a group for the purpose of writing and printing articles to be distributed amongst the students. One of the group was a cartoonist. The articles were published under the name of the NUMS and addressed the usual political issues but in addition the articles attacked the monarchy, its links with corruption and its amassing of enormous wealth in stark contrast to the poverty of so many Moroccans. Such direct attacks on the monarchy were highly dangerous.

[5] Despite their extreme caution, within a short time the authorities appeared to have become aware of the origins of the articles. During October 1994 two student members of the group were arrested by the security police. Immediately afterwards the appellant’s family warned the appellant that they suspected that the family home was being watched and that several persons in civilian clothes had made enquiries about him. The appellant assumed from this advice that it was probable that his co-workers had given his name under torture. His family cautioned him not to return home and, if possible, to leave the country. The appellant left his flat and went to stay with his brother who was living in a relatively remote area. He learned much later through his sister, that his flat was searched around this time. The appellant’s family organised funds for him to leave Morocco and fly to South Africa on 7 December 1994.

[6] The appellant remained living in South Africa until 15 March 1997 when he departed for New Zealand travelling on a French passport. The appellant did not apply for refugee status in South Africa. His explanation for this was that when he arrived he initially held a visitor’s permit. However, after a period of living in

Johannesburg he became totally convinced that he did not wish to stay in South Africa. He said he found himself living with a different type of fear. Because of his difficult economic position he had to live for a time in central Johannesburg which had become a black area and home to many drug dealing West Africans. Crime was horrendous and people were continually being shot. The appellant himself was assaulted and robbed on several occasions.

[7] The appellant's younger brother, after graduating from university, joined the army with a view to training as an aircraft engineer. However, his career was cut short when he was arrested in March 1998 and sentenced to one and half years' imprisonment by a military court. He was released at the end of 1998 at the instigation of a well connected relative who is an army officer and a prosecutor in the military court. The appellant is unable to say with what exactly his brother was charged, but he is certain that it related in some way to his own activities. He acknowledged that he had not been able to get any real details from his family who had been reticent about the matter. More recently he had asked his sister for information but all she would say was that his brother had been charged with "complicity". Their relative, despite his position, had been unable to obtain the brother's early release and had indicated to the family that the brother's arrest was a political matter and related to the appellant.

[8] The Authority raised with the appellant country information concerning the improved human rights records since the death of King Hassan II during July 1999 and the accession of his son Mohammed VI. While acknowledging the reforms, the appellant rejected any suggestion that he need have no fear of coming to harm should he now return to Morocco. As of yet, his family had not encouraged this. He believes that although there may have been a relaxation of restrictions on freedom of speech, it is still taboo in Morocco to openly criticise the monarchy or royal family. The whole Moroccan political system, he suggests, is geared towards the preservation of the royal family. Even when talking amongst themselves, no ordinary Moroccan would dare to criticise the monarchy. The appellant's involvement in the writing of articles suggesting that the monarchy was corrupt was a very sensitive matter which could still cause enormous harm to him and his family.

[9] Unfortunately, the appellant was not legally represented. Because of this and because of the potential importance to his case of his brother's arrest and imprisonment, the Authority felt that fairness required that he be given the

opportunity to approach his family with a view to trying to establish the reasons for the arrest. At the completion of the evidence, the Authority granted 21 days leave to the appellant to make further enquiries with his family to see if he could obtain more specific information and to file any submissions he may wish to make in response to the information contained in the latest Department of State Country Report on Morocco, a copy of which the Authority provided to the appellant.

[10] The Authority subsequently received further written submissions from the appellant. As far as his brother is concerned, he writes as follows (verbatim):

“On the same day after the interview, I called my sister to find out about further information concerning the arrest and jailing of my brother, [X]. She couldn’t submit much other than the same facts that I previously mentioned during the interview, but she offered me the home phone number of our relative, Com. [Y]. Later during the weekend, I managed to call him and I came out with the following:

- He asserted that he intervened, though not directly involved, using his connections within the police force, to spare [X] from being physically assaulted while being interrogated in police custody. He was eventually tried at the military court, [X]; then jailed in [Y] prison.
- The whole situation including the arrest and detention of [X] was instigated by the army as well as a body related to the ministry of interior called (DST)=Direction de la Surveillance du Territoire=(Office of Territorial Surveillance).
- The mere relationship or connection of an army official to a wanted political dissident constitutes a high likelihood of complicity as interpreted by the authorities.
- Some of the items that existed in [X’s] place were seized (a letter, photos), as well as the recorded phone conversation; all these were enough for the authorities to start suspecting and accusing him of complicity. My relative then confirmed to me that a case of so called “complicity” within the army is considered an offence, and that the authorities don’t have to justify or refer to the law to convict the person involved. He then said that had [X] committed a crime or an offence other than the one he was accused of, he [our relative] could have easily interfered and done something on his favour.
- Another revelation that I learnt from our relative was that he had to intervene at the time when I left the country to prevent any physical assault after my family contacted him when the police in [A] summoned my father for questioning. This new revelation, as much as it struck me, it revealed to me how my family, especially my father, in trying to prevent me from turning myself in have kept that incident secret from me for years. Indeed, if ever I knew that my parents were subject to physical harassment, I don’t know what I could have done with myself, especially when I was still in hiding in Morocco. Up till today, I haven’t discussed this issue with my family.

My relative finished the conversation by warning me to be very careful not to venture to return to Morocco because of the eminent danger that could face me on arrival, and since it would be hard for him to interfere in sensitive issues like these.”

THE ISSUES

[11] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

[12] 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

[13] Before proceeding to determine the above two issues it is first necessary to make an assessment of the appellant's credibility. The appellant impressed as an open and sincere witness. His account has been highly consistent. Although the evidence concerning the appellant's brother has taken time to emerge, the Authority does not consider that this should be held against the appellant given his otherwise highly credible account and demeanour. The Authority therefore accepts his account of events as outlined above.

[14] Turning now to the issue of well-foundedness, the Authority is in no doubt that at the time the appellant fled Morocco, he faced a real risk of persecution for the expression of his political opinions, namely arrest, torture and detention for a relatively lengthy period. The question to be determined is whether or not, in the light of the reforms that have been initiated by Mohammed VI since ascending the throne in July 1999, there remains a real chance of the appellant being persecuted in the event of his now returning to Morocco.

[15] Initially, like the refugee status officer, the Authority inclined to the view that the passing of time, in conjunction with the recognised improvement in Morocco's human rights record under Mohammed VI, may well have diminished the interest of the security authorities in the appellant.

[16] Summarising the most significant developments which might lend support to this view, the United States Department of State, in its latest country report, states:

“However, there was further progress on some important human rights issues during the year. In March the Human Rights Minister announced that the Government's priority was to harmonize local laws on torture with international treaty obligations. In April the Youssoufi Government organized the first-ever conference on human rights in the Arab world. Soon after assuming the throne, King Mohammed VI stated his own commitment, along with that of the Youssoufi Government, to advancing respect for human rights, and established a new royal commission charged to indemnify former political prisoners and their families. The Minister for Human Rights pledged in May that the "excesses of the past" would end. In August the Government announced a substantial reform advancing prisoner rights and protections, and it cleared a backlog of unenforced legal judgments during the year. In September Abraham Serfaty, who had been exiled since 1991, was allowed to return to Morocco. In November the King relieved of his duties Interior Minister Driss Basri, who was considered by most observers to have been the driving force behind years of abuse of citizens by police and security forces. One immediate effect of Basri's dismissal, most observers agree, was that the practice of press self-censorship has diminished considerably. While the Government began to make significant progress in resolving the fate of those citizens abducted from the 1960's through the 1980's, human rights groups continue to call for full disclosure of all available information.” United States Department of State *Country Reports on Human Rights Practices 1999: Morocco*, (April 2000) Vol II, page 2170 at page 2171.

[17] The report further notes that 1999 saw no reports of political killings and no new cases of disappearances for the fourth consecutive year.

[18] These improvements in the human rights record have followed on constitutional reforms initiated in 1996 by the late King Hassan II, which provided for a bicameral legislature consisting of a lower house, elected by universal suffrage and an upper chamber, whose members are elected by various regional, local and professional councils. In March 1998, King Hassan named a coalition government headed by the opposition socialist leader, Abderrahmane Youssoufi, and composed largely of ministers drawn from opposition parties.

[19] The appellant, in detailed written submissions, has urged a more cautious approach. He argues that to understand the oppressive Moroccan system, one needs to go back to the failed military coups of the past which eventually led to the establishment of a regime responsible for thousands of human rights abuses. The late king made of the army an instrument of oppression and destruction. Whoever

belonged to the “system”, enjoyed tremendous wealth, impunity and power. This “system”, according to the appellant, has been characterised over the years by deceit, inhuman treatment to its own people and a high degree of corruption. The authorities have always given false reports of the actual extent of human violations against Moroccans and Sahrawis. From time to time, royal pardons and special amnesties have taken place, yet every Moroccan knows that to qualify for such amnesties, a person needs a strong and well-placed connection within the “system”, as was the case with the appellant’s own brother. Although the appellant acknowledges that Mohammed VI is more liberal than his father, he remains sceptical that the authorities are not still playing their usual political games and considers that even with perfect leadership, democracy and the process of healing the wounds of the past, are still a long way from being achieved. Even though the new king appears to be genuinely determined to build something out of the ruins left by his father, many people who served the regime during the last decades have accumulated huge wealth and assets within and outside the country. For them, this positive recent transition and progress must seem threatening to the continuation of their prosperity; a prosperity built on other people’s misery. The appellant submits that widespread human rights abuses continue in Morocco. There continues to be danger for someone such as himself who contributed to the writing, printing and distribution of articles and pamphlets criticising the king, the royal family and the monarchy as a whole. It has already led to the shattering of his brother’s life and kept his family in worry and suffering for the last six years.

[20] The Authority acknowledges that despite welcome reforms, Morocco is still very far from being a democracy. As the United States Department of State reports, ultimate authority rests with the King, who presides over the Council of Ministers, appoints all members of the Government, and may, at his discretion, terminate the tenure of any minister, dissolve the Parliament, call for new elections and rule by decree. The results of the 1997 elections are credibly believed to have been heavily influenced, if not predetermined, by the Government. *Ibid* (page 2170). Members of the security forces continue to commit serious human rights violations, including torture of detainees. The security forces are reported to have responded brutally to demonstrations and strikes, especially in the Western Sahara where, during a demonstration in September 1999, dozens were severely beaten and disproportionate sentences of up to 15 years handed down, after trials which have been condemned as unfair. (*Ibid*, page 2179).

[21] The appellant's concerns relating to the power of what he terms the "system" in Morocco is echoed in the report by Ignacio Ramonet, "Morocco: the point of change", *Le Monde Diplomatique*, July 2000. In a survey of the achievements of the Youssoufi's government, mention is made of the potential of the *makhzen* to impede the current transition to democracy and modernity.

"The *makhzen* is a political and administrative structure, the basis of power in Morocco, which includes rituals and traditional ceremonies; the form of authority throughout the governing class, with the King as its lynchpin."

[22] Various political commentators quoted by Ramonet speak of how the present king's concern for the poor, albeit sincerely held, also amounts to an astute strategy for cutting the ground from under the Islamists whose constituency lies in the poor neighbourhoods.

"Now the king appears as the major rival for religious legitimacy, since he is the descendant of the prophet Mohammed and commander of the faithful and also because of solidarity with the deprived and excluded."

[23] Although the real power and attraction of the Islamists is disputed, fear of their influence remains real.

"Islamists are a convenient distraction, enabling the government to justify its inaction and non-existent reforms and accuse its critics of being provocative. Plans to reform women's status have been shelved because they would help the Islamists. There will be no really truly democratic elections because they would benefit the Islamists. Nothing will really be done to modernise social values for that, too, would play into their hands."

[24] The appellant says that he will be harmed because of his past involvement in the production of articles and pamphlets critical of the previous king and the very institution of the monarchy. He points to the sacrosanct position of the monarchy in Morocco. Criticism of the monarchy, Islam or support for Saharan independence have, he said, always been taboo subjects. The United States Department of State report supports this, referring to the continued restrictions on freedom of speech in respect of these sensitive topics with most journalists practising self-censorship:

"... both law and tradition historically have prohibited criticism on three topics: the monarchy, Morocco's claim to the Western Sahara and the sanctity of Islam." (*ibid* p 2178).

[25] While the Department of State notes some relaxation with respect to discussion of the Western Sahara (although *Le Monde Diplomatique* refers to the

recent seizure of *Le Journal*, a respected French-language weekly, due to its publication of a short interview with the leader of the Polisario Front), there is no evidence that criticism of the monarchy is yet tolerated. For instance, Amnesty International reports that three prisoners of conscience sentenced to up to five years' imprisonment for "insulting the royal family", remained in prison at the end of 1999 (Amnesty International, *Report 2000*, page 172). The government also continued to resist calls for the release of Islamist leader, Abdussalin Yassine, under house arrest since 1989 for refusing to acknowledge the religious authority of the king. *Le Monde Diplomatique* reports that the government finally authorised his release in May 2000. Such is the sensitivity to these issues, that the Department of State reports that while universities enjoy relative academic freedom in most areas, they are still barred from open debate on the monarchy, the Western Sahara and Islam. Government informers monitor campus activity and rectors are appointed by the Ministry of Interior. (*Ibid*, page 2178).

[26] The Authority, in extending the benefit of the doubt, accepts that the arrest and detention of the appellant's brother related to the appellant's activities. The brother's fate must be taken as a good indication of the seriousness with which the appellant's activities are regarded, in particular, by members of the military/security forces who constitute an integral element of the *makhzen*.

[27] The appellant's activities in 1994 constituted a serious political offence. The evidence suggests that, despite the recent reforms, his conduct would still be regarded as such. The Authority therefore finds that, in the event of the appellant returning to Morocco, there is a real chance that he will be apprehended, interrogated, ill-treated and, quite possibly, subjected to imprisonment for a relatively lengthy period. His fears of persecution are therefore well-founded.

[28] The persecution feared by the appellant relates to the Convention reason of political opinion.

CONCLUSION

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

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V J Shaw
Member