

HEALD J.: -- The Appellant is a citizen of Syria. He was born on May 1, 1972 and was 15 years of age when he left Syria in November of 1987. He was 17 years old at the time of his full hearing before the Refugee Division on September 27, 1989. Both of the appellant's parents are deceased and he lived with his brother, Ali, before he left Syria.

In 1986 or 1987, the appellant, who is a Shiite Muslim, joined with other members of the jamat (congregation) of which he was a member, to raise money to send food for the poor and needy people in Lebanon. This decision to form such a group came following a suggestion to that effect from the Imam of their congregation. The Imam is the leader of the congregation and is similar in function to Ministers, Priests, Rabbis etc. of churches in other denominations. The appellant's brother Ali was also a member of the group which met every two to four days at the home of one of the members, starting in the fall of 1987. During the course of one meeting, members of the Syrian Secret Intelligence and the Syrian police came into the meeting and warned the group to cease its activities. There was a further statement by the police to the effect that if the group wished to raise money, it should make contributions to the Syrian army effort in Lebanon. Since the group was of the view that they were not doing anything illegal or wrong, they decided to continue with their charitable activities since, as Moslems, it was their duty to raise money to help the poor. While the group was holding a subsequent meeting in the same house two weeks later, the Syrian authorities arrived once more and questioned the group as to why they were meeting again contrary to the earlier warning. The appellant's brother, Ali, attempted to explain the group's intentions to the authorities whereupon they commenced beating Ali. The rest of the members of the group escaped. Ali, alone, was arrested and imprisoned. He has not been heard from since. The appellant's sister-in-law visited in Syria in 1989 and she reported that nobody in the family had any information concerning Ali.

The appellant went to live with his uncle since he was afraid to return home. While hiding at his uncle's home, the appellant was informed by his neighbours that the police had come looking for him. The police also came to the appellant's uncle's home on two occasions to inquire as to the whereabouts of the appellant. The appellant had applied for a visa to the U.S.A. before encountering problems with the Syrian authorities. While he was in hiding at his uncle's house the visa was issued to him and he left Syria for the U.S.A. He remained in the U.S.A. for some eighteen months during which time he lived with his half brother Hassan, an American citizen. His brother was unable to arrange for him to remain permanently in the United States.

The appellant testified that there were four or five different kinds of police in Syria including Intelligence Police, Military Police and Defence Police. He said that the police who interfered with the activities of his group were partly from the Intelligence Police and partly from the Military Police. He was questioned by police at the airport when he left Syria but those policemen did not belong to the Forces who had interfered with the activities of his group and had arrested his brother Ali.

In its reasons, the Board made the following comments with respect to the appellant's testimony (A-B-PP 176-177):

"The claimant's testimony lacked detail and was sometimes inconsistent. He was often unable to answer questions and sometimes appeared uninterested in doing so. While this may be partly due to the claimant's young age, the panel was not fully satisfied of his credibility as a witness."

The appellant was the only witness who gave oral testimony before the Board. His evidence was uncontradicted. The only comments as to his credibility are contained in the short passage quoted supra. That passage is troublesome because of its ambiguity. It does not amount to an outright rejection of the appellant's evidence but it appears to cast a nebulous cloud over its reliability. In my view, the Board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The Board's credibility assessment quoted supra is defective because it is couched in vague and general terms. The Board concluded that the appellant's evidence lacked detail and was sometimes inconsistent. Surely particulars of the lack of detail and of the inconsistencies should have been provided. Likewise particulars of his inability to answer questions should have been made available.

The Board then proceeds in its reasons (page 177) to note that the appellant's claim is based on the grounds of religion, political opinion and membership in a particular social group and that the evidence most "therefore indicate that the claimant has good grounds for fearing persecution for one or all of these reasons should he return to Syria." After deciding on the basis of the appellant's evidence that he had no problems practising his religion in Syria, the Board concluded that the appellant did not suffer persecution on religious grounds. On page 176 and page 177, the Board finds his evidence credible enough to rely on it as the basis for dismissing one component of his claim to refugee status. This selective treatment in respect of various segments of the appellant's testimony is not calculated to enhance one's confidence in the Board's assessment of the appellant's credibility.

With respect to the appellant's claim to fear of persecution on the basis of political opinion, the Board stated: (pp 177-178)

"With respect to political opinion, counsel for the claimant submitted that by attending the informal meetings of the group, the claimant would be perceived by the authorities as holding a political opinion. The panel is not persuaded by this argument. First, this loosely knit group, with apparently charitable aims, had no official title, office or status. Second, the claimant, a boy of fourteen at the time, had no specific role or responsibility within this group. Finally, the claimant engaged in no other form of behaviour or expression which would have given rise to a perception of his political opinion by the authorities. For all of these reasons, the panel is of the opinion that the claim is not properly based on the ground of political opinion."

I have no difficulty in concluding that the Board clearly erred in law in its determination of the appellant's claim to fear of persecution on the basis of political opinion. The above reasons make it apparent that this Board fell into the same kind of error as that which occurred in the Inzunza case. In dealing with the proper test for evaluating "political activities", Mr. Justice Kelly said

"□ the crucial test in this regard should not be whether the Board considers that the appellant engaged in political activities, but whether the ruling government of the country from which he claims to be a refugee considers his conduct to have been styled as political activity."

When this test is applied to the facts enumerated herein, one is impelled to the inescapable conclusion that the members of the appellant's charitable group were persecuted because the Syrian security forces had concluded that the group was politically motivated against the Government and thus politically undesirable. I agree with counsel for the appellant that the Board's comments that the group is "loosely knit", that it "has no official title, office or status" is irrelevant. Likewise, the comment that the appellant was a boy of fourteen at the time, had no specific role or responsibility within the group and engaged in no other form of behaviour or expression giving rise to a perception of his political opinion is also irrelevant. The Syrian authorities sought to persecute the appellant because of his perceived political opinion. In failing to find that the appellant had a well-founded fear of persecution based on his political opinion, the Board erred in law in my view, when the oral and documentary evidence on this record is taken into consideration.

For these reasons, then, I would allow the appeal, and pursuant to paragraph 52(c)(i) of the Federal Court Act, render the decision the Board should have given and declare the appellant to be a Convention refugee.

HEALD J.

STONE J.:-- I agree.

LINDEN J.: I agree.