

NATIONAL COURT OF ASYLUM

Hearing of 18 April 2008

Read on 14 May 2008

N° 493412

Mr. Mohammad ASSFOUR

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

The National Court of Asylum

(Plenary session)

Considering the appeal n° 493412, registered on 17 May 2004 with the secretariat of the Refugees Appeals Commission, presented by Mr. Mohammad ASSFOUR, residing at c/o ATE 10, rue de Maeyer 06300 NICE, with the aim of requesting the Commission to quash the decision of the Director General of the French Office for the Protection of Refugees and Stateless Persons dated 20 April 2004, whereby Mr. ASSFOUR's asylum application was rejected, on the following grounds:

born in Kuwait in 1976 in a family of Palestinian refugees, he left that country with his parents, in 1990, during the invasion of the Iraqi army, and settled in the West Bank, in Nablus, his father's birthplace; the members of his family were expelled in 1992 following an Israeli court order, so that they finally found refuge in the Palestinian camp of Irbid in Jordan, where he himself lived from 1993 until June 2003. In Jordan, he was entitled to the assistance provided by the United Nations Relief and Works Agency for Palestinians in the Near East (UNRWA), with which he was registered as a refugee. Since several members of his family were historically involved in the Democratic Front for the Liberation of Palestine (DFLP), his family was highly suspected by the Jordanian secret services. In June 1998, he married Miss Mohammad Fatma, who was of Palestinian origins as well, born in Irbid. In July 2001, one of his brothers was seriously wounded after a fight with the member of an influential Jordanian family. Himself and other members of his family were sent to jail until his brother surrendered to the Jordanian authorities. Some of the victim's close relatives or friends kept retaliating against his family whereas the Jordanian police did not intervene to protect them. Then he tried in vain to request the arbitration of local notables to solve the dispute. Considering the connections of the victim's family with members of the State apparatus, he was afraid that his brother would be heavily condemned following an unfair judicial process. Therefore, he decided to pay the bond requested for his release, and organized thereafter his escape to Syria. After his brother's departure, he became himself the main target of the intrigues of the victim's close relatives. As he was threatened and as he could not claim proper protection from the Jordan authorities, he left irregularly that country with his wife and children, with forged passports purchased to organize their escape ;

Considering the appealed decision ;

Considering the asylum application presented by the applicant to Director General of the French Office for the Protection of Refugees and Stateless Persons and recorded on 26 October 2004, communicated by the latter without further observations ;

Considering the other documents produced and enclosed in the file ;

Considering the resolution of the General Assembly of the United Nations n° 302 (IV) of 8 December 1949 which established the United Nations Relief and Works Agency for Palestine Refugees ;

Considering the Geneva Convention relating to the status of Refugees of 28 July 1951 and the Protocol relating to the status of refugees, adopted in New York on 31 January 1967 ;

Considering the code on entry and stay of foreigners and of the right of asylum as amended, notably its Part VII ;

After Mr Fournel's report, Rapporteur of the case, during the public hearing of 18 April 2008, Mr. Piquois' observations, the applicant's counsellor, and the latter's explanations assisted by Mrs. Kattar, sworn interpreter, as well as Mr. Pujol's observations, representative of the Director General of the French Office for the Protection of Refugees and Stateless Persons ;

Following deliberations ;

Without considering the other arguments of the appeal

Considering that according to Article 1D of the Geneva Convention,

« This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention ».

Considering, in view of the "travaux préparatoires" of the Geneva convention, that the State parties to the aforementioned convention intended to set up for the Palestinians registered with the United Nations Relief and Works Agency for Palestinians in the Near East (UNRWA) a particular protection regime in the form of special assistance arrangements; that the provisions of the second paragraph of article 1D must be interpreted with the aim of ensuring the continuity of such protection; that, from the moment it ceases, the equivalent protection provided by the provisions of the Geneva convention should be substituted, without prejudice to the application of article 1E and article 1F of the Geneva convention or the existence of a protection provided by a State or another international or regional organization ;

Considering, in the present case, that Mr. ASSFOUR was registered with UNRWA; that the assistance he was entitled to by the UNRWA is deemed to have ceased from the moment he left the area of activity of the abovementioned agency; that it does not appear from the documents enclosed in the file that he has Jordanian citizenship or enjoys rights and obligations derived from Jordanian citizenship; that the mere provision of the copy of a passport is insufficient to invalidate this analysis; that, finally, it does not appear from the documents enclosed in the file nor is it alleged that the applicant could have committed acts likely to exclude him from the protective provisions of the Geneva convention ;

Considering that, on the basis of the above, Mr. Mohammad ASSFOUR is entitled to claim refugee status ;

DECIDES

article 1 - The decision of the Director General of the French Office for the Protection of Refugees and Stateless Persons of 20 April 2004 is annulled.

article 2 – The status of refugee is granted to Mr. Mohammad ASSFOUR

article 3 - The present decision will be notified to Mr. Mohammad ASSFOUR and to the Director General of the French Office for the Protection of Refugees and Stateless Persons.

Deliberated on 18 April 2008 in presence of: Mr. Bernard, President of the National Court of Asylum, Mr. Sauzay, Vice-President of the National Court of asylum, Mr. Le Pors, Chamber President; Mr. Benbekhti, Mrs. Robert, Mrs. Vallaud, eminent figures appointed by the United Nations High

Commissioner for Refugees; Mr. Lefevre, Mr. Gendreau, Mrs. Ginesty, eminent figures appointed by the Vice-President of the Council of State;

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The President: F. Bernard

The Secretary General of the National Court of Asylum: N. Guilbaud

FOR FORMAL NOTIFICATION: N. Guilbaud

The present decision can be appealed before the Council of State. To be admissible such an appeal must be presented through a lawyer to the Council of State and the Court of cassation within two months as of the notification of the decision. Moreover, this decision is likely to be challenged through a judicial review before the National Court of Asylum if it is alleged that the decision of the Court was taken on the basis of a fraud. This appeal must be exercised within two months after the fraud is discovered. No other appeal procedure before other courts can be initiated against the decisions of the National Court of Asylum.