

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 73873

AT AUCKLAND

<u>Before:</u>	P Andrew (Chairperson) G Pearson (Member)
<u>Counsel for the Appellant:</u>	R McLeod
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	10 and 11 November 2004
<u>Date of Decision:</u>	28 April 2006

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a stateless Palestinian whose former residence was in Egypt.

INTRODUCTION

[2] The appellant, a single man in his mid-thirties, was born in Egypt. His father is Palestinian and his mother Egyptian. The appellant's legal status in Egypt is uncertain. He claims that he is not entitled to Egyptian citizenship but contends that he can re-enter that country given that his mother is an Egyptian citizen

[3] The appellant claims he is at risk of being persecuted by the Egyptian authorities for suspected involvement with the Palestinian Liberation Organisation (PLO) and political Islam. He first came to the attention of the Egyptian authorities because his father was a relatively senior figure in the PLO. It is said that despite his lengthy absence from Egypt (ie since 1997) the authorities there would still be interested in him should he return.

[4] The critical issues in this appeal are two-fold: whether as a matter of fact the appellant can return to Egypt, his country of former habitual residence; and, if so, whether his fears of persecution by the Egyptian authorities are well-founded.

[5] The appellant arrived in New Zealand during May 1999 and applied for refugee status that month. A refugee status officer of the RSB interviewed him on 6 December 2001. A decision declining his application was published by the RSB on 31 May 2002. He has appealed against that decision.

THE APPELLANT'S CASE

[6] The following is a summary of the evidence presented by the appellant. His credibility is assessed later in this decision.

[7] The appellant was born in Egypt to an Egyptian mother and a Palestinian father. The parents met in Egypt where the appellant's father relocated from Gaza due to conflict in that area.

[8] The appellant's father worked for the PLO during most of the appellant's childhood. He ultimately held senior positions in PLO posts, and retired in the mid-1990s. This work was elsewhere in the Middle East as there was no PLO base in Egypt. The appellant's parents would accordingly travel to and from Egypt at regular intervals, and spend extended periods in other Arab countries.

[9] Due to his father not being Egyptian, the appellant was regarded as Palestinian and did not have Egyptian citizenship. He had a residency visa attached to the Egyptian travel documents styled a *Document De Voyage Pour Les Refugies Palestiniens* (Palestinian Travel document). This had to be renewed every two-three years.

[10] The parents still live in Egypt. The father has never obtained Egyptian citizenship. He too holds a Palestinian travel document and must regularly extend his residency permit that is stamped in the document. The appellant's two younger brothers also still live in Egypt and have the same status there as their father.

[11] During his childhood the appellant regularly travelled in and out of Egypt in reliance on his Palestinian Travel Document. The document allowed the appellant to travel freely provided he was not away from Egypt for more than six months. If

he was, then it would be necessary to apply for a new visa. The appellant was not away from Egypt for more than six months until his present absence. The travel when the appellant was young was for family reasons, usually to visit his parents elsewhere in the Middle East. The appellant would variously be with his maternal grandparents in Egypt, or with his parents in those other Middle Eastern states.

[12] The first time the appellant experienced difficulties with the Egyptian authorities, was when he was about 16 years of age. This was in the late 1980s. Following his return from Saudi Arabia the police visited his grandparents' home where he was staying. They questioned him about what his father had been doing. The appellant was then arrested and detained for about a week, and questioned further regarding his father. He was beaten while in detention. The beatings were administered using hands and sometimes with a stick. The appellant's release was secured by his grandparents and friends of his family approaching the authorities.

[13] Until this time, the appellant had been subject only to routine scrutiny at the Cairo Airport when leaving to travel to other countries. However, from this point the level of scrutiny by the authorities significantly increased, and the appellant was questioned at length at Cairo Airport whenever he travelled. The Egyptian authorities wanted to know about his father's work with the PLO. The appellant attributed this to tension between Egypt and the PLO. The appellant considers the true relationship between Egypt and the PLO is fraught; it is disguised by a public façade of mutual respect and support.

[14] From this time onwards the Egyptian police would regularly visit the appellant, at least twice per year at his home in Egypt. Sometimes he was detained. This was approximately once per year.

[15] In 1991, during the Gulf War the appellant was detained by the Egyptian authorities, as were many other Palestinian people. This detention lasted some two weeks, and the appellant was questioned about who he supported in the war. During that detention the appellant was badly injured, and subsequently had to have surgery for the facial injuries inflicted by officials.

[16] Whenever the appellant was detained and questioned the authorities would always ask him about his father and the PLO. The appellant understood from his interrogators that his father was suspected of having given negative comments to journalists regarding the Egyptian government. There was some substance to these suspicions. The appellant's father did provide information to journalists

regarding difficulties Palestinian people faced in Egypt. He was concerned about discriminatory treatment of displaced Palestinian persons living in Egypt.

[17] During the years that the appellant's father was travelling to and from Egypt for work, the father was mistreated by the Egyptian authorities when entering the country. He would be detained at the airport for several hours, and at times for a day or two. He was physically mistreated but not as badly as the appellant's mistreatment.

[18] Since his retirement from the PLO, the appellant's father has never left Egypt. Following his retirement the Egyptian police would visit the appellant's father approximately twice per year and question him about the PLO. However, during this time he has never been seriously harmed by them.

[19] The appellant went to university in the early 1990s. Initially he made inquiries about his entitlement to study, on the basis his mother was Egyptian. He was told he would have to pay full fees, as he was not an Egyptian citizen. However, he could not afford to pay the fees. The appellant then obtained a forged identity card, and used that to gain access to the university without having to pay fees. He realised that while the forged card would allow him access to the university, he would subsequently have to do compulsory military training. The false card would not be effective at that point since the authorities would likely check his original birth certificate. The appellant attended the university for five years, using a false identity.

[20] When the appellant first went to university the Egyptian police searched for him, after discovering he was no longer living at his family home. When they located him he was questioned as to whether he was doing something connected with his father's PLO interests. They did not discover his false identity at that time.

[21] In 1997, the appellant was detained by the Egyptian police for some 35 days. He had obtained work in an Egyptian city some distance from his home. He travelled back to Cairo for the purpose of applying for a visa so he could work overseas. When he did so, he was questioned by the police about whether he had completed military service. It was a requirement to complete the service if he was Egyptian, and the appellant was of an age where he should be completing the service. Questions were raised and it became evident the appellant had a Palestinian background, and had used false identity documents. He was accordingly put into detention, and questioned further about his links with the PLO. The authorities made reference to the appellant's father but also accused the

appellant of working for the PLO in his own right.

[22] While in detention the appellant was beaten and kicked. He was released after his family paid money to the officials. He subsequently had to seek medical treatment for his injuries.

[23] Soon after his release from detention, the appellant obtained a non-returning visa which allowed him to travel to southern Europe. He had to bribe officials to obtain the visa. He was also interrogated by immigration officials on departure from Cairo Airport. When reaching the European city he attended classes to learn the language of that country. When he got there he considered applying for refugee status, but was advised by people he met that the result might be a forced return to Egypt. The appellant was able to extend his stay, and after some six months left and travelled elsewhere in Europe.

[24] He eventually arrived in Denmark. Contacts had advised him it was a good place to apply for refugee status; but that he should not disclose his mother was Egyptian, or that his father had been a PLO official. The appellant accordingly applied for refugee status in Denmark on the basis he was Palestinian, and had no rights living in Egypt. The claim was denied.

[25] Shortly before he was to be deported from Denmark back to Egypt, the appellant obtained a false Danish passport and travelled to New Zealand arriving here in May 1999.

[26] In the last 18 months the appellant's father was detained by the Egyptian authorities for five to six days and physically mistreated while in custody. One of the appellant's brothers was also mistreated by the Egyptian authorities during the last four years. He was hit on the face and the body.

[27] The appellant's father still has PLO contacts, but he is now an elderly man and no longer actively involved in any PLO matters.

[28] Egypt will normally refuse to allow Palestinian people to be re-admitted to Egypt if they leave the country and attempt to return following the expiry of their re-entry visa or Palestinian travel documents. However, because the appellant's mother is Egyptian he would be admitted if he applied for a visa; or if removed from New Zealand.

[29] The appellant fears that if he returns to Egypt he will be detained indefinitely by the Egyptian authorities, most likely at Cairo Airport, and tortured by them. He

attributes this fear to his history of detention, the apparent belief by the authorities that he is involved with the PLO and has had a false Egyptian identity card. He acknowledges a degree of uncertainty as to why the authorities have shown a particular interest in him. Their interrogation and questioning of him suggests that they see him as a source of information about the PLO. He also believes that they have wrongly attributed to him an association and involvement with political Islam. Palestinians with false ID are frequently regarded as working for Islamic causes hostile to the Egyptian government. These factors, together with his father's advancing age and ill-health, provide some explanation as to why the appellant is now of greater interest and concern to the Egyptian authorities than either the appellant's father or indeed, other members of his family.

[30] The appellant knows of a number of Palestinians incarcerated indefinitely at Cairo Airport. The appellant's father has previously spoken out to journalists about their plight.

[31] Prior to the hearing, counsel for the appellant produced a medical report indicating the appellant has suffered from depression and also submissions and a written statement from the appellant.

[32] Following the hearing and with leave from the Authority, counsel filed a report from Professor George Joffé of King's College, London University. The report deals with three important issues: the situation of Palestinians in Egypt, Palestinian travel documents and human rights in Egypt.

THE ISSUES

[33] 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."

[34] 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 of the appellant's account

[35] The Authority accepts the evidence given by the appellant as credible. In reaching this finding we record some concern as to the real reason why the Egyptian authorities have previously been interested in him. However, we extend to him the benefit of the doubt and accept, together with the rest of his evidence, that the Egyptian authorities have falsely attributed to him an involvement with the PLO and political Islam

[36] Before addressing the principal issues framed above it is necessary to consider the appellant's nationality and the issue of exclusion under Article 1D.

Nationality

[37] The appellant says that he is stateless. The Authority must therefore consider the issue of his nationality.

Egypt

[38] The appellant claims that he has never been able to acquire Egyptian citizenship or permanent residence in Egypt despite having an Egyptian mother and having been born in that country. His father, a Palestinian born in Gaza, has similarly never acquired Egyptian citizenship or permanent residency. His father, who has now lived continuously in Egypt since 1995 is required to renew his residency permit on a regular basis – ie every two or three years. The situation is the same for the appellant's siblings.

[39] In its decision the RSB referred to Article 2 of the Egyptian Citizenship Code which provides that persons born in Egypt of an Egyptian mother, and whose father is stateless or of unknown nationality, are Egyptian citizens. On the face of this provision therefore, the appellant, born of an Egyptian mother and a stateless Palestinian father may be entitled to Egyptian citizenship.

[40] However, country information, including that obtained by the RSB from the Egyptian Embassy in Canberra, indicates that Article 2 of the Egyptian Citizenship

Code does not apply in any way to Palestinians in Egypt. (See also UNHCR refworld Egypt: *Information of the nationality of a person born in Egypt in 1971 to an Egyptian mother and Sudanese father, and who attended school in Egypt for several years* (1 October 1994)). These materials indicate that someone in the appellant's position – ie born to an Egyptian mother and Palestinian father – would be regarded by the Egyptian authorities as having the same nationality as the father, that is, a Palestinian.

[41] There is some suggestion in the report of Professor Joffé that a Palestinian husband can obtain naturalisation from his wife after two years of marriage. The Joffé text actually reads “for his wife” but we apprehend that this is a typographical error and should read “from his wife”. However, the assertion made by Professor Joffé is not supported by any specific reference to country information and contradicts the materials cited above. Furthermore, it is clear from the evidence of the appellant (and consistent with the information obtained by the RSB from the Egyptian Embassy in Canberra) that the Egyptian authorities do not consider that either the appellant or his father is entitled to Egyptian citizenship. In the present state of international law, questions of nationality are principally within the jurisdiction of the state: see *Refugee Appeal No 72635/01* (6 September 2002) citing the statement by the Permanent Court in the Advisory Opinion concerning the *Tunis and Morocco nationality decrees case* (Advisory Opinion) PCIJ Ser B23 (1923).

[42] The Authority therefore accepts that the appellant is not entitled to Egyptian citizenship. Such doubt as there is, should be resolved in favour of the appellant. Counsel did not seek to argue otherwise.

Palestine

[43] The Authority also finds that the appellant is not entitled to citizenship in the Palestinian Territories of the West Bank and/or Gaza Strip.

[44] As noted in *Refugee Appeal No 73861/02* (30 June 2005) Palestinian citizenship, and the corresponding right of residence in the Palestinian Territories is governed by the principal of *jus sanguine*. This means that citizenship is conferred on all persons born in the Palestinian Territories to Palestinian/Arab parents who carry Israeli identification cards (a condition imposed by the Oslo Agreement). A child born abroad to a Palestinian father is only a citizen of the Palestinian Territories if his father resides in the Territories and holds an Israeli ID

card (*Refugee Appeal No 73861/62* (30 June 2005) at para [48] p11); see also DIRB West Bank and Gaza Strip: *Whether a person who is born stateless in Lebanon of Palestinian parents would be permitted to apply for Palestinian citizenship* (20 May 1998); Palestinian National Authority website *Special Reports of the Palestinian Authority and Citizenship in the Palestinian Territories* (6 June 2000) www.pna.net/reports/mcitizen.htm at section iii Palestinian citizenship.

[45] The appellant's father does not reside in the Palestinian Territories and has no Israeli ID card. The appellant is thus not entitled to Palestinian citizenship. That the father has no right to return to the Palestinian Territories is confirmed by the appellant's own evidence – ie when he explained that the Saudi Arabia authorities were unable to deport the father to the Palestinian Territories while the appellant was still at school.

[46] On the issue of nationality therefore, the Authority concludes that the appellant is stateless. He is not considered a national by any state.

Exclusion – Article 1D

[47] In his report Professor Joffé states that Palestinians in Egypt are excluded from protection under the 1951 Refugee Convention as a result of the provision in the Convention excluding them on the grounds that they are already protected by the UN Relief and Works Administration (UNWRA).

[48] Professor Joffé was obviously referring to Article 1 D which reads:

“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 Commission 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.”

[49] The Joffé report goes on to note that Egypt has not allowed UNWRA to operate within its borders, although it did allow it to operate inside the Gaza Strip when Egypt administered that region up to June 1967. By contrast, UNWRA has operated in Jordan, Lebanon, the Syrian Arab Republic and the West Bank and Gaza Strips. In his footnote Joffé asserts that UNWRA does not provide persons subject to it to security but only with relief, as its mandate outlines. Joffé concludes that UN registered persons are still entitled to seek the protection of other states.

[50] The Authority is satisfied that the appellant is not excluded from protection under the Refugee Convention by virtue of Article 1D. It is clear from the terms of Article 1D itself that it applies only to those who are currently receiving protection or assistance from the UN and that where such protection and assistance ceases “for any reason” the benefits of the Convention are then engaged. This appellant has never received protection or assistance from any UN agency and it is unlikely that he ever will.

[51] The conclusion the Authority has reached is consistent with the approach taken by the Authority in previous decisions (see *Refugee Appeal No 1/92* (30 April 1992)). In that earlier decision it was held that Article 1D was primarily concerned with the status of persons receiving or potentially able to receive assistance from UNWRA (see also *Refugee Appeal No 74260*).

Country of former habitual residence

[52] In terms of Article 1A(2) of the Refugee Convention a refugee claimant without a nationality must establish a well-founded fear of being persecuted in his or her country of former habitual residence (*Refugee Appeal No 72635/01* (6 September 2002) at para [112]).

[53] The protection afforded by Article 33(1) of the Refugee Convention is protection from the act of expulsion or return, whether the act is “legal” under the domestic law of either the sending or receiving state. The issue of return to a country of former habitual residence is therefore an issue of whether return is possible as a matter of fact, not as a matter of law. Article 33 prohibits return “in any manner whatsoever” not in a legal manner whatsoever (see *Refugee Appeal No 72635/01 (supra)* at para [156]: see also *Refugee Appeal Nos 73861 and 73862* (30 June 2005)).

[54] If a stateless person cannot, as a matter of fact return, or be returned to a country of former habitual residence in relation to which a fear of being persecuted is claimed to exist, the claim to refugee status must fail as the fear is not a well-founded fear and past persecution alone is insufficient to establish a claim to refugee status. The Authority thus now turns to consider the issue of whether the appellant can in fact be returned to Egypt.

Is Egypt the country of former habitual residence?

[55] The appellant has a Palestinian Refugee Travel Document. This is a travel document held by many Palestinians living in Egypt and is used to leave and enter the country. Such travel documents are normally valid for five years but their validity is also conditional on the holder possessing a residency permit.

[56] The appellant's travel document has expired, including of course his Egyptian residency visa. He has been out of Egypt for a period well in excess of six months and has no re-entry visa.

[57] While Palestinians can travel on these Palestinian Refugee Travel Documents in and out of Egypt, they can only re-enter Egypt if they return within six months or by applying for a one year visa justified by evidence of employment or education abroad. Palestinians who acquired Palestinian travel documents after 1994 must surrender their Egyptian travel documents and are then treated as foreigners in Egypt. Failure to return within the stipulated period can mean that residency rights are revoked (see the Joffé report at para [23]).

[58] There is conflicting country information on whether an expired Palestinian travel document can be renewed outside Egypt and thus allow for a return to the country. The DFAT CIR No 48500 *Return of Palestinians to Egypt* (FISNET 1.6 Asylum and migration) 12 September 2002 states that an expired re-entry visa cannot be renewed or extended outside of Egypt. If a re-entry visa expires or if a Palestinian is outside Egypt it cancels his/her residency visa (even if it was still valid for one or two years) at the same time.

[59] By contrast, Professor Joffé's report concludes that it is possible for Palestinians to renew expired Palestinian travel documents and to return to Egypt. Professor Joffé cites evidence of this having occurred and makes specific reference to the websites of the Egyptian consulates in Ottawa and San Francisco. Those two websites expressly invite Palestinians whose travel documents have expired to renew them and the websites provide details of the necessary procedures.

[60] In *Refugee Appeal No 1/92* (30 April 1992) the Authority held that if the nationality of a candidate for refugeehood is indeterminable, it would be best in keeping with the Refugee Convention, as well as with the humanitarian spirit underlying it, to give the appellant the benefit of the doubt. This would mean in some cases considering him a national of his country of origin (the country where

he fears persecution) but should it, for some reason, be more favourable, for a person of indeterminable national status to be considered a stateless person, he should be considered as such (see also *Refugee Appeal No 71687/99* (28 September 1999) at p15).

[61] For the purposes of this appeal, and consistently with the approach of *Refugee Appeal No 1/92*, we extend to the appellant the benefit of the doubt and find that he is in fact able to return to Egypt, his country of former residence. That is the approach most favourable to the appellant, since it means that the Refugee Convention is engaged. This was of course the approach that counsel urged the Authority to adopt. In these circumstances it is not necessary for the Authority to address the issues raised in *Refugee Appeal Nos 73861 and 73862* (30 June 2005).

[62] We now turn to consider the issue of whether the appellant would face a real chance of persecution, should he return to Egypt, his country of former habitual residence. We begin our analysis with an assessment of the country information.

Country information

[63] At various places in this decision we have indicated some shortcomings associated with the Joffé report. We assume these arise from the report having been prepared under some time pressure. However, despite such shortcomings we conclude overall that considerable weight should be attached to the critical elements of the Joffé report. In particular we have found the report helpful in relation to the issue of the treatment of Palestinians in Egypt by the Egyptian authorities. Apart from the Joffé report, there was relatively little country information available to assist us with our analysis.

[64] The Joffé report properly makes no observations regarding the credibility of the appellant's account, other than to observe the material facts stated by the appellant are not implausible when measured against circumstances in Egypt.

[65] We summarise the key findings from the Joffé report relevant to our assessment.

(a) The report relates the history of the PLO and the role Egypt had in that history. There was a turning point in relations in the 1970s:

“... when President Sadat decided to cut through the Gordian Knot of Arab/Israeli relations by flying to Jerusalem and appealing to the Israeli Knesset for an end to the violence and a negotiated solution to the conflict. Egypt’s unilateral action attempted to achieve protection for Palestinian interests in the subsequent Camp David agreement, relations between the Egyptian government and the PLO soured in 1978 and Yasir Arafat distanced himself from President Sadat.”

(b) Thereafter the relationship fluctuated. However, relations between the PLO and the Egyptian government at the highest levels did not necessarily dictate how Palestinian people were treated on a day to day basis by the Egyptian officials.

(c) Discriminatory measures affecting Palestinians living in Egypt were introduced in 1978. From that point on Palestinians engaged in political activism, whether inside or outside the PLO, were subject to repression. Following the Camp David accord there was a peace treaty between Egypt and Israel. The report observed that after 1980:

“... the Egyptian government was then obliged to repress all political activity that threatened the state of Israel under the terms of the treaty and PLO activists became a particular target.”

(d) The report goes on to observe that even Palestinians living in Egypt who were not politically involved saw “their status profoundly degenerate under 1978”. Palestinians were discriminated against in employment and education.

(e) In relation to human rights in Egypt generally the report expresses the following view:

“In view of the fact that [the appellant] claims to have been ill-treated by the Egyptian authorities and tortured because of his father’s past connections with the PLO and because he was discovered to have falsified identity documents to enter an Egyptian university – the very common procedure because of the restrictions on Palestinian education since 1978 – it is worth considering Egypt’s reputation for its human rights observance. It needs to be borne in mind that such a claim is certainly plausible in view of the way in which Palestinians are restricted in Egypt, even if they have been born there. This has been particularly evident in recent years in terms of Egypt’s treatment of sympathisers with political Islam but the same principles of discrimination can apply to all those who irritate the Egyptian authorities, such as Palestinians who are forced to act illegally to survive and are discovered by the authorities doing so. There has long been an antagonism towards political Islam, in all its aspects, most particularly since the beginning of the 1990s, on the part of the Egyptian state and the Mubarak regime. This has been accompanied by persistent official abuses of human rights and brutality by the police and security services, even culminating in extra-judicial executions.”

- (f) These problems arise, in part, from a long-standing tradition of bureaucratic inefficiency and incompetence in which the state cannot monitor the activities of its organs in such a manner as to ensure their accountability. There are more political prisoners in Egypt today than there were under the Sadat or Nasser regimes in both relative and absolute terms – and the Sadat regime had been more repressive than its predecessor. The authorities are particularly unforgiving with persons suspected of links to Islamist organisations.
- (g) The “simple fact” is that the Egyptian government is and is recognised to be engaged in massive abuses of human rights under the guise of the emergency it claims it faces from the Islamist threat.

[66] The Authority notes that the views of Professor Joffé on human rights practices in Egypt are consistent with observations expressed in other country information reports. Both the United States Department of State *Country Reports on Human Rights Practices Egypt: (February 2005)* and the Amnesty International *AI Report: Egypt: Muzzling Civil Society (September 2000)* refer to significant human rights abuses, including mistreatment and torturing prisoners and holding detainees in prolonged pre-trial detention.

[67] The conclusion Professor Joffé reaches is that if the appellant’s evidence of his background is found to be credible, then it seems to him “to be clear that he will face the danger of persecution by the Egyptian authorities for the reasons he has provided”.

[68] The Authority has some misgivings about Professor Joffé’s conclusion, or at least the manner in which it is expressed. It appears to us to be a rather bold assertion to claim that the appellant “will face the danger of persecution”. Having said that, however, the test we must apply is not whether the appellant will in fact be persecuted but rather, whether there is a real chance of him being persecuted upon a return to Egypt. We now address that critical issue.

Real chance of persecution

[69] While we accept the appellant’s account as credible, it is of course not sufficient to determine the outcome of the appeal. The refugee enquiry is forward looking; applicants must demonstrate a real chance of being persecuted if returned to their country of nationality or country of former habitual residence. An assessment of the real chance test requires the Authority to look critically at the

cumulative effect of the risk factors relevant to the appellant, viewed in the context of the country information.

[70] Having regard to all of the risk factors in this case, the Authority finds the appellant would face a real chance of persecution should he be returned to Egypt, his country of former habitual residence. We acknowledge that the appellant has now been absent from Egypt for some considerable time but we find the cumulative effect of the following matters to be persuasive in reaching our conclusions:

- (a) The appellant has previously been persecuted by the Egyptian authorities. His 35-day detention and physical mistreatment in 1997 can properly be regarded as a sustained and serious violation of his human rights. While the authorities may have had a valid reason to initially arrest the appellant in 1997 – ie because of his false ID, we accept that his treatment was disproportionate and severe. The appellant was also mistreated by the Egyptian authorities on a number of earlier occasions, namely in 1991 and the late 1980s. He was also seriously mistreated by the Egyptian authorities on a number of earlier occasions.
- (b) The Egyptian authorities have taken a particular interest in the appellant and appear genuinely to believe (albeit falsely) that he has been actively involved with the PLO and political Islam. During the many times he was detained and questioned by the Egyptian authorities, they have consistently interrogated him about suspected involvement with the PLO. The authorities are interested in the appellant in his own right, not simply because his father previously held office in that organisation. Since his father's retirement from the PLO in 1994, the Egyptian authorities have continued to show interest in the appellant.
- (c) In 2003, the appellant's father was detained by the Egyptian authorities. He was physically mistreated on that occasion and questioned about the appellant's whereabouts. There is thus evidence of ongoing interest in the appellant by the authorities since he left Egypt in 1997.
- (d) The Joffé report notes that the Egyptian state and the Mubarak regime have long had an antagonism towards political Islam. Its

treatment of sympathisers with political Islam has been and is very harsh. While the appellant has now been out of Egypt for some considerable time, the Mubarak regime remains particularly concerned about political Islam. The conclusions of Professor Joffé are supported by country information cited in *Hani Youssef v The Home Office* [2004] EWHC 1884 (QB) where Field J referred to “strong evidence” known to the Home Office, that the Egyptian security forces systematically tortured political detainees, despite the fact that Egypt had signed the UN convention against torture in 1987 (at para 78 of the judgment).

- (e) The appellant is known to the Egyptian authorities to have had a false ID card. He has been suspected of having a false Egyptian passport. The combination of suspected PLO involvement and a false Egyptian ID card are likely to give rise to an increased degree of risk.
- (f) It is clear from the evidence that the appellant and his family have been extorted by corrupt Egyptian officials on a number of occasions. Despite having paid money over to the officials, they have not been always able to avoid being physically harmed, and on occasions seriously.
- (g) Since he was 16 years of age, the appellant has regularly encountered difficulties with the Egyptian immigration officials when departing from and entering Cairo Airport. When he last departed from there in 1997 he was threatened by an immigration officer.
- (h) The appellant would likely return to Egypt through Cairo Airport. His Palestinian travel document, even assuming it had been renewed, and his long absence from Egypt, would immediately engage the interest of immigration and security officials. As Professor Joffé notes, the Egyptian entry authorities are particularly strict in monitoring such entries as far as Palestinians are concerned.
- (i) As Professor Joffé further notes, Egypt has a long-standing tradition of bureaucratic inefficiency and incompetence. Joffé records that there is a conscious willingness on the part of the Egyptian authorities to use methods illegal under the Egyptian Legal Code. Given his background, the appellant’s concerns that he is vulnerable

to unaccountable officials, particularly on arrival at the airport, appear to have merit.

- (j) It may well be that the Egyptian government could lawfully prosecute the appellant for breach of Egyptian immigration laws arising from the expiry of the appellant's re-entry permit, his residence visa and also the Palestinian travel document itself. Indeed, as already stated, he is likely to attract the attention of the Egyptian authorities on arrival because of these facts. The Authority is nevertheless satisfied that any punishment likely to be imposed on the appellant for such offences would be disproportionately severe and likely to involve torture and indefinite detention. There must also be a real chance that any criminal trial would be delayed indefinitely. The circumstances cannot properly be regarded as simply a case of criminal prosecution. The persecution threshold is made out.

[71] The Authority accepts counsel's submission that the situation of the appellant can properly be distinguished from that of his father and brothers. They of course still live in Egypt and although they are troubled by the authorities they do not appear to be at a real risk of persecution. As indicated above, the Egyptian authorities appear to be interested in the appellant in his own right, independently of his father. The father has now long retired from the PLO, is not in good health and has not travelled outside of Egypt since 1994. As to the appellant's brothers, they have never been targeted in the same way that the appellant has.

Convention ground

[72] It is clear from the evidence that the Egyptian authorities would be interested in the appellant for a number of reasons. This includes his suspected involvement with the PLO and political Islam, the fact that he is a Palestinian returning to Egypt after the expiry of his travel document and beyond the normal six-month deadline, and his record of having a false Egyptian ID card. It is likely also that the authorities would further seek to extort him.

[73] The Authority needs only be satisfied that a Convention ground is a contributing factor to the risk of being persecuted. It is not necessary that such ground be the sole, or even a dominant cause of the risk of being persecuted. (See *Refugee Appeal No 72635/01* (6 September 2002) at para [177].

[74] The Authority finds that both the appellant's ethnicity (ie being a Palestinian) and imputed political opinion (ie suspected involvement with the PLO and political Islam) are contributing factors to the risk of being persecuted. There is thus clearly a Convention reason for the persecution. In reaching this conclusion we accept, as indicated, that the appellant is not in fact actively involved with the PLO or political Islam. He is a supporter of *Fatah* but that is the extent of his involvement.

[75] Accordingly, issues (a) and (b) raised at paragraph [34] above must be answered in the positive with the result that the appeal succeeds.

CONCLUSION

[57] 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.

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P J Andrew
Chairperson