PURSUANT TO S 129T IMMIGRATION ACT 1987, ORDER PREVENTING PUBLICATION OF NAMES OF APPLICANT, OR PARTICULARS CAPABLE OF LEADING TO HIS IDENTIFICATION.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV 2005-404-003360

UNDER	the Judicature Amendment Act 1972 (Part I)
IN THE MATTER OF	the Immigration Act 1987
BETWEEN	S Plaintiff
AND	CHIEF EXECUTIVE OF DEPARTMENT OF LABOUR First Defendant
AND	REFUGEE STATUS APPEAL AUTHORITY Second Defendant

Hearing: 25 October 2005

Appearances: D J Ryken & I M Chorao for Plaintiff
M A Woolford for First Defendant
No appearance for Second Defendant

Judgment: 19 December 2005 at 1.16 pm

JUDGMENT OF KEANE J

Solicitors

Ryken & Associates, Auckland
Crown Solicitor, Auckland

[1] S, an Iraqi national, who is an Assyrian Christian, entered New Zealand in December 2001, initially on a nine month visitor's permit. In October 2002 S claimed refugee status. On 31 May 2004 the Refugee Status Branch declined his claim and on 19 May 2005 the Refugee Status Appeals Authority declined his appeal. On this application for review, it is contended, the Authority was unreasonable and unfair. S seeks orders setting aside the Authority's decision and directing that it reconsider his appeal.

[2] In assessing under Art 1A(2) of the 1951 Convention relating to Status of Refugees whether S, an Assyrian Christian and a once active member of the Assyrian Democratic Movement, had a legitimate claim to refugee status – whether he had a 'well founded fear of being persecuted' in Iraq, were he to return there, and whether, that being so, he was unable or unwilling to avail himself of the protection of the State of Iraq - the Authority, it is contended, set the threshold too high.

[3] The purpose of the 1951 Convention, it is contended, is to provide surrogate protection from persecution where the state from which a claimant comes will not or cannot; and 'persecution' extends to any denial of basic human rights. But the Authority, it is contended, required to be satisfied that as an Assyrian Christian S was likely to be persecuted in the most extreme sense; to be at imminent risk of injury even loss of life. That, it is contended, rested on a fundamental error of law.

[4] The Authority, which abides the decision of this Court, it is contended for the Chief Executive of the Department of Labour, made no such error. S, as claimant, was obliged to demonstrate to the Authority that he was entitled to refugee status. He claimed Iraq to be so in the throes of internecine violence, and Assyrian Christians to be so singled out, and the state to be so powerless, that were he to return to Iraq his safety, even life, would be at real risk. Lesser forms of persecution were less emphasised. The Authority did no more, it is contended, than to find that S had failed to establish his claim.

[5] Until this application is resolved S, whose identity is protected from disclosure under s 129T of the Immigration Act 1987, is entitled by consent order to remain in New Zealand under a temporary work permit. Presently, it appears also, at

the request of the High Commissioner for Refugees, New Zealand is not repatriating to Iraq any Iraqis claiming refugee status.

Decision under review

[6] S, the Authority accepted on the appeal, is as he claims to be an Assyrian Christian, who from his birth in 1967 lived with his family in a small town in Northern Iraq, in which Kurds comprise the majority, and Arabs the sizeable minority. His family, the Authority accepted also, had been intimately connected with the Assyrian Democratic Movement, which during the Ba'athist regime promoted the independence and security of Assyrian Christians, and under the present regime still does. Until 16 years ago his father was a local leader.

[7] The Authority accepted that in the Iraqi Army, in which he served between 1985 and 1990, S was mocked for his religious beliefs and practices, that when he returned to the work force he was harassed; and that he was pressed constantly to convert to Islam. The focus before the Authority, however, became rather the risk to Assyrian Christians, and to S were he to return to the town in which his family still lives, as that risk has evolved from two distinct sources since the demise of the Ba'athist regime: traditional Arab Muslim intolerance of Assyrian Christians, and resurgent Kurds coveting their lands.

[8] Relevant to that risk, as S himself saw it, the Authority recorded, were the facts set out in paras [11] to [17] of the decision:

> [11] The family was well-known in X being an ADM family; his father had been a member for many years and indeed, from at least 1980, had been elected the local leader for X. In the late 1980s, the appellant became involved in the ADM.
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> [12] The ADM was not allowed to have an office in X. Rather, the appellant's father spoke to local ADM members in public places frequented by Christians, giving instructions as to what needed to be done. The ADM members in X, were all instructed by the appellant's father to keep watch over their community. Thus, if any Christian person was arrested, this had to be brought to his father's attention. Similarly, if there was any movement by Iraqi military or security units through the X area, this too would be reported to his father.

[13] As a local leader the appellant's father was required to report to the overall ADM leader in D. The appellant occasionally went with his father to such meetings. After the establishment of the Kurdish Autonomous Region (KAR) in the aftermath of the first Gulf War, the ADM opened an office in D with the consent of the Regional Kurdish leadership and the appellant became involved in ferrying information from X to the leadership at this office. This required him to frequently travel over what was the de facto border between the KAR and that part of Iraq under Ba'ath Party control. He carried out such activities until he left Iraq. While the appellant's father had ceased being the local leader in the late 1980s, he remained active in ADM and in the community.

[14] The appellant had no trouble until early 2001, when the police came to his house asking for him. He was in D at the time. While there, a relative came to see him who told him the news. He waited in D for a few days and then went back to X. Two months later, on returning home with his family from a celebration, they were told by a neighbour that the police had come to the house looking for the appellant.

[15] The next visit by the police was in late 2001. The appellant's house was raided that night and the appellant was taken to a local police station. He was held for four days, during which he was questioned each day about his involvement in the ADM. The questioning would last for approximately an hour to an hour and a half. He was assaulted with a hose and punched in his face. The appellant's father secured his release by payment of a bribe. After this incident, the appellant ceased all his activities and he kept a low profile, staying at home.

[16] He left Iraq towards the end of 2001. After he left, the appellant's family fled to another town although they returned to X with the fall of the Ba'ath Party. Since he has been in New Zealand, the appellant has kept in regular contact with his family over the telephone. He has learned from them that the authorities visited the family home as an order had been issued stating that all young men of his age must report back to the Army.

[17] He has learned that the situation for Christians in Iraq has deteriorated since the fall of the regime. Many churches in Iraq have been bombed and his family have told him that the church in X has closed out of fear. He fears he will be targeted by either Muslims or Kurds because he is a Christian. He fears the fact that his family were well-known in the area for being an ADM family, will increase the prospect of it being targeted at some stage.

[9] Iraq remains, the Authority accepted, a 'generally violent place'; and in Baghdad there was a 'real chance' that practising Christians could be persecuted for a Convention reason. But, as had been held in recent cases, the Authority concluded, except in Baghdad, where a significant proportion of Christian Churches have been bombed, Christians in Iraq were unlikely to be persecuted because they were

Christians: *Refugee Appeal No 74838 and 74839* (14 July 2004) and *74686* (26 November 2004).

[10] Equally, the Authority accepted, drawing on news agency and interest group reports, anti-Christian violence in the northern parts of Iraq was increasing and ADM leaders, if not members, could well be at increased risk. The risk faced by S's father, on account of his historical role as an ADM leader, and by S himself, the Authority concluded however, could be no greater than that endured by other Iraqis - Arab Muslims, Assyrian Christians and Kurds alike.

[11] During the Ba'athist regime, the Authority accepted, S had been detained and beaten, but his only immediate risk lay in being conscripted into the army. Muslim Arabs, the Authority found, and Kurds too, were unlikely to be interested in him and his risk of harm fell well below the 'real chance' threshold.

[12] The Authority's critical reasoning is set out in paras [32] – [37]:

> [32] … the Authority accepts that in general terms, there is an increasing level of violence being visited on the Chaldean community in the area around X, both in common with the rest of Iraq as a result of the Sunni Arab insurgency, but additionally at the hands of the local Kurdish power, the KDP, as the territory becomes a contested strategic resource. This violence has been visited upon the community in the form of attacks on individual Christians and there is at least one report of a church being attacked and a Christian village coming under mortar attack.
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> [33] While the situation in the north of Iraq is one of increasing violence, there is nothing in the country information to suggest that attacks on Christian churches, villages or on individual Christians have reached such a level, that the risk of the appellant suffering serious harm on this basis alone crosses the real chance threshold. In this sense the situation in the north may be distinguished from that in Baghdad. While it is impermissible to reduce the issue of 'real chance' to the exposition of a bald statistical probability, the fact that by November 2004 nearly 25 percent of the Christian churches in Baghdad had been bombed underscores just why the Authority found in *Refugee Appeal No 74686* (29 November 2004) at paragraph [39] that the real chance threshold was met in these circumstances.
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> [34] In conversations he has had with his family the appellant has not been told of any attack on X or on his church. This is not, however, determinative as the assessment of risk is forward looking.

> [35] In this regard, the risk that X itself, or its church, may nevertheless come under attack, is one which in light of the country information, cannot be absolutely dismissed. Nevertheless, the associated risks to the appellant are highly serendipitous. It is plain from the reports of these attacks, that while individuals were either injured or killed as a result, the attacks were not so intensive as to cause widespread injury or loss of life and thereby indicate a real chance of risk of serious harm on this basis. The victims were simply randomly unfortunate.
>
> [36] Similarly, that the church in X may come under attack is a risk that cannot be entirely dismissed. However, it must be remembered that X is one of many Christian villages in the north of Iraq. Country information available to the Authority does not establish that attacks on churches have reached such a level that the risk of serious harm befalling the appellant, were he try to manifest his religious belief by attending church, rises above mere conjecture or surmise.
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> [37] As to the risk to the appellant simply by being Christian, the risk to him is essentially random and conjectural. It is not well founded. Country information shows that this is how the Christian community sees the risk to ordinary civilians … it refers to KDP pressure in the lead up to the recent elections and refers to the 'random killing of civilians.'

Appellant's submissions

[13] In denying his appeal, it is contended for S, the Authority made two errors, the more fundamental of which was that by narrowing the Convention question, it raised without warrant the threshold for refugee status. The Authority required S to demonstrate that he was 'at real risk of serious harm'. The issue was rather, it is contended, whether S had a 'well founded' fear of – a 'real chance' of suffering - 'persecution'.

[14] One effect of that was, it is contended, that the Authority limited 'persecution' to acts of violence. It excluded less extreme forms of oppression, involving the denial of basic human rights, which are nevertheless well recognised forms of persecution. Then again, it is contended, the Authority required that at the time of claim the level of violence towards Assyrian Christians throughout Iraq be so pervasive that the risk of violence to S, should he return to Northern Iraq, could be seen to be imminent. Yet the Convention does not require actual persecution. It seeks to anticipate persecution by its focus on 'well founded fear'.

[15] This error in its two aspects, it is contended for S, led the Authority into further error when it assessed the risk of violent persecution to S as 'highly serendipitous' and as indistinguishable from the risk of violence faced by any 'randomly unfortunate' victim in the general population.

[16] Underlying the Authority's conclusion, it is contended, was an unspoken and impermissible question – the statistical probability of S becoming a victim of violent attack. The Authority contrasted the risk to S's home village or its church with the statistic that 25 percent of Christian churches in Baghdad had been attacked, perhaps destroyed. It described the village to which S would return as 'one of many' Christian villages. It adhered to this when considering whether any risk to S was heightened by his ADM allegiance.

[17] The issue, it is contended, can never be numerical. Whether one Christian is injured or killed as opposed to another might be random. The issue for the Authority was whether attacks were systemic and expressions of ideology. Did any attacks, one or several, show that underlying likelihood? If that likelihood did exist, as the Authority ought to have accepted, it is contended, then S too was at real risk of persecution.

[18] Persistent acts of random violence, whether by Arab Muslims or by Kurds, against Assyrian Christians, on which the Authority focused, it is accepted, could have been highly indicative. But lesser forms of persecution had to be no less significant. The Authority ought to have concluded, it is contended, that S could anticipate that, were he to return to Northern Iraq to his family, nothing would have changed. He would again find it difficult to obtain work and he could again expect to be ostracised and oppressed.

[19] Finally, it is contended, there has since the demise of the Ba'athist regime been a radical shift in Iraq, to which the Authority gave little or no weight. Under the Ba'athist regime Assyrian Christians were persecuted but Kurds were equally oppressed. Under the present regime Arab Muslim intolerance has heightened and Kurds seek to oust Christians from their traditional northern lands. S, who played a

part in the ADM in the past, even if at a low level, the Authority ought to have concluded, could well become a target.

[20] The Authority's error, it is contended, lay in failing to ask what is necessarily a global question. Instead of asking whether S would be a victim of violence, it should have asked 'will life be intolerable for the plaintiff because of a Convention reason, and will the state fail to protect him, making him deserving of surrogate international protection?'

[21] The decision of the Authority is, it is contended for S, perverse in the extreme *Wednesbury* sense but, because of what is or may be at stake, the denial of basic human rights and at the extreme risk to life itself, this Court on review has wide latitude to intervene.

Scrutiny on review

[22] There can be no question that in these cases the stakes can be high and, whether and to what extent they are, it is the anxious task of the Authority to decide - a responsibility that on review this Court shares.

[23] That being so, in *Woolf v Minister of Immigration* [2004] NZALR 414, on review of the Deportation Review Tribunal, Wild J assessed the Tribunal's decision against a less constraining standard - not whether it was unreasonable in the sense that it was perverse or irrational, but whether it was inherently reasonable. He found that it was not. On the same principle Winkelmann J held in *A & Ors v The Chief Executive of the Department of Labour and The Refugee Status Appeals Authority* (HC Auckland, CIV 2004-404-6314, 19 October 2005, paras [29] – [33]), on review this time of the Authority, that the Authority's decision was to be scrutinised with great care. So scrutinised, she found, it too contained a significant error.

[24] This need for searching scrutiny on review was first identified in this context, so far as I can see, by Anderson J in *K v Refugee Status Appeals Authority* (HC Auckland, M 1586-SW99, February 2000); and it may be that Winklemann J, in the

level of scrutiny on review that she endorsed, intended to echo what Anderson J said at paragraph [40] of his decision:

> In a case such as this where the consequences of a wrong decision could be persecution of a most grave and inhumane nature, a reviewing court should look at an impugned decision with great care.

[25] In principle, I agree with each of these decisions. The issues that arise on a claim for refugee status can be of the highest personal and public significance. Reasonableness, not unreasonableness, must be the focus of this Court's inquiry on review of a decision of the Authority. But there is a need for care also in another sense, it seems to me, for two reasons identified by Winkelmann J.

[26] The first is that though the *Wednesbury* test sets the need for restraint on review at the highest conceivable level and in that respect, as Lord Cooke said in *R v Secretary of State for the Home Department, ex parte Daly* [2001] 2 AC 532, at para [32], may now be seen as 'unfortunately retrogressive', it remains the clearest possible instance of what review is and what it is not. Judicial review is not an appeal. It is concerned with how a decision was made rather than its merit; with whether the decision maker asked and answered the right question, and did so with sufficient material. It involves neither a rehearing nor the fresh exercise of a discretion.

[27] The second is that in the case of the Authority, in contrast to the Deportation Review Tribunal, there is no right of general appeal to this Court. By statute the Authority is the ultimate decision maker, it has garnered hard experience by deciding an ever increasing number of cases, and it is rarely reviewed by this Court. That, and the complex dimensions of the Convention question itself, are yet further reasons for restraint.

[28] In Winkelmann J's judgment there is a statement by Sedley J in *R v IAT; ex parte Shah* [1997] Imm AR 145, at 153, which bears repeating:

> In this highly specialised field of adjudication, a great deal depends upon the expertise of the … (Authority) itself. Its adjudication is not a conventional lawyer's exercise of applying a litmus test to ascertain the facts; it is a global appraisal of an individual's past and prospective situation in a particular

> cultural, social, political and legal milieu, judged by a test which, though it has legal and linguistic limits, has a broad humanitarian purpose.

In *R v IAT; ex parte Shah* [1999] 2 AC 629, HL, at 646, this statement was endorsed by Lord Steyn.

[29] Finally, on review, the reasonableness of the Authority's decision, sometimes a matter of degree, even perhaps impression, is not at large; much depends not just on how the Authority decided the ultimate question, but what it was asked to decide.

[30] A feature of the statute remarked on by the Court of Appeal in *Jiao v Refugee Status Appeals Authority* [2003] NZAR 647, is that a claimant for refugee status, when applying initially, and when appealing, carries the 'responsibility' to establish his or her claim on the basis of 'all information, evidence and submissions' on which she or he wishes to rely: ss 129G(5), 129P(1). By contrast, the Court noted, any officer who decides a claim, and the Authority on appeal, can seek further information, but does not need to and may decide the claim solely on the claimant's own case: ss 129G(6), 129P(2).

[31] Unless then, that suggests to me, there is significant new evidence to which the Authority could not have had access, and which might call for a fresh assessment by the Authority, the focus on review has to be on how the Authority resolved the case as it then was. There is warrant for a close look. There is no warrant for a fresh look.

Convention issue

[32] The Appeal Authority, it is accepted for S, articulated the convention question correctly but, it is contended also, did not adhere to the question in its decision. The harm it identified as essential was greater than that inherent in the concept of 'persecution'. Thus the 'real chance' test became meaningless. It is as well then to begin at the beginning.

[33] Article 1A(2) defines a 'refugee' as one who:

> … owing to a 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…

[34] On this appeal the Authority, relying on the decision *Refugee Appeal No 70074/96* (17 September 1996), as it does invariably, stated the principal issues it had to decide as these:

> (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?

[35] This way of expressing the issues derives, it appears, from the 1989 decision of the High Court of Australia, *Chan v The Minister of Immigration and Ethnic Affairs*, 87 ALR 411. In New Zealand it has still to be approved expressly at a high appellate level, but has been recognised to have a settled place: *Jiao v The Refugee Status Appeals Authority* [2003] NZAR 647.

[36] The Authority's two questions are abstractly stated. They assume the concept of 'persecution', and the premise on which the duty to accord refugee status arises – the principle of surrogacy – the equation 'persecution equals serious harm plus the failure of state protection'. The duty to protect only arises when the claimant's own state is the persecutor or is unwilling or unable to protect the claimant from the persecution of others: *R v IAT; ex parte Shah* [1999] 2 AC 69 (HL); *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489 at 515 (HL); *Refugee Appeal No 27558/01* and *27559/01* (19 November 2002).

[37] On that essential premise Lord Hope of Craighead said in *Horvath*, at 499, speaking of such a case as this, as appears to have been uncontested on the appeal - where the state is not itself the persecutor, and may be unable rather than unwilling to offer protection:

> … the applicant for refugee status must show that the persecution which he fears consists of acts of violence or ill treatment against which the state is unable or unwilling to provide protection. The applicant may have a well-founded fear of threats to his life due to famine or civil war or of isolated acts of violence or ill treatment for a Convention reason which may

> be perpetrated against him. But the risk, however severe, and the fear, however well founded, do not entitle him to the status of a refugee. The Convention has a more limited objective, the limits of which are identified by the list of Convention reasons and by the principle of surrogacy.

[38] What was at large on the appeal if only implicitly, at least in retrospect, was what might constitute 'persecution'; and relying on the extended analysis McHugh J made of that concept in *Chan*, at 448-449, it is contended for S, the Authority so reduced its scope as to deny it efficacy.

[39] In his analysis McHugh J, having first propounded the 'real chance' test of persecution, at 448, turned to consider what 'persecution' might be, beginning with what kinds of conduct might qualify and then with what purpose and effect; and as to the former said this:

> The term 'persecuted' is not defined by the Convention or the protocol. But not every threat of harm to a person or interference with his or her rights for reasons of race, religion, nationality, membership of a particular social group or political opinion constitutes 'being persecuted'. The notion of persecution involves selective harassment. It is not necessary however that the conduct complained of should be directed against a person as an individual. She may be 'persecuted' because she is a member of a group which is the subject of systematic harassment.

And then:

> Nor is it a necessary element of 'persecution' that the individual should be the victim of a series of acts. A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a convention reason against that person as an individual or as a member of a class, she is 'persecuted'.

[40] As to the essential purpose and effect of such conduct, McHugh J continued:

> … to constitute 'persecution' the harm threatened need not be that of loss of life or liberty. Other forms of harm short of interference with life or liberty may constitute 'persecution' for the purposes of the Convention and Protocol. Measures 'in disregard' of human dignity may in appropriate cases constitute persecution …

And again:

> … the denial of access to employment, to the professions and to education or the imposition of restrictions on the freedoms traditionally guaranteed in a democratic society such as freedom of speech, assembly, worship or movement may constitute persecution if imposed for a convention reason.

[41] These descriptions may seem expansive and, it is contended for S, ought to be applied expansively. But they exist to serve and must be harnessed to the 'real chance test', which McHugh J propounded; of which Mason CJ, who joined McHugh J both in that test and in his wider analysis, said at 418:

> … I prefer the expression 'a real chance' because it clearly conveys the notion of a substantial, as distinct from a remote chance, of persecution occurring …

That is the finally decisive question and, where direct evidence is lacking, the Authority will have to resort to inference from the variety of sources Lord Clyde identified in *Horvath*, at 513.

[42] Lord Clyde began by saying this:

> For a fear to be well-founded it seems to me that all the circumstances relating to the fear have to be taken into account. In assessing the existence of a real risk of the violation of rights occurring anything which may bear on the likelihood of the incidence of the violation will be relevant.

He then said (very relevantly in the context of this review):

> It is the applicant's fear which is in issue, and so matters particularly relating to him will be important. For example his prominence in society or political life, or anything else which might make him a particular target of persecution may be relevant. The history of past violations, the extent to which the applicant has personally been directly affected, either by being the victim of violence or the recipient of threats of violence, considerations of geographical location, of all the factors which might stimulate or facilitate a violation, will be among the circumstances to be taken into account. As also will factors which may discourage or deter or render a violation less likely.

And then:

> The political and legal situation in the country should be taken into account. And among those will be the element of the protection which the state affords.

[43] At each phase then in the process, the administrative phase, on appeal and on review, one can expect both claim and decision to involve these layers of asserted and either accepted or rejected inference, always with the risk to the claimant as the final point of reference; and this case was no exception.

Case before Authority

[44] Complicating his claim to refugee status in October 2002, the officers of the Refugee Status Branch found, was that S had failed to disclose that, when he entered New Zealand in December 2001 on a nine month visitor's permit, that was to marry his then fiancée, an Iraqi national with permanent resident status. They questioned his credibility. They did accept that he was an Assyrian Christian and an ordinary supporter of the ADM. They did not accept that, if he were to return to Iraq, he was at risk in any sense of persecution.

[45] On his appeal on 17 November 2004, at which he was represented by counsel, S contended that there was a 'real chance' that he would be persecuted if he did return to Iraq. He asserted that violence and lawlessness prevailed, that the situation of the general population remained volatile and dangerous, that attacks on Iraqis considered to be collaborating with the occupying forces were at a peak, that the situation of Christians living in Iraq had worsened and that Muslim Arab groups, two in particular, were subjecting them to co-ordinated attacks.

[46] A theme of his appeal was that because the invading forces were largely Christian, and Christian missionaries were active, that had excited the anger of Arab Muslims. Assyrian Christians were particularly at risk, and were leaving Iraq in increasing numbers. S said that if he had to return to Iraq he would be at real risk, because of his ethnicity, religion and politics. He relied also on a recent decision of the Authority, which had concluded that the Iraqi state could not protect at risk Christians, and in Northern Iraq, he contended, he would be no better placed. The Kurds, whom he then seemingly assumed still to be benign, were themselves victims of violence and unable to offer any protection.

[47] On 8 March 2005 the Authority sent to S's solicitors articles it had discovered going to the risk to Assyrian Christians in Northern Iraq. On 24 March 2005 the solicitors responded with still more materials. These showed, they contended, that in Northern Iraq the Kurds, intent on taking by force if need be the lands of minorities, including Christians, and creating reality on the ground by denying them access to the ballot box, had become a distinct source of danger.

[48] S contended that he and his father were, because of their roles in the ADM, even more exposed; and, as the Authority had accepted in other recent cases, were unable to relocate to any other part of Iraq in which they might be safer.

Conclusions

[49] S's case for refugee status, as will be apparent, was that, if he were obliged to return to Iraq, his safety, even his life, would be at risk because of his ethnicity, his religion, and his political affiliation. Implicit in his case may well have been that access to housing and employment might also be denied him, but that was not prominent. It was the risk to his safety and life for Convention reasons that the Authority had to assess.

[50] The Authority concluded that Iraq is subject presently to a high level of internecine violence in which all Iraqis potentially, Muslim Arabs, Assyrian Christians, Kurds and others, are at risk. The Authority accepted that Assyrian Christians in some parts of Iraq, notably Baghdad, were particularly at risk and for Convention reasons. But the Authority did not consider that risk to Christians throughout Iraq to be general. Hence its conclusion that if S were to return to Iraq he would not necessarily be at risk simply because of his ethnicity, his religion and his political affiliation.

[51] As to the risk S might be under if he returned to Northern Iraq, once again the Authority concluded that it fell below the 'real chance' threshold. In contrast to the level of violence against Christians in Baghdad, the Authority concluded, that visited on Christians to the north was still random, not systematic. Other members of the population could equally be injured or killed. There was nothing that singled out S to any greater risk, particularly for a Convention reason.

[52] In this analysis the Authority, as is accepted for S, asked itself the right essential question. It reviewed the case S presented, and went further. After hearing the appeal it exchanged further information with S's solicitors and on those materials as well decided his claim against the 'real chance' test, resorting to a statistic but only illustratively. It did not narrow the concept of 'persecution'. It tailored its

conclusion to S's own case. It made no invalidating error of law, it was not unreasonable, and S's application for review will be dismissed.

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P.J. Keane J