

Heard at: Field House
On: 13 January 2005

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

22/04/2005

Before:

**Mr D K Allen - Vice-President
Mr J A Blair-Gould
Mr N Kumar JP**

Between

APPELLANT

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
RESPONDENT**

Representation:

For the Appellant: Mr D Magne of Magne & Co Solicitors
For the Respondent: Mr G Elks, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals to the Tribunal with permission against the determination of an Adjudicator, Mr Warren L Grant, in which he dismissed his appeal against the respondent's decision of 29 October 2003 to issue directions for his removal from the United Kingdom, and refusing asylum.
2. The hearing before us took place on 13 January 2005. Mr D Magne of Magne & Co Solicitors appeared on behalf of the appellant, and Mr G Elks appeared on behalf of the Secretary of State.

3. This appeal was listed to be a follower to the Tribunal Country Guidance case in AK [2004] UKIAT 00298. It has become clear that it cannot be regarded purely as a follower case, given the evidence that has been produced of risk to Christians in Iraq since AK was determined, and therefore what we have to say about risk to Christians in Iraq, although it builds on the Tribunal's findings in AK, necessarily goes beyond the findings there recorded given the fresh evidence. We should record our gratitude to Mr Elks who coped with a long and difficult list, receiving only very short notice of a good deal of detailed objective evidence.
4. The Adjudicator accepted that Mr Al-Najaar is a Catholic. He found little else of his claim to be credible however. Mr Al-Najaar arrived in the United Kingdom by lorry on 22 December 1999 and claimed asylum on the following day, though his interview did not take place until nearly four years later. He claimed that, having refused in 1998 to assist some security men by providing them with information about his father's Christian customers, he was attacked by four men in a car who also ransacked his father's shop. After spending three days in hospital he was again approached by the security men who returned a week later and arrested him and he was detained for two weeks and tortured. His father arranged for him to leave Iraq after his release. Subsequently he learnt that two weeks later the security men had come to his home to look for him and had beaten his father to death and then tortured his brother so that he became insane. The appellant went first to Jordan where he remained for five months until he found an agent to whom he paid \$5,000 to take him to Europe. He was arrested on the Austrian border and imprisoned for two months and on release told that the Austrian government would not grant asylum. He went to Germany and applied for asylum but after attacks on him by neo-Nazis he left Germany through Belgium and thus came to the United Kingdom.
5. He gave evidence before the Adjudicator and produced a letter from his sister who he said worked for the CPA and who had married Mr Brian Erickson some two months prior to the hearing.
6. The Adjudicator concluded that the appellant was forum-shopping, having gone from Jordan to Austria and then to Germany and then to the United Kingdom. He considered that he had failed to report his fears of neo-Nazis to the authorities in Germany or to the church to which he belonged. He noted that although he had not known the whereabouts of his family as recently as October 2003 his sister's wedding must have taken place in late November of that year and he had with him at the hearing a set of photographs to prove it. Given that he had been with his cousin since 1999 the Adjudicator considered that it made no sense that he claimed to have had no idea by October 2003 about his family's whereabouts. The evidence was that they had not moved house and the Adjudicator considered that the appellant

could not have contacted his cousins from Germany if he had not had their telephone number and could not have had that number if they had not given it to him before he left Iraq. The appellant had claimed that two weeks after his release his father was arrested and tortured to death and his brother tortured into insanity. His evidence in his statement was that he left for Jordan a week after his release which showed either that he was in contact with his family after his departure from Iraq or the story about what happened to his father and brother was not true. There was no evidence as to how his sister could have known that he was living in the United Kingdom other than that he was at contact in all times with his family and had embellished his story.

7. The Adjudicator also considered the letter from the appellant's sister to be curious, noting that it was written in English, that it contained spelling errors including an error in the spelling of the name of Paul Bremer, failure to exhibit any of the threatening letters that were claimed to have been sent and that she had not reported the matter to Mr Bremer or to the British representative. The Adjudicator considered that it was unclear why an Iraqi citizen married to an American citizen should seek to report threats to the British representative. He noted that the letter was presented at the last minute. There was no medical evidence to support the claim that their mother and brother had been rendered mentally ill.
8. The Adjudicator having therefore in effect accepted little more than that the appellant was Iraqi and a Catholic, went on to consider the objective evidence concerning the situation for Christians in Iraq and concluded that targets of Islamic ire were attacked for what they did such as for selling liquor or being women who did not cover their hair, rather than because of what they were. He concluded that there was no real risk on return.
9. The grounds of appeal challenge the Adjudicator's adverse credibility findings and as a consequence challenge the findings on risk on return, and also argue that the Adjudicator erred in his assessment of the positions of Christians in Iraq. Permission was granted on the former two but not the last point.
10. This was the first issue that came for consideration before us. Mr Magne sought permission to vary the grounds of appeal given the significant recent deterioration in the situation for Christians in Iraq.
11. Mr Elks argued that it was not open to the Tribunal to allow variation just because of a deterioration in the situation, but it needed to be shown that in accordance with what has been said by the Tribunal in **AK [2004] UKIAT 00201** that there must be special circumstances. The strength of the grounds was not enough by itself. Special circumstances had not been shown in this case, though it may be that

the appellant would wish to make future representations to the Secretary of State in the light of fresh evidence and that was the appropriate forum for the fresh evidence.

12. On consideration we considered that we would allow the variation in this case. We accept as we must, since it is set out in a starred determination that the strength of grounds of appeal cannot by itself be a ground for extending time, bearing in mind however that that is a somewhat different context from the issue before us of permitting a variation, though clearly there must be a degree of relevance of this criterion to the context before us. The strength of this particular ground is of clear relevance to our mind. There are references to objective evidence which arguably go contrary to the Adjudicator's reasoning in this regard, and, if we find that there is an error of law in the Adjudicator's determination this would allow us to deal with the up-to-date objective evidence. It is clear that that objective evidence is of some force as regards assessment of the risk to Christians in Iraq at present. Though we have some sympathy with the points made by Mr Elks we consider on balance that it is appropriate to allow the variation of the grounds in this case to allow the ground concerning the challenge to the findings on risk to Christians in Iraq to be argued.
13. Thereafter Mr Magne sought and was granted permission to adduce oral evidence from Mr Brian Erickson.
14. Mr Elks expressed concern that he had not been able to make enquiries about Mr Erickson.
15. Mr Magne said that he had contacted the team leader at the Presenting Officer's unit seeking the bundle to be brought to the attention of the Presenting Officer as quickly as possible.
16. Mr Elks expressed his concern that the case had been listed for no more than 25 minutes, and we undertook to record as we here do his concern about the lack of time to prepare for cross-examination in this case. We gave him time to make such preparation as he felt able to do in the circumstances.
17. Mr Brian Erickson of 14202 Cokevale Street, Rockville, Maryland 28041, USA gave evidence. He was referred to his letters at page 131 and 140 of the bundle and confirmed that they had both been written by him and he stood by their contents as he did by the contents of his statement at page 301 of the bundle subject to one amendment at paragraph 16. He had said at page 304 that probably half of the people at the CPA were Christian but that was probably towards the beginning and did not mean that that was the case all the time he was there. Towards the end of his time there and the transfer of power there were probably only a quarter or slightly fewer who were Christians.

18. He was referred to page 143 of the bundle and asked to identify the three people in the photograph. He said that the lady on the left was a friend of his wife, the lady in the middle was his wife and the gentleman to her left in the photograph was Ambassador Paul Bremer. Subject to the above amendment he was willing for his statement to be adopted as evidence in court today.
19. He was referred to paragraph 6.215 of the October 2004 Country Report. This involved information concerning the Iraq Property Claims Commission (IPCC). He was asked whether the Home Office or the UK government contacted him while he was there and he replied no. He was asked whether they had contacted anyone in his organisation and he said it was possible that they had contacted the senior advisor of his commission, but he did not see any information there that referred to speaking to them.
20. He was referred to the Section between paragraph 6.46 and 6.55 in the Country Report concerning Christians in Iraq. He had had the opportunity to read this. He had shared his office with the Ministry of Displacement and Migration which is the main ministry working to assist Iraq on matters of humanitarian relief and human rights. He referred to the Minister Pascale Isho, with whom he had worked towards the last two and a half months of his time in Iraq where he had succeeded to the senior position in the IPCC, and he had worked with the senior person who was working with the ministry, Jennifer Johnson. The IPCC's implementing body was the Ministry of Displacement and Migration.
21. He was asked what information he had got from the Minister about Christians elsewhere in Iraq. He said that in speaking with Jennifer Johnson and several times with the Minister it was obvious that the situation was extremely grave. The Minister was specifically concerned about very old Christian communities in the north and reports of ethnic cleansing and depopulation of those communities and a series of attacks and violence aimed against Christians.
22. He was asked whether the Home Office had ever contacted Ms Johnson about Christians in Iraq. He said that they had not to his knowledge. He found it surprising that in that section of the document the Minister was not quoted, as she was the only Christian in the Iraqi government and her Ministry was primarily charged with humanitarian issues as they concerned the Iraqi people. He also considered that a lot of the information was dated. His understanding was that the Archbishop in Basra referred to at paragraph 6.48 had subsequently been assassinated. Also towards the end of his time there when he spoke to Iraqis he worked with, especially the Christians, they spoke about Baghdad being flooded by Christian refugees. He had been told that there were no more Christians in the south of Iraq.

23. It was put to him that the appellant was from Baghdad and he was asked whether he could not go and live at his family address. He said that this would be very difficult. His (i.e. Mr Erickson's) wife was targeted by terrorists and insurgents and people had come to the neighbourhood and searched for her and a note was posted at her residence with a statement about people who worked with the coalition. He thought that the appellant would be in danger as there were attacks on people who worked with the coalition and their families. He had heard a rumour via his wife that it was said that she had married an American general, so she was subject to talk and scrutiny.
24. On cross-examination Mr Elks asked Mr Erickson if he had any identity documentation with him and he produced among other things his passport and his embassy card which was formerly his ID when he was at the US Mission in Baghdad.
25. He was referred to his letter of 18 August 2004 at page 140 of the bundle. He confirmed that it had his signature on it and he had written the letter. He was asked whether this was the official line of the US government and said no and his position working for the US government was that he was the senior advisor to the IPCC and this was information that he had given concerning the appellant's case, in a private capacity. He was asked why if that was the case it was on US Embassy headed paper and he said it was because he was working for the US mission. He did not normally write personal letters on such paper and had done this as it gave the identification that he worked at the US mission in Baghdad and he believed it gave veracity to the information he gave.
26. It was put to him that he could have given the same information in a personal letter and could have verified his ID by reference to documents and it was put to him that he had done this in order to give kudos. He said that the facts spoke for themselves and denied that the aim was for his views to be interpreted as those of the US government. He had wanted to ensure that it was understood that he was a person working in Iraq and the information he had obtained was reputable and he was a reputable source of that information.
27. He was asked whether he was a contractor or employed by the US government whilst in the CPA and he said he was employed by the Department of Defense, and when he wrote the letter he was employed by the US State Department. He was asked what the position was for US government employees who used their position for personal gain and he denied that there was any personal gain. The question was repeated and he said that he had no idea. He was asked whether he had ever told his superiors he was writing letters on US headed paper and he said he had spoken with his superior Duncan Gilchrist and told

him he was writing on behalf of the appellant and his case would be pending before the UK courts. He had not said that he was writing on headed paper with his personal position at the foot of the paper.

28. He was asked how many Christians there were in Iraq from his limited experience and he said that he had read in a CIA Factbook that it was around 3 per cent and that would be around 600,000 people. He had read this book for general information on Iraq and did not know if it said 3 per cent but knew it from general reading about Iraq. He had not specifically researched the problems of Christians. He had kept himself abreast and read articles in his office and working with the Minister for Displacement and Migration and they would share articles and this was a problem that they discussed.
29. He was referred to paragraph 19 of his statement, at page 305 of the bundle, where he had said that many Christians relocated to Baghdad. He was asked how many. He said he had no idea. There was information about moving from the south and the west, for example from Fallujah and from the north. He had heard anecdotally from Christians. He had spoken to people specifically about the south having been emptied of Christians coming to Baghdad. It was very hard always to estimate the number of refugees accurately and this was the view of bodies such as the UNHCR.
30. He was referred to paragraph 24 of the statement at page 306 of the bundle concerning gold being a big business for Christians in Iraq. He said that a group of Christians worked in the Iraqi Property Claims Commission and they, about four people, were involved with the gold business and they spoke about stores being burned and people picked on. He was asked whether he had only got his information about gold from these four people and he said he also got the information from talking to other Christians and this was a niche they had carved out, and this was true also with regard to alcohol and hospitality. These were profitable businesses. It was put to him that the attacks on Christians could be put down to the general lawlessness and the fact that they were people with money. He said that this was not the case as it was clear that there was a very specific pattern of attacks against Christians. There was for example the case he had cited at paragraph 23 of the statement concerning the burning down of the optician's building. You could always tell that a store was a Christian store for the reasons that he had set out in that paragraph.
31. His wife's status in the United States was as a legal resident and she had been told that she would get her green card, the resident's card, and she was legally able to work in the USA. He was asked why he had not applied for refugee status for her there and he questioned why it would be necessary to go through that when she was married to him and he could get her in legally. Today she was in Washington DC.

32. There was no re-examination.
33. In his submissions Mr Magne stated that, with regard to the Adjudicator's adverse credibility findings, the Adjudicator had not referred to the objective evidence. The failure to claim asylum in a third country was of little relevance to the proof of the claim. He had failed to consider the reason why the appellant had not claimed asylum in Germany. As to the last sentence of paragraph 15 it was a matter from which adverse inference was drawn and it should have been put to the appellant if it was a material concern.
34. The Tribunal was referred to page 128 of the bundle, where the case worker for the Refugee Legal Centre made it clear what the appellant had said to her and that the issue of the appellant's contact with his family in Iraq had not been raised either by the Adjudicator or the Presenting Officer at the hearing. It was clear that shortly after his arrival in Jordan he was in contact with his family but lost contact and the Adjudicator had failed to address this issue. It was contended that the Adjudicator had adopted a flawed approach to credibility having looked at the evidence on its own before considering the objective evidence.
35. Mr Magne contended that the circumstances today in Iraq made a lot of the earlier country information obsolete. The appellant still feared targeting from Ba'ath Party officials and was at risk as a Christian and on account of imputed political opinion given his sister's marriage to Mr Erickson, a leading CPA member. The UNHCR report of August 2004 had not been before the Tribunal in the AK.
36. Mr Magne then took us to various points in the bundle. First of all at page 148 he referred us to the evidence concerning Christians in the UNHCR document of 12 August 2004 with an update at page 156 paragraph 2 which was of especial relevance to the appellant on account of his relationship to his sister to Mr Erickson. He also took us in detail to the House of Commons debate on 8 December 2004 which is set out at pages 158-169 of the bundle. The targeting of the appellant's sister as set out in the letter of 26 March 2004 had not been contradicted by the Secretary of State. The letter of 26 April 2004 confirmed that she was the only Iraqi working for the CPA who was allowed to live in the Green Zone. Examples of killings of staff were set out in that letter. It was accepted by UNHCR as could be seen at page 274b that operatives of the former regime continued to operate and those who were at risk from the Ba'ath regime remained at risk. Mr Erickson's evidence was confirmed by the US Department of General Accounting Office at page 220-221. Property reform was a main point in reconstruction but they were not even able to engage interpreters, as could be seen at paragraph 11 at page 304 and this was relevant to inability to protect. People had left from both the south and the north so it was not only Christians with money who were at risk.

Nor was it limited to people who were acting in a manner offensive to Islam as had been held in **AK**. There were specific killings and blanket warnings that people should convert, leave or die, and a campaign of persecution. The administration was unable to offer protection and it could hardly protect its own soldiers and police officers. The state was unable to offer protection.

37. In his submissions Mr Elks contended that Mr Erickson had not provided evidence of great assistance since it was essentially based on his personal knowledge and was anecdotal. It depended on whom a person spoke to and their qualifications, and it depended upon an analysis of the information being set against established tests and put into context. Mr Erickson had agreed for example that with regard to the number of Christians in Iraq he got this information from general reading on Iraq and had not carried out any specific research and set his knowledge gained in Iraq against academic research. Little weight could be attached to his evidence. He had made it clear that he did not usually write personal letters on US paper and the reasons he had given for doing so were weak and it was argued that it was done to give some extra weight to the information provided, and it did not deserve that weight.
38. Mr Elks contended that there was no error of law in the determination. The Adjudicator had heard the appellant's evidence and came to sustainable conclusions on credibility. It was not necessary to put every point concerning the Adjudicator with regard to credibility to the appellant and there could be tactical reasons as had been held by the Tribunal in **WM** why an appellant did not deal with an issue and hoped that the Adjudicator would not notice it. It was for an appellant whose credibility was challenged as in this case to put forward all the evidence and deal with the discrepancies.
39. The approach to the sister's letter was not perverse. It was valid to query why she would report to the British representative. The credibility assessment was sound.
40. If the Tribunal disagreed then dealing first with the risk on account of association with the CPA, it was not disputed that threats had been directed to the appellant's sister and her family, but he would return to Iraq after a number of years' absence. The family would be associated with the CPA in Baghdad and he could relocate elsewhere and it could be he would not be associated with his family in any event. As a consequence there was no risk and no need to consider protection.
41. As regards risk as a Christian, **AK** was the starting point. It was said that things had moved on, and there were references to further attacks. The bombs that went off in August 2004, referred to at paragraph 6.52 of the Country Report had been considered by the Tribunal in **AK**. It was for the appellant to show that the **Batayav** threshold had been

crossed. A lot of information had been submitted but it did not show a gross and systematic persecution of Christians in Iraq. Mr Erickson's evidence included statements concerning Christians being involved in lucrative trades and although it would not be entirely on that account that they would be at risk, in a lawless society some of the attacks detailed within the evidence were related to economic betterment. He referred to page 148 of the bundle which bore this out.

42. As regards the House of Commons debate, a lot of the references were to Chaldo-Assyrian Christians and the appellant was a Catholic. It had not been shown that they faced the same risk but it did not in any event cross the threshold. It could be seen from page 169 that relocation was feasible and the appellant had to show it was not viable. The issue of protection was fact-sensitive and a broad assertion could not be made that every Christian in Iraq would have a sufficiency of protection. This appellant would not face a real risk.
43. By way of reply Mr Magne argued that Mr Erickson's letter made it clear that his wife was allowed to stay in the CPA but the mother and mentally-disturbed son were in hiding, and if the State could protect then they would not have to be in the Green Zone. Relocation was not viable. The Tribunal was referred to Mr Erickson's statement in the evidence in this regard. There was also reference to this point at page 274b in the bundle and at page 132 paragraph 7 concerning relocation to the north and elsewhere.
44. With regard to what had been said by the Parliamentary Under-Secretary of State for Foreign & Commonwealth Affairs during the debate, the fact that families lived in the north did not mean that it was secure or that there were enough places there for the appellant. They were a small number in quite a precarious situation. In fact it tallied with Mr Erickson's evidence. People have come to Baghdad for safety from the north and it showed a true desperation and it also had to be seen in the context of there being 600,000 Christians in Iraq.
45. At this point Mr Magne took instructions from Mr Erickson concerning what the Minister of Displacement and Migration had said about the resettlement of Christians and that she had been angered about the displacement being effected with no reasons. Mr Magne argued that the Secretary of State's assertions could not be taken to be reliable.
46. Mr Elks contended that it would be appropriate if Mr Erickson was going to give fresh evidence for him to be recalled, so that he could be cross-examined. Mr Erickson was recalled and said that he had spoken with Pascale Isho the Minister, and he had attended a conference in Geneva with her where he had spent some time and had been in a meeting with her in Baghdad. She had spoken about her anger concerning the Christians in the north being pushed out of their ancestral areas. It was unclear what the report was. She was angered

about the fact that there was supposed to be resettlement going on but it was being blocked by the Kurds. This had been in October 2004. He was surprised that she was not being consulted. There was no information that anyone had spoken to her directly though this could be done and she could explain in depth.

47. When cross-examined by Mr Elks, Mr Erickson agreed that he had last had contact with Pascale Isho in October 2004. It was suggested to him that it could be that he was not aware of the resettlement programmes that had taken place and the resettlement referred to at page 169 by the Parliamentary Under-Secretary of State. Mr Erickson said that there were plans for relocation but Pascale Isho had spoken with frustration and anger that this was not ongoing.
48. It was put to him that this might be the case that things were going on that she was not aware of or things had begun to develop since he had spoken to her and there was specific evidence about resettlement now. Mr Erickson questioned what was said by the Parliamentary Under-Secretary of State at page 169 of the bundle with regard to the detail on resettlement. From his lengthy experience of working with the Kurds they had real problems with them and people were threatened and there were problems if you were not a Kurd.
49. We asked Mr Elks whether he would be prepared to investigate the information stated at page 169 concerning the specific examples of relocation mentioned there on the basis that he would not find it necessary to say anything if it was not accurate and unless his enquiries altered the correctness of the information then he stood by it. We allowed Mr Elks a week to provide that information if any and for Mr Magne to provide any comments on it a week thereafter for him. No such communication was in fact received from Mr Elks.
50. Mr Magne referred to Mr Erickson's later evidence. He said that the information in the debate was highly likely to be inaccurate and his experience with the Kurds should be borne in mind. Even taken at its highest it only involved 1,050 families and it was negligible and was irrelevant to the appellant.
51. We consider first whether there is an error of law in the Adjudicator's determination. Upon consideration we consider that the credibility findings are flawed to the extent that they comprise an error of law. The issues that concerned the Adjudicator appear to us to be essentially marginal. The first of these concerns the view that the appellant was forum-shopping, given that he spent several months in Jordan and thereafter went to Austria and from there to Germany. It seems that he was told in Austria that they did not accept asylum seekers and this was after a period of imprisonment for two months, and he had fears of neo-Nazis in Germany. It may be that he should have pursued matters further than he did there but as we say we consider this to be of no

more than marginal relevance to the credibility of the claim that he makes. The question of the whereabouts of his family again appears to us to be of limited relevance. It would have been of assistance if these concerns had been put to the appellant by the Adjudicator, as clearly they were not. It would also have been preferable had he considered credibility in the context of the objective evidence, and that to our mind adds further weight to the conclusion we have come to that there is an error of law in the assessment of credibility in this case.

52. That having been said, the key issue is that of risk on return on account of his Christianity. The claim that he was a Catholic was not challenged. The Tribunal considered the risk to Christians in Iraq in its determination to which we have referred above, **AK**, in a determination where the appeal was heard in August 2004 and promulgated in November of that year. The Tribunal considered the objective evidence and concluded that though there might be categories of Christians who were at particular risk, especially sellers of alcohol, owners of cinemas where sexually-explicit films were shown and perhaps people who spoke English who would be at risk on account of their Christianity. It was also considered that clerics of some eminence and prominence would be in particular at risk. The appellant in that case did not come into any of those categories.
53. It is contended that since the Tribunal considered the evidence on risk to return in Iraq to Christians in August 2004 the situation has materially deteriorated to the extent that there can now properly be said to be a real risk of persecution and/or breach of human rights of a Christian in Iraq. In this regard Mr Magne relied first of all on the oral evidence of Mr Erickson and thereafter in particular on evidence from the UNHCR, evidence in the October 2004 Country Report and evidence in a debate in the House of Commons on 8 December 2004. Mr Erickson was in Iraq between May 2003 and November 2004 and it seems he was back in the United States in August 2003. During the earlier period he worked as a contractor for USAID and in February 2004 he was hired by the Defense Department as a Public Affairs Officer under Mr Bremer and then became involved with the Iraq Property Claims Commission and he worked thereafter for the Department of State at the US mission in Baghdad, having been appointed to the Coalition Provisional Authority. The evidence set out in his two letters and in his statement arises essentially as a consequence of discussions he had with a number of people including interpreters and also colleagues in the Ministry of Displacement and Migration including the Minister, Pascale Isho. The further risk factor which is said to exist in this case is on account of the appellant's relationship to Mr Erickson, being his brother-in-law. Mr Erickson married the appellant's sister Ragat in October 2003 and this led to threats being made against her to the extent that she was afforded protection by the CPA, being the only Iraqi national allowed to live in

the CPA-protected area, as set out in Mr Erickson's letter of 26 March 2004 at page 131 of the bundle.

54. Mr Erickson's evidence, concentrating for the moment purely on the question of risk as a Christian, is clearly of assistance though he accepted that it was essentially derived anecdotally, however he attached particular weight, not surprisingly, to what he said he had been told by the Minister with regard to her concerns that resettlement with Christians in the north was not taking place due to this being blocked by the Kurds.
55. We find it somewhat surprising that no evidence has been provided by Pascale Isho recording her concerns in this regard. It would have been of assistance also to have had information as to the timing of the stating of these concerns and the basis upon which they were expressed. We understand from Mr Erickson that he had conversations with Ms Isho in this regard in October 2004, and that is relevant to an issue we shall come to consider later which is that of the situation in the north of Iraq for Christians. We conclude in this regard by noting the assistance we have derived from Mr Erickson's evidence but bearing in mind that it is essentially anecdotally sourced.
56. The next piece of evidence to which we turn is the UNHCR information document dated 12 August 2004, which as noted above was not before the Tribunal when it considered **AK**. There is a section here on the situation for Christians at page 148 of the bundle. It is said that it was unanimously acknowledged by all persons interviewed that the situation of Christians in Iraq has dramatically deteriorated since the fall of the previous regime. This was attributable to one or more of the following factors: firstly that the coalition forces are predominantly made up of people from Christian nations, secondly that Christians are regarded as "infidels" by Islamic fundamentalists and extremists, and thirdly that Christians have traditionally been involved in the alcohol trade in Iraq and the combination of economic benefits and non-Islamic values of this activity are resented by fundamentalists and the unemployed.
57. It is said that resentment towards Christians appears to be particularly heartfelt in the south as well as in the Sunni triangle where there is currently a trend towards a stricter interpretation of Islam. There is reference to several incident of Christian-owned alcohol shops being targeted or ransacked. It is said that it is possible that this was done for religious reasons but many people felt that it was also possible that there was an economic motive. It is said that due to the perceived ineffectiveness of the police as well as the religious element of these crimes, most such crimes are never reported to the police.
58. Thereafter there is detailed evidence to be found in the course of the parliamentary debate on 8 December 2004. This, as Mr Elks reminded

us, is essentially in the context of the Chaldo-Assyrian community in Iraq, who it seems form more than 95% of Iraq's Christians, according to Stephen Pound MP. We see no reason to suppose however that the risk is materially different for Chaldo-Assyrians and for other Christians such as Catholics, though Mr Pound does refer at page 159 to the fact that they are at risk as being both an ethnic and a religious minority which may not be true of Catholics as regards the former aspect. Mr Pound refers to having many examples of the slaughter of innocent Chaldo-Assyrians on their way to and from church, work and their study. He refers to pressure being placed by the KDP in the north on Chaldo-Assyrians to join the KDP or fly the Kurdish flag. He states that as recently as July 2004 the KDP in Dohuk and Irbil prevented Chaldo-Assyrian groups and organisations from being part of the special electoral committee to nominate participants to the Iraqi National Conference, the purpose of which was to elect representatives to the Iraqi National Assembly. He states that the situation was violent and awful up to that day which had seen gunmen bomb two Christian churches in Mosul. He states that the specific targeting of Christian churches continues with the unimaginable consequence that a Christian is terrified to attend his or her place of Christian worship. He refers to the mortar attack on 9 September 2004 against the inhabitants of the Chaldo-Assyrian town of Baghdede which included the death of a child and critical injury to his brother and mother. In the same month two 26 year old Chaldo-Assyrians were kidnapped and beheaded and there was another example in December of 2004 of a man who had been kidnapped and killed when the family could not come up with the ransom. Mr Pound goes on to state at page 161 that Chaldo-Assyrians and Christians are being specifically targeted and no group in modern Iraq is being targeted in the same way. He refers to the fact that there has been one attack on a mosque in the past three months and eighteen attacks on Christian churches.

59. He was reminded by the Parliamentary Under-Secretary of State for Foreign & Commonwealth Affairs (Mr Chris Mullin) that the Shia Muslim leader in Iraq, Grand Ayatollah Ali Sistani, had called for an end to the attacks and talked about the need to respect the rights of Christians and other religious faiths and their right to live in Iraq peacefully. Mr Pound considered however that the voice of the Grand Ayatollah was essentially isolated and there had been very little indication of any diminution in attacks on the Christian community since.
60. There are also statements by Mr Spink MP who referred to the attacks which we have already mentioned in August 2004 against five churches in Baghdad and Mosul. Since those attacks Islamic extremists have struck Christian churches again. Five Chaldo-Assyrian churches in Baghdad were bombed on 16 October although nobody was injured. Bombs exploded at two churches in Baghdad on 8 November within the space of five or ten minutes which is indicative of the level of

coordination, and at least three people were killed and 40 injured. On 4 July two Chaldo-Assyrians were shot dead at their home by Islamic extremists, it seems in Mosul. There was reference to a bishop having referred to posters being put up in northern Iraq urging Christians to convert to Islam or leave the country. Chaldo-Assyrian Christians had received threatening letters telling them to support the Muslim rebellion against the Coalition Authority and to practise Islam or suffer severe consequences. The recipients of those letters were told that if they did not follow basic rules such as wearing the veil and did not follow Islamic teachings they would be severely treated or killed. Three Christian bishops in Mosul had received letters threatening to kill one member of each Christian household as a punishment for women not wearing the Islamic veil.

61. There was also reference to the fact that at least 58 Chaldo-Assyrian villages had been occupied, eight completely and 50 partially, by the Kurds. All of these are in Dohuk province and in areas controlled by the KDP. There is reference to the Chaldo-Assyrian Christians being a community under siege and of being specifically at risk of attacks from Islamic extremists from Iran and from those who want to drag them out of Iraq and kill them or force them to convert to Islam.
62. It is said by Mr Barratt MP at page 164 that the Christian community is clearly suffering badly. People were fleeing on a regular basis and there were claims of villages being destroyed, churches and monasteries being razed and Christians being deported to Baghdad. Christians were often victims of the growing abduction industry because they were seen as wealthy and he refers to a large number of Christians having been kidnapped in Baghdad between April 2003 and November 2004 and naturally people are terrified of even going to pray and of coming out as Christians.
63. There was reference by Mr Streeter MP at page 166 to a recent email received from Canon Andrew White who works in the Middle East and Iraq of a mass leafleting to all the churches and individual Christians having taken place recently telling them to leave the country or convert to Islam. There was reference to his church having been attacked yesterday afternoon, though the guards shot at the attackers which caused them to flee. It is said that the cries from the Christians of Iraq are increasingly desperate. He refers to the examples given of specific atrocities.
64. The Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs, Mr Mullin, referred to the fact that in some parts of Iraq, notably the Sunni area west of the Tigris river, attacks had been specifically directed at Christians and churches. He referred to the government having recently consulted fairly widely with a range of leading Christians in northern Iraq. He went on to state that Christian Iraqis are well integrated in the autonomous area of Kurdistan, the

Kurdistan regional government in Kirkuk and most parts of Mosul, but not of course in the western side of the city where the situation is difficult and dangerous. In Irbil some Christians occupy senior government positions. One is Deputy Prime Minister, another is Minister of Migration [this would be a reference to Pascale Isho to whom Mr Erickson referred]. Mr Mullin also referred to the fact that a committee has been set up in Angkawr Christian village just outside Irbil to help the resettlement of Christians from elsewhere in Iraq. He referred to the fact that so far about 1,000 Christian families have resettled in the areas around Irbil and Dohuk provinces and another fifty Christian families, mainly from the south of Iraq, have resettled in the Suleymaniah province. He referred also to the fact that a further 1,000 Christians took temporary shelter in Suleymaniah from Mosul during fighting there in early November but it was understood that most if not all of them had returned to their homes in Mosul. Progress continued to be made and he was pleased to report that on 6 and 7 December the first 70 of 170 Assyrian families who had fled to Baghdad in the 1980s returned to their homes near the Syrian border. He remained concerned by reports that Christians were suffering discrimination in other parts of Iraq, referring to the appalling attacks on churches which had resulted in a number of deaths and injuries to dozens more.

65. Thereafter there is an item from Asian News concerning attacks on the Chaldean Bishop's palace and the Catholic Armenian church, both in Mosul, by bomb attacks.
66. We think it is appropriate that we refer also to evidence that was put before us in a further appeal heard on the same day, the appeal of Mr Basheer Hana. Much of this concerns articles from various sources referring to the situation of Christians in Iraq. There was reference in the document at page 12 of the bundle in that case from MSNBC News concerning a two-thirds drop in attendance at St Joseph's Cathedral in Baghdad. A Christian community leader is quoted as saying that more than 200 Christians have been kidnapped and at least 60 of them have been murdered. Pascale Isho the Migration Minister is quoted as saying that at least 40,000 Christians have fled the country since the US invasion, most having gone to Jordan and Syria. Christians were targeted partly for operating liquor stores and beauty salons, for being perceived as being comparatively well-off and as being staunch supporters of the American-led invasion. It is said at page 17, this being a document from the Assyrian Democratic Movement, that those occupying Chaldo-Assyrian lands in the north of Iraq refused to leave and have now embarked on a process of intimidation so that Chaldo-Assyrians in other villages are forced to flee due to threats and constant mental and physical harassment. At page 19 to page 25 of this bundle there is a list of people who between April 2003 and October 2004, all being Chaldo-Assyrians, were killed or attacked in their homes, colleges or at work in some cases for the US military. There is a report

in The Times of 18 October 2004 concerning the damage done to five churches in Baghdad, to which we have referred above. In The Times of December 24 2004 there is an article concerning Christians facing an absence of midnight mass on Christmas Eve because of curfews imposed and the fact that congregations on Christmas Day were sparse, given people's fears as to their safety.

67. There are also various documents from the Barnabas Fund which is concerned with bringing hope to the persecuted church. There is reference at page 52 of this bundle in a document dated 3 November 2004 to leaflets being distributed with a message telling Christians to go and leave Iraq, and Islamic militants knock at the doors of Christian homes in Mosul demanding money. There are threats and attacks many of which it is said go unreported. In an item in the Independent of 17 October 2004 it is reported that the Christian community in Iraq has come under repeated sectarian attack from Muslim extremists since the occupation, and about 45,000 of a population of around 600,000 have fled abroad. It is clear that steady numbers of Christians are leaving Iraq. Looting has been used as a tool of intimidation against Christians in Basra, and there are concerns that an Islamic republic, i.e. a theocratic regime, would be particularly oppressive and alienating.
68. There is a document at page 65 concerning the blinding and amputation of the hands of the Muslim partner of the Christian owner of a restaurant who was killed because he served the Americans. At page 75 of the bundle "The Universe" it is said that so well orchestrated were the attacks on the Christians in August 2004 that they were beginning to suspect that the forces ranged against them amounted to far more than just a few fanatics.
69. There is also a very recent item in the Daily Telegraph of 8 January 2005 in which it is suggested that some 300,000 Christians, roughly a quarter of the population, have fled their homes since the US-led invasion. It is said that 60,000 Christians fled Mosul in recent months. Anti-Christian graffiti has been daubed on church walls and inflammatory CDs sold in the market and there have been regular gun attacks in Christian areas of the city. There was an interview with a gentleman who had fled with the rest of his family to Angkawr which is described as one of a number of Christian communities in the Kurdish-protected north. 150 families sheltered there from the oppression and fear that forced them to flee their homes in Mosul, Baghdad and Basra. Angkawr is a town of 35,000 people and is defended by guards and concrete barriers.
70. There is clearly therefore evidence of significant problems for Christians in a number of parts of Iraq. Most of the evidence concerns Chaldo-Assyrians, but we consider that the risk to Christians generally is not materially different from the risk to Chaldo-Assyrians and the issue is of that of assessing the level of risk that they face, and in

particular as the Tribunal noted in AK, following Hariri and Batayev, there requires to be a consistent pattern of gross and systematic violation of rights under Article 3 for that threshold to be crossed.

71. We accept that the evidence shows a deterioration in the situation since the Tribunal considered the evidence of risk to Christians in Iraq in AK. It is relevant to bear in mind also what is said in the Country Report of October 2004 that the Foreign and Commonwealth Office is receiving increased reports of intimidation against Christians. There have also been sectarian attacks and over recent months Christian churches have been deliberately targeted in bomb attacks which have resulted in the deaths of eleven people. The Chaldean Patriarch is quoted as saying that fanaticism is on the rise though he also stated that there was no general persecution of Christians. He considered that the personal survival of Christians is likely to come under further threats as the movement for the Islamisation of Iraq gathers momentum.
72. The question before us is whether there is a real risk on return for this appellant and to what extent if any there can be said to be a real risk for Christians generally in Iraq. Increasing numbers of Christians are leaving Iraq, though equally it is clear that significant numbers remain. The number of Christians in Iraq would appear on the evidence as a whole (and in this regard we consider that the recent report in the Daily Telegraph is somewhat in error in this respect) to be in the order of some 600,000. It is said that at one point there were over a million prior to the downfall of Saddam Hussein's regime. We are persuaded by the number of examples to which we have referred above in the evidence and the general atmosphere of fear that the situation is closer than it was to one where there is a real risk of persecution or breach of their human rights for Christians in Iraq. We are not persuaded however that it has reached the point of crossing the threshold so as to become a real risk. It is clear that Christians are still meeting together and attending church, albeit in an atmosphere of increasing concern, and increasing examples of attacks and are clearly feeling inhibited from expressing their religion to an extent which, we accept, comes closer than previously to amounting to a real risk of persecution. However we conclude that the evidence falls short as of today of indicating that the appropriate threshold is crossed.
73. If we are wrong in this regard we consider that the evidence in particular as set out in the remarks of Mr Mullin in the parliamentary debate of 8 December 2004 indicates that relocation can take place to the north. We bear in mind in this regard Mr Erickson's evidence and his quotations from Ms Isho concerning the problems with the Kurds for a non-Kurd assimilating in the north. Against that however we have the clear and specific examples given by Mr Mullin and also the evidence as contained in the Daily Telegraph report of 8 January 2005 concerning Christians living in the north having relocated there from other parts of Iraq. Though the numbers, as Mr Magne contended, are

small in comparison to the numbers of Christians generally, we do not consider that that shows that it would be unduly harsh for a Christian to relocate to the north. The evidence is not such at this stage as to indicate problems for a person relocating to the north such as to render this unduly harsh or, in the case of Article 3 of the Human Rights Convention to indicate a real risk of breach of their human rights in effecting such relocation and living in the north.

74. We are conscious of the fact that Iraq is a country where change occurs at a faster rate than most other countries of the world. Country Guidance cases on Iraq at present are unlikely to have a very long shelf life. Nevertheless we can only deal with the evidence as it is before us at the time of the hearing, and we have concluded with regard to the evidence on risk to Christians in Iraq that at present though the position has, as we say, deteriorated since it was examined by the Tribunal in AK, that it does not in the case of a Christian such as the appellant who has no particular distinguishing features to his Christianity, give rise to a real risk. Again the categories identified by the Tribunal in AK at paragraph 10 would appear to be at particular risk, especially clerics of some eminence and prominence. The comment made at paragraph 11 in that determination concerning alcohol sellers or owners of cinemas showing films offence to Muslims is a comment which we would endorse and repeat.
75. We turn to the other risk factor in this case, that of the appellant's relationship to Mr Erickson through his sister. The appellant has been in the United Kingdom since 1999. Mr Erickson came to Iraq in May 2003 and married the appellant's sister Ragat on 21 October 2003. He referred in his memo at pages 131 to 133 of the bundle to threats being made against his wife in the form of a visit by two young men who asked about her in the neighbourhood and a piece of cardboard left on the doorstep at her family home stating "the enemies of Iraq and God will die". He had considered that her life was in danger since she worked for the CPA, and had requested that she be allowed to stay in the protected CPA housing area. She lived there with him until she went to the United States with him. Mr Erickson considered that the appellant would have to stay in the family house and believed that he would be targeted since there were people who knew that his wife worked for the CPA and were looking to kill her. He also considered that, since the family home was in Dora where there had been the most fighting against the coalition and resistance by former Ba'athists in Baghdad that he would be at risk there. He would not be allowed to live in the Green Zone. Nor, as we have noted above, did Mr Erickson consider that the appellant could relocate elsewhere in Iraq. His wife's family had said that the appellant could stay with them for a short time, but they did not have the room. His mother and her mentally disturbed son were now in hiding.

76. We accept that there are risk factors in the applicant's case which would make it unsafe for him to return to his home area. His problems as regards his relationship to his sister are however in our view essentially localised. We consider that he could relocate away from that area without this being unduly harsh, essentially for the reasons given at paragraph 73 above. Indeed as regards the problems on account of his relationship with his sister we consider that relocation could take place to areas other than the north away from his essentially localised problem. We do not consider however that either separately or cumulatively with the risk factors that we have identified for him as a Christian that he faces a real risk of persecution away from his immediate home area in Iraq. The appeal is therefore dismissed.

D K Allen
Vice President