

**REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND**

REFUGEE APPEAL NO. 76448

AT AUCKLAND

Before: RPG Haines QC (Chairperson)
BA Dingle (Member)

Representative for the Appellant: The appellant represented himself

Counsel for the Department of Labour: MP Whelan

Date of Hearing: 29 March 2010

Date of Decision: 21 April 2010

DECISION OF THE AUTHORITY

INTRODUCTION

[1] On 8 July 2003 the appellant, presently thirty-seven years of age and a citizen of Iraq, was recognised as a refugee by the UNHCR office in Thailand at a time when he was held at the Immigration Detention Centre in Bangkok en route to New Zealand. He intended joining his father and eldest brother who were already in New Zealand and who had in the previous year been recognised by the Refugee Status Branch (RSB) of the New Zealand Immigration Service as refugees. On the basis of the UNHCR and RSB status recognitions, the appellant was accepted into the New Zealand refugee resettlement programme. On his arrival in New Zealand on 28 October 2003 he was granted a residence permit.

[2] Six years later, on 28 October 2009, a refugee status officer determined that the appellant would no longer be recognised by New Zealand as a refugee because the officer had concluded not only that the original recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information, but also because the appellant did not (in the officer's view) presently meet the definition of a refugee in Article 1A(2) of the Refugee Convention.

[3] From this decision the appellant appealed to this Authority. He elected to represent himself both at first instance and on appeal. The Authority is satisfied that this election was an informed one. The eldest brother was represented by a lawyer in his cancellation proceedings. When those proceedings reached this Authority the appellant was called to give evidence in support of his brother's case. The same lawyer represented the appellant's sister in her refugee application which also eventually came before the Authority. When the refugee claim by the sister's mother reached the Authority, the mother too was represented by a lawyer, albeit a different one. In these circumstances the Authority is satisfied that the appellant has made an informed decision to represent himself in this appeal.

CANCELLATION - SUMMARY OF LEGAL POINTS

[4] The statutory provisions which govern the procedure for so-called "cancellation" proceedings are fully addressed in *Refugee Appeal No. 75574* [2009] NZAR 355 (NZRSAA) and it is not intended to repeat or summarise what is said there. The main points relevant to the current appeal are:

- (a) Part 6A of the Immigration Act 1987 prescribes the procedure not only for recognising refugee status but also for the cancellation of refugee status where such recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information. See ss 129A,

129L(1)(b) and (1)(f)(ii) and 129R(b) of the Act. These statutory provisions do not employ the term “cancellation”, but in the interests of brevity we will throughout this decision use that term.

- (b) The statutory provisions pose two issues for determination (both at first instance and on appeal) in the cancellation context:
 - (i) Whether the earlier recognition of the person as a refugee may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; and if so
 - (ii) Whether the refugee status officer or Authority (as the case may be) should cease to recognise the person as a refugee.
- (c) Because the statute mandates a two-stage cancellation inquiry, it is to be noted that an affirmative ruling at the first stage of the inquiry that there may have been fraud, forgery, false or misleading representation, or concealment of relevant information cannot lead automatically to loss of refugee status. Rather, the affirmative finding simply puts back in issue the status of the person and reopens the refugee inquiry. The refugee decision-maker must determine anew, on the evidence available at the date of redetermination, whether the person is a refugee within the meaning of Article 1 of the Refugee Convention and therefore a person to whom, inter alia, the non-refoulement obligation is presently owed.
- (d) The standard of proof which applies to both the first and second stages of the inquiry is lower than the balance of probabilities but higher than mere suspicion.
- (e) A causal connection must be shown between the procuring of recognition as a

refugee and the alleged fraud, forgery, false or misleading representation, or concealment of relevant information.

- (f) The standard of proof required to establish the causal connection is lower than the balance of probabilities but higher than mere suspicion.
- (g) There is no discretion to continue to recognise a person as a refugee where that person's recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information and where the person does not presently satisfy the definition of the term "refugee" in the Convention.

[5] Against this background we turn to the facts on which the original recognition of the appellant as a refugee was based.

BACKGROUND FACTS AND THE BASIS FOR THE CANCELLATION PROCEEDINGS

[6] Because this is a case of interlocking refugee claims by members of the same family a brief description of that family follows:

- (a) **The father.** In his refugee application to the RSB the father gave his name as [*withheld*] with a date of birth of 1 January 1947. He arrived in New Zealand on 8 April 2002 and was recognised by the RSB as a refugee on 3 May 2002. He passed away in this country on 13 February 2005. He will be referred to as "the father".
- (b) **The mother - wife No. 1.** The father's first wife was identified in the father's refugee application as [*withheld*]. It would appear that she has at all relevant times remained in Iraq.

- (c) **The eldest son.** In his refugee claim filed with the RSB the eldest son gave his name as [withheld]. He arrived in New Zealand on 4 January 2002 and was recognised as a refugee by the RSB on 31 January 2002. That recognition was cancelled by the RSB on 30 April 2005. An appeal to this Authority was dismissed on 9 April 2008 (*Refugee Appeal No. 76051*). He will be referred to variously as “the eldest son” or “the eldest brother”.
- (d) **The appellant.** The appellant was recognised as a refugee by UNHCR Bangkok on 8 July 2003 under the name [withheld] and he arrived in New Zealand as a resettlement refugee on 28 October 2003. Due to difficulties in effecting service, the appellant was not served with the notice of cancellation until 8 July 2009. The RSB cancellation decision was given on 28 October 2009.
- (e) **The youngest son.** The youngest son is [withheld] who has been living in Syria for some number of years.
- (f) **Wife No. 2.** The father’s second wife was [withheld], a citizen of Kuwait. She arrived in New Zealand in November 2004. After an unsuccessful appeal to the Removal Review Authority a refugee status claim was lodged on 27 February 2006. That application was unsuccessful at first instance. An appeal to this Authority was dismissed on 27 March 2007 (*Refugee Appeal No. 76009*). The appellant believes that Wife No. 2 has returned to Iraq. Wife No. 2 has two daughters.
- (g) **The eldest daughter.** The eldest daughter is [withheld], who has been living in London since 2002.
- (h) **The youngest daughter.** The youngest daughter is [withheld], who arrived in New Zealand on 30 November 2004 and claimed refugee status on arrival.

After her claim was unsuccessful at first instance she appealed to this Authority. Although she was found not to be a credible witness she was nevertheless recognised as a refugee on the grounds of her status as an Iraqi woman without male protection. See *Refugee Appeal No. 75656* (10 November 2006). She will be referred to as “the youngest sister”.

[7] The respective refugee claims will be briefly summarised to show their interrelated and interdependent character.

Refugee claims by the father

[8] The father made three claims to refugee status. The first, under the name “KT”, was when he registered with the UNHCR Jordan on 17 September 1995 with his wife (it is not clear which one) and three children, being his two daughters and the youngest son. The eldest son and the appellant were both said by the father, when interviewed in 1996, to be attending University in Baghdad. The UNHCR refugee file was closed on 24 November 1998 after rejection of the refugee claim was upheld on appeal. The papers made available to the Authority do not reveal the basis of the unsuccessful refugee claim in Jordan.

[9] The second refugee claim, under the name “KAT”, was made on the father’s arrival in Australia by boat on 5 November 1999. He then possessed no valid passport or other legal travel document. His wife was said to be [*withheld*], an apparent reference to wife No. 2. The refugee application was based on a claim that the father had been detained and tortured by the then authorities in Iraq because he had made enquiries about his brother-in-law, a Kuwaiti national, who was then being detained in Iraq as a prisoner of war. The family had thereafter been ordered to leave Baghdad for a town near the border with Kuwait. In July 1996 the father and his family travelled to Jordan where they remained for two years before moving to Syria. It was from Syria that the father had travelled alone to Australia.

[10] The father was recognised in Australia as a refugee on 31 August 2000. At some point he was joined there by his second wife. Australian records show that on 21 November 2001 the father and the second wife left Australia for Damascus in Syria. They did not return.

[11] The third refugee claim was made when, almost five months later, on 8 April 2002 the father arrived in New Zealand by air. That claim was made under the name of "KAMJATT". His family name "ATT" now matched that earlier given by the eldest son in his refugee application lodged on his arrival in New Zealand two months earlier, namely "SKAMJATT". He had been recognised by the RSB as a refugee on 31 January 2002, prior to the father's arrival in New Zealand. The father told the RSB that he had travelled on an Australian passport in the name of "KAT" which he had purchased but destroyed during the flight to Auckland. The father concealed the earlier refugee claims made in Jordan and Australia respectively and the fact that in those applications he had used the family name of "T". He also concealed the fact that he had held an Australian Certificate of Identity in the name of "KAT". Moreover he concealed his presence in Australia in the period 5 November 1999 to 21 November 2001.

[12] The father now claimed that his difficulties stemmed from the fact that one brother had been executed after refusing to carry out an extrajudicial killing of prisoners of war during the first Gulf War and a second brother had been arrested in mid-1994 on suspicion of being the leader of an Al Dawah group. As a consequence the father had been removed from a responsible position in the Iraqi hospital system and placed under house arrest. The fact that the father was a Shi'a compounded these difficulties and for that reason he had left Iraq, eventually travelling to New Zealand to join his eldest son.

[13] The refugee status officer who recognised the father as a refugee on 3 May 2002

was not then aware of the father's sojourn in Jordan from at least 17 September 1995 to at least 24 November 1998 and of the refugee claim made there. Nor was the officer aware of the father's residence in Australia during the period 5 November 1999 to 29 November 2001 or of the fact that the father had successfully applied there for recognition as a refugee. After the RSB discovered the true circumstances but before cancellation proceedings could be initiated, the father passed away in New Zealand on 13 February 2005.

Refugee claim by the eldest brother

[14] The claim made in New Zealand by the eldest brother was under the family name of "ATT". The narrative was that because one uncle had been executed for refusing to obey an order during the first Gulf War and another uncle imprisoned for belonging to the Al-Dawah Party, the father had been initially demoted and then finally dismissed from his position with the Ministry of Health. In the same year the authorities began to suspect that the eldest brother was taking his uncle's place in the Al-Dawah Party and inciting unrest among university students. He was detained twice and beaten severely. In April 1997 and again in August 1999 he had been detained by the authorities. Each time he had been released after the intervention of his father. In 1999 he withdrew from university. In April 2001 he was arrested, severely tortured and sentenced to an unspecified punishment. In May or June 2001, after approximately one month in prison, and while being transferred to a second prison, the guards, in arrangement with the appellant's father, allowed the eldest brother to escape into the hands of his waiting father. After remaining in hiding for several months he (the eldest brother) crossed into Turkey illegally in mid-October 2001. After obtaining a false Kuwaiti passport, he travelled to New Zealand and claimed refugee status on arrival.

[15] As to the claimed escape from custody, the Authority's cancellation decision in *Refugee Appeal No. 76051* (9 April 2008) at [23] records:

[23] The appellant [ie the eldest brother] was also asked about his account to the RSB of his escape from prison in 2001 which, in his written statement dated 16 January 2002, he described thus:

“My father, uncles, relatives and friends tried to help when they transferred me to another prison ... my father bribed the guards with a big amount of money”

[24] In the record of the RSB interview the appellant had stated that after escaping from the prison guards he ran off for about 15 to 20 minutes then:

“I found my father along with another group in a car ... then they took me ... to the farm ... after I entered the farm I was told by my father that I had to leave Iraq”

[25] In view of the fact that his father was not in Iraq at the relevant time, the appellant was asked to explain his earlier statements which showed that his father had been personally involved in assisting him. The appellant attempted to explain this contradiction by attributing it to an error of interpretation at the time his statement was translated from Arabic to English; by “father” he had meant not his father in person but his father’s relatives and acquaintances in respect of each of the incidents in 1999 and 2001.

[16] As to this narrative, the findings of the Authority were that the eldest brother was not a truthful witness. See paras [58] and [69]. In the latter paragraph the Authority stated:

[69] The Authority is left in no doubt that the appellant [ie the eldest brother] knowingly colluded with his father in the preparation of his father’s false claim. He helped his father prepare a false account which repeated some of the same lies that the appellant had already related to the RSB in the course of his own claim; his father’s personal assistance in his release from detention and eventual escape from Iraq. The appellant knew that his father had been in Australia, not in Iraq, from 1999 to 2001. He knew that his father had previously been out of the country in Syria and Jordan where he had applied for refugee status.

Refugee claim by the appellant

[17] The appellant is recorded in the UNHCR Resettlement Registration Form as having told the UNHCR that one uncle had been executed for refusing to carry out an order to kill prisoners of war. The appellant’s father had consequently been demoted within the Ministry of Health. After a second uncle was arrested for being a member of the Al-Dawah Party the family suffered the stigma of the allegations which had

been made against the two relatives. Consequently the father had been removed from his position and kept under house arrest. In 1996 the appellant, a university student at the time, was arrested on several occasions for refusing to work for the student Ba'ath Party, beaten and questioned about his links to his second uncle and the Al-Dawah Party. The eldest brother, as the head of the University Student Union, had been able to obtain his release by bribing the authorities and vouching for the appellant's character. The family eventually decided that the only option was for the two brothers to leave Iraq. In July 2001 the appellant travelled to Jordan on an Iraqi passport previously obtained by his father in Jordan in the name of [withheld] and issued at Amman on 1 December 1998. The appellant then worked in Jordan until March 2003.

[18] The appellant is further recorded in the UNHCR document as saying that his eldest brother and father had left Iraq in March 2001 and had then made their way to New Zealand via Turkey and Indonesia:

In July 2001, the applicant left Iraq for Jordan, where he lived for two years in constant fear of the Iraqi Intelligence officers stationed amidst the Iraqi refugee community there. His brother and father left Iraq in March 2001, and made their way to New Zealand via Turkey and Indonesia; they were recognised as refugees by the New Zealand Immigration Service in early 2002 and granted residence permits. The remainder of the applicant's family had fled to Syria in 2001 prior to the departure of the applicant's brother and father.

[19] The assertion that the appellant's eldest brother and father left Iraq in March 2001 cannot be true as in March 2001 the father was living in Australia and on his own evidence, the eldest brother was not arrested in Iraq until April 2001. His fortuitous escape from detention did not occur until May or June 2001. The eldest brother did not cross into Turkey until mid-October 2001.

[20] The appellant now denies the accuracy of the paragraph quoted from the UNHCR document but accepts that the balance of the content is an accurate record of the information he provided in support of his refugee claim in Bangkok.

[21] Part of the appellant's factual narrative is a claim that following the discovery at Singapore Airport that he was travelling on a false passport and his immediate return to Thailand, he was detained, prosecuted and convicted on charges relating to his false travel documents. While in Bangkok Immigration Detention Centre he was visited by the eldest brother. The appellant says that they were unable to get close enough in the visiting area to be able to talk. The eldest brother left money for him and returned to New Zealand. The point made by the appellant is that he lodged his refugee status claim with the UNHCR Bangkok without being able to speak to the two members of his family who were then in New Zealand, being his father and eldest brother. The assertion is that he was not, at the time he made his own refugee claim to the UNHCR, then aware of the factual narratives given in New Zealand by his father and eldest brother or of the identities they had used. The fact that his refugee narrative largely dovetails those of his father and brother is said to be indicative of the truth of his claim.

[22] Although out of strict chronological order, we mention that after the father was recognised in New Zealand as a refugee and while the appellant was still in Jordan, he (the appellant) received from the father a set of medical forms for completion and return. This would allow the appellant to join the father and eldest brother in New Zealand. The doctor who carried out the medical examination drew attention to the fact that the name in the appellant's passport did not match the name given in the forms in that the passport was missing the family name of "ATT". The appellant says that he then added in the "ATT" name to a photocopy of the relevant page in the passport although in previous evidence given in support of the appeal by the eldest brother to this Authority he stated that he had altered the passport itself.

Refugee claim by the father's second wife

[23] As a Kuwaiti national, the second wife said she incurred the strong disapproval of her family by marrying the appellant's father, an Iraqi citizen. In her refugee claim

she narrated periods of imprisonment and violence at the hands of her family because of her marriage. She was also under suspicion by the Kuwaiti intelligence service because of her connection to Iraq. She claimed that if returned to Kuwait she would once again be subjected by her family to imprisonment and violence, including the possibility of an honour killing because of her marriage to an Iraqi. There was also the danger of renewed interest in her by the Kuwaiti intelligence officials. This account was not believed and her appeal to the Authority was dismissed in *Refugee Appeal No. 76009* (27 March 2007). Of all the refugee claims involving members of the appellant's family, the claim by "wife No. 2" is of little relevance to the appellant's own appeal.

Refugee claim by the youngest sister

[24] The youngest sister's narrative was that two uncles had problems with the former Ba'ath regime. One had been executed because of anti-regime activities. The other disappeared because of anti-regime activities. Her father had himself experienced problems with the regime, including periods of detention. In approximately 2000 she began to notice a change in her father in that he had by then become very worried for the family's safety. In early 2001 the family moved to Syria after threats that they would be killed. At the time of this move the eldest brother had left for Turkey because of his own problems with the regime. The current appellant also had problems with the regime and was being pressured to join the Ba'ath Party. In January 2002 the appellant's father obtained Iraqi passports for both sisters. He then travelled to New Zealand where the eldest brother had already been recognised as a refugee. The youngest sister had then joined them. Her refugee claim was based on a claim that because of her membership of the "ATT" family, she would be targeted by members of the former Ba'ath regime. Alternatively, she would be targeted by persons loyal to Muqtada Al-Sadr for the same reason. Finally, she claimed to be at risk because she would be living alone in Iraq as an unaccompanied, young, single woman without male protection and therefore vulnerable to violent attacks and other

forms of serious harm. In *Refugee Appeal No. 75656* (10 November 2006) the younger sister was recognised as a refugee solely on the last ground advanced by her. The balance of her account was rejected as she was found not to be a credible witness.

[25] In the result two separate panels of the Authority have rejected the claim by the eldest son and youngest daughter that two uncles were persecuted in Iraq and that their father had himself experienced problems with the regime.

**WHETHER RECOGNITION OF THE APPELLANT AS A REFUGEE MAY
HAVE BEEN PROCURED BY FRAUD, FORGERY, FALSE OR
MISLEADING REPRESENTATION, OR CONCEALMENT OF RELEVANT
INFORMATION**

[26] It is to be noted that the first stage of the inquiry mandated by the statutory provisions does not require the Authority to make a definitive finding that the earlier recognition of the particular individual as a refugee **was in fact** procured by fraud, forgery, false or misleading representation, or concealment of relevant information. The jurisdiction to reopen the refugee inquiry is established once it is found that the recognition “may have been” procured by such means. The standard of proof is lower than the balance of probabilities but higher than mere suspicion.

[27] Although we have referred to the findings made by earlier panels of this Authority, the present panel is conscious of its duty to reach its own independent conclusions on the evidence before it. The findings which follow have been reached after a careful examination of that evidence and after making due allowance for the fact that the appellant has chosen to represent himself.

Principal findings

[28] The essential points arising from the foregoing narrative are:

- (a) The father, the eldest brother, the appellant and the youngest daughter concealed the two refugee claims made by the father in Jordan and Australia respectively and the fact that in those applications the father had used the family name of “T”. Specifically, they concealed:
 - (i) The entirely different set of facts asserted by the father in support of his claim in Australia;
 - (ii) His recognition there as a refugee; and
 - (iii) His presence in Australia in the period 5 November 1999 to 21 November 2001.
- (b) The evidence establishes, beyond any reasonable doubt, that the father was in Australia in the period from 5 November 1999 to 21 November 2001.
- (c) Because it was physically impossible for the father to be in two places at the same time, it was not possible for him, during this period to be in Iraq or Syria.
- (d) The father’s claim to the RSB that he had had difficulties with the authorities in Iraq during this period (1999 to 2001) cannot be true.
- (e) It follows that the claim by the eldest brother that the father assisted the eldest brother to escape from custody in May or June 2001 is untrue.
- (f) The appellant’s claim that his eldest brother and father left Iraq in March 2001

and made their way to New Zealand via Turkey and Indonesia is not true.

- (g) The sister's claim that her father was living in Iraq during the 1990s and that in approximately 2000 she began to notice a change in him is not true. Nor is her claim that the family, including the father, moved to Syria in early 2001.
- (h) The true identity of the family remains in doubt given that in Jordan and in Australia the father gave his family name as "T", the passport obtained by the father for the appellant was in the family name of "KA" and the appellant amended his Iraqi passport by the addition of the family name "ATT" so that it would match the "ATT" name which had by then been given by both the father and the eldest son to the authorities in New Zealand.

[29] Our finding is that the appellant's recognition as a refugee by both the UNHCR and by the RSB may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information. Indeed the evidence here not only meets the "lower than balance of probabilities but higher than mere suspicion" test, it also comfortably exceeds the higher balance of probabilities standard. The causal connection between the procuring of recognition as a refugee and the alleged fraud, forgery, false or misleading representation, or concealment of relevant information is equally established on the legal test referred to earlier and comfortably exceeds the higher balance of probability standard. Our reasons follow:

- (a) The principal findings already referred to establish that the overlapping narratives given in New Zealand by the father, the eldest brother and the youngest sister are patently untrue, as is the narrative given by the appellant to the UNHCR.
- (b) The appellant was not a credible witness. He clearly understood that it was in his interests to adhere to the original account given to the UNHCR Bangkok

office except as to the claim that his eldest brother and father left Iraq in March 2001. Almost every attempt by the Authority to probe the appellant's claim to innocence and to confront him with the implications of his father being in (first) Jordan and (second) Australia, was met with the answer that he either did not remember or did not know.

- (c) The appellant having accepted that the UNHCR document is an accurate record of the information he provided in support of his refugee claim (except as to the March 2001 date), it is highly improbable that the UNHCR incorrectly recorded the appellant as saying that his brother and father left Iraq in March 2001.
- (d) That claim (that there was a departure in March 2001) simply cannot be true.
- (e) The claim by the appellant that he had no opportunity to collude with his eldest brother when the latter visited him at the detention centre in Bangkok is not accepted. At the time of the visit both the eldest brother and the father had been recognised as refugees in New Zealand and it is fanciful to say that the eldest brother travelled all the way to Bangkok other than with the purpose of briefing the appellant on the false accounts which the eldest brother and his father had colluded on in New Zealand. The Authority specifically rejects the appellant's claim that when he was visited in Bangkok by his brother they were unable to speak or to communicate.

[30] Having found that the appellant's recognition as a refugee may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information and that a causal connection has been established between the procuring of recognition as a refugee and the alleged fraud, forgery, false or misleading representation, or concealment of relevant information, the Authority moves to the second stage of the inquiry, namely whether, on the evidence available to

the Authority at the present time, the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

WHETHER THE APPELLANT IS PRESENTLY A REFUGEE

[31] 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.”

[32] In terms of *Refugee Appeal No. 70074/96 Re ELLM* (17 September 1996); [1998] NZAR 252 the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is Yes, is there a Convention reason for that risk of being persecuted?

[33] Because the appellant is not accepted as a credible witness and because this family has colluded as to the content of the refugee claims lodged both in New Zealand and in Bangkok, nothing that the appellant has said is accepted or relied on other than the fact that he is an Iraqi national of the Shi'a faith. The question is whether a person possessing those characteristics is at risk should he be returned to Iraq at the present time. With these findings in mind we turn to the three grounds on which the refugee claim is advanced:

- (a) The appellant is at risk of being targeted by former members of the Ba'ath Party.
- (b) He will be made to perform military service.
- (c) He may become a victim of sectarian violence, including suicide bombings.

[34] Each of these issues is addressed in some detail in the decision given by the refugee status officer on 5 November 2009. The appellant says that he has no further evidence to address or contradict those findings.

[35] As to the first ground, there is no evidence that members of the former Ba'ath Party are targeting or harming individuals. Above all, however, there is simply no credible evidence that former members of the Ba'ath Party have reason to target or harm the appellant. This limb of the appellant's case fails due to a complete absence of supporting evidence. Section 129P(1) of the Immigration Act 1987 expressly stipulates that it is the responsibility of an appellant to establish the claim. By a clear margin, the appellant has failed to do so.

[36] As to the military service issue, the country information cited by the refugee status officer (*Child Soldiers Report 2007* (21 May 2008)) establishes that there is no longer a system of compulsory military service in Iraq. Even if the appellant avoided military service during the Ba'ath Party regime he is not at risk of being obliged to perform it now. This element of his claim accordingly fails.

[37] As to the claim that the appellant may become a victim of sectarian violence, including suicide bombings, there are two points:

- (a) The appellant must establish that the risk of being harmed is a well-founded one; and

- (b) That such risk is for reason of his race, religion, nationality, membership of a particular social group or political opinion.

[38] As to the risk issue, while all citizens of Iraq may theoretically become victims of sectarian violence or of a suicide bombing, the appellant does not stand out as being at risk over and beyond the theoretical. Put another way, his risk of harm is no more than the risk faced by all those living in Iraq and is a speculative risk only. This falls well short of the “well-founded” standard set by the Refugee Convention. For the reasons explained in *Refugee Appeal No. 72668/01* [2002] NZAR 649 (NZRSAA) at [111] - [154], conjecture or surmise has no part to play in determining whether the anticipation of a risk of harm is well-founded. Such anticipation is only well-founded when there is a real substantial basis for it. A substantial basis may exist even though there is a far less than a fifty percent chance that persecution will eventuate. But no anticipation of harm can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of being persecuted. A fear of being persecuted is not well-founded if it is merely assumed or if it is mere speculation. On the present facts there is nothing to transform a generalised risk that all Iraqi citizens face. It simply cannot be said that this risk approaches, for each citizen (and therefore for the appellant), the well-founded standard. There is no real ground for believing that the appellant faces a risk higher than a speculative or assumed risk.

[39] Furthermore, even assuming against this finding that the risk of harm does reach the “well-founded” standard, the appellant must still establish that that risk of being harmed is “for reasons of” one of the five Convention grounds enumerated in Article 1A(2). Once again, there is simply no evidence of such causative link. As Professor Hathaway explains in *The Law of Refugee Status* (Butterworths, Canada, 1991) at 93, refugee law is concerned only with protection from serious harm tied to a claimant’s civil or political status [ie one of the five Conventions grounds]. Persons who fear harm as the result of a non-selective phenomenon are excluded. Those impacted by

natural calamities, weak economies, civil unrest, war, and even generalized failure to adhere to basic standards of human rights are not, therefore, entitled to refugee status on that basis alone.

[40] On the facts there is a complete absence of evidence to show that any risk of harm potentially faced by the appellant in Iraq will be “for reasons of” his race, religion, nationality, membership of a particular social group or political opinion.

[41] In conducting his case before the Authority the appellant appeared to be under the misapprehension that the Authority has a discretion on humanitarian grounds whether to cease to recognise him as a refugee; or alternatively, that the Authority has a general humanitarian jurisdiction to allow him to remain living in New Zealand. As the Authority explained both at the hearing and at the commencement of this decision, given the terms of s 129W of the Immigration Act 1987, it has no such jurisdiction or discretion.

CONCLUSION

[42] Our conclusion is that the original recognition of the appellant as a refugee by the UNHCR and by the RSB may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information. It is our further conclusion that the appellant does not satisfy the requirements of Article 1A(2) of the Refugee Convention. The appellant is not recognised as a refugee. The appeal is dismissed.

“Rodger Haines”

.....

Rodger Haines QC

Chairperson