

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70388/97

A L J
(AT 70388)

AT AUCKLAND

Before: S Joe (Chairperson)
D Plunkett (Member)

Counsel for Appellant: Mr R Chambers

Representative for NZIS: No Appearance

Date of Hearing: 18 April and 14 May 1997

Date of Decision: 20 November 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellant, a Shi'ite Moslem and national of the Republic of Iraq.

INTRODUCTION

The appellant arrived in Port Nelson on board a shipping vessel on 8 April 1995, and made a spontaneous application for refugee status that same day. A formal application for refugee status, dated 1 May 1995, was subsequently lodged on his behalf by his then counsel from the Refugee and Migrant Service.

The appellant was interviewed by the RSB in respect of this application on 22 March 1996. By letter dated 15 January 1997, the RSB declined the appellant's refugee application. It is against this decision that the appellant presently appeals.

THE APPELLANT'S CASE

It is appropriate to record that the Authority heard evidence from the appellant over the course of two days of hearing, namely 18 April 1997 and 14 May 1997 respectively. For this reason, the Authority had the opportunity to obtain a more detailed and comprehensive account of the appellant's family background and life in Iraq than that which was previously adduced at the RSB interview. The appellant's account before the Authority is set out below:

A. Family Background

The appellant is a 30 year-old, divorced man from Baghdad, Iraq. He married in 1985 but subsequently divorced his wife following his departure from Iraq while in Jordan in early 1995. His daughter by this marriage continues to live with the appellant's former wife in Iraq.

The appellant is the son by his father's first marriage. Both of his parents are deceased. His father was executed by the Iraqi authorities in 1986. The appellant's step-mother, now aged approximately 60 years, presently lives in Baghdad with two of the appellant's brothers and one sister. The appellant's eldest brother, who was drafted to serve in the military in 1982 during the Iran/Iraq war, has been missing in action since that time and is presumed dead. The appellant's younger brother, now 18 years old, has since ceased his studies and works to support the family. The appellant's remaining siblings continue to study at school. Members of the appellant's extended family also live in Baghdad. One paternal uncle, however, having left Iraq some 30 years ago, is currently living in Canada, and is a professor of biology at one of the colleges.

Prior to his death, the appellant's father was a criminal lawyer. He was also an active member of the banned Iraq Communist Party, a matter about which the appellant came to know only in 1981 or 1982. In the early 1980s, the appellant's father was periodically arrested and detained for questioning by intelligence agents who suspected him of being involved with the Communist Party. The appellant believed that the Iraqi intelligence agents had suspected his father of anti-government activities, but had released him in order to find out the identities of others who may have been involved with him. Although he never discussed in detail with the appellant his treatment

while in detention, the appellant believes his father was maltreated by the intelligence agents on these occasions. During this period, five of the appellant's seven paternal uncles were similarly arrested and detained as a result of his father's political activities. They were usually released after being detained for a few days.

It was not until around 1985 that the appellant learned more about his father's Communist Party activities, for it was around this time that his father began to talk to him about the Communist Party in an effort to persuade him to similarly join. The appellant gave evidence that his father was very secretive of his Party activities and the appellant learned of his involvement in a very piecemeal fashion, as and when his father chose to tell him. He did, however, come to know that his father had some prominence as leader of a sub-group within the Communist Party, although he did not know how long he had been involved with the Party. His father had also been one of many responsible for helping formulate a subsequently foiled assassination attempt on Saddam Hussein who was then deputy leader, in 1979. Arrests of those known to be involved were made by Iraqi intelligence, including that of the then chief of police, Nadine Gazer, but the father's involvement in this assassination attempt was never discovered.

The appellant's father also published writings, sometimes using a pseudonym, both within Iraq and overseas. The subject matter of his works published within Iraq never referred to Communism nor were critical of the Iraqi regime, and for this reason were not considered controversial. However his writings which were, with the assistance of friends, published overseas, were impliedly critical of the regime, in that he called for the banned Iraqi Communist Party to be recognised as a legal political party. He also advocated that the Party's leaders in exile act to further achieve this cause.

On 13 March 1986, the appellant's father was arrested from his workplace by Iraqi intelligence authorities. At the time, the appellant's family did not know what had happened to the father, and began to search for him, enquiring about his whereabouts at various hospitals and of the police. Some two weeks later, police came to the family home notifying them of the father's death, and requesting that the mother collect his remains. To add

further insult, his mother was required to pay for the number of bullets used in his execution. The appellant considers that his father was executed by Iraqi intelligence because of his active involvement in Communist Party activities in Iraq. The appellant further claimed that Iraqi intelligence were specifically targeting members of the intelligentsia, whom they regarded with deep suspicion.

B. The Appellant

Following completion of his primary school studies in 1978, the appellant attended middle school for two years (1979 and 1980) before taking a leave of absence from his studies for seven months in 1981. The appellant, who was 15 years old at the time, tired of his studies and desired instead to do his reading at home. Despite some opposition from his teachers at school, the appellant remained at home reading books at his leisure on literature, philosophy, psychology and music. He also pursued his interest in writing poetry in his spare time. The remainder of time the appellant spent, as a typical teenager, on the streets.

Subsequently, the appellant resumed his studies to complete his final year at middle school by 1982. He then undertook his secondary school studies for a further three years from 1983 until 1985. During his secondary school years, the appellant also pursued his interest in psychology and read books on the subject from his library at home as well as that of his teacher. The appellant claimed that his understanding of psychology also allowed him to analyse himself and the world around him.

In 1982 the appellant became a supporter of the Communist Dawa Party, but withdrew his support around 1983-1984 having become disenchanted with the increasingly violent approach adopted by that Party. In 1984, the appellant decided to accompany his father to attend a Communist Party meeting which was being held at someone's house. More than 25 people attended the meeting at which participants discussed how the Party would institute change through revolution, and what changes would be brought about to better serve the Iraqi people.

The appellant did not attend any further Party meetings with his father. This was not as a result of any lack of interest on the part of the appellant in

the Party itself. The appellant claimed that he wanted to read and learn more about the Communist Party.

Around the same time, whereas previously the appellant had written essentially love poems, he began to write poems more political in their content, using such writing techniques as symbolism. None of these writings attracted the attention of the authorities until the end of 1984, when one of his works, which had been vetted by the publication's editor-in-chief, was published in a newspaper called "Ashaad". In this article the appellant questioned why there should not be a celebration to commemorate the founder of modern poetry, as that held for MA, founder of political action and of the Ba'ath Party.

Intelligence authorities subsequently visited the appellant at school, and took him away for questioning to determine the 'true meaning' behind this work. The appellant was similarly questioned for short periods of time in the one or two months following publication of the article. This would occur as often as every day, or three to four days. The appellant would always tell the officers that he merely considered the founder of modern poetry deserved equal respect to MA and should be similarly commemorated. The appellant would be reminded by the intelligence officers of the positive aspects of the Iraq Revolution and the Ba'ath Party and, when they had finished questioning him, laughed and told him they would see him "next time".

As previously noted, by 1985, the appellant's father began having serious discussions with the appellant about Communism and Socialism, with a view to getting the appellant to join the Communist Party. The appellant told the Authority that he was not interested at the time in becoming a Communist Party member, nor indeed a member of any political party at that time. He had no political aspirations insofar as obtaining an office within the government was concerned either and was concerned only with the concept of the protection of human rights. The appellant told the Authority he would have supported any political party that defended this principle but, according to what he understood at the time, neither the Communist Party nor the Ba'ath Party appeared to subscribe to these principles. Despite their differing political views, the appellant's father respected his decision not to become a member of the Communist Party.

In January 1986, the appellant commenced his university studies in politics and law at B university. By this time the appellant had become more interested in politics and had read widely about the principles of Communism from such works as the writings of Karl Marx and Lenin. These books were obtained initially from his father's own library collection. Subsequent to his father's death, however, the appellant, out of caution, would read such books at the house of a friend, who similarly supported Communism. These books were illegal or banned publications.

By 1986, the appellant's views about Communism had gradually changed and from his readings he arrived at the conclusion that Communism was the only solution to saving the poor. It was not, however, until around April 1986, that the appellant decided to formally join the Communist Party.

The appellant initially joined as an ordinary Party member, and would attend clandestine Party meetings to discuss with other members how they could bring about change through revolution. These meetings would occur sometimes as often as once a week, or at other times every two to three weeks. The appellant also became involved in scattering Party circulars on the streets and posting them on walls late at night or in the early hours of the morning. These writings espoused Communist principles and were aimed at enlightening the public on such issues as the government's dictatorship of the people, and criticised the Iran/Iraq war and the execution of army deserters. The appellant distributed approximately 100 circulars as often as every three days, or two to three weeks at a time.

Despite having formalised his association with the Communist Party, the appellant told the Authority that he did not consider that he necessarily 'belonged' to that Party. The principles of Communist theory represented merely one political opinion with which he agreed. The appellant was not confined, therefore, to carrying out Party activities. He continued to write poetry and other writings to criticise anything he considered was inhumane and unacceptable. These writings he left with a friend to hide in his house.

On 13 June 1986, three armed men in civilian clothes, whom the appellant later concluded were intelligence agents, visited the appellant's home and conducted a house search. A book on the life of Lenin (which the appellant

had forgotten to transfer to his friend for safety purposes) was discovered from the appellant's library, together with poems he had written about the Middle-East. When questioned about these materials, the appellant attempted to distance himself by saying that the book belonged to his father and not himself. However, as the poems that were discovered were written in his own name, he was not believed. The appellant was subsequently arrested, blindfolded and taken away in a car. He estimates that it took some 15 minutes before he reached his destination.

When his blindfold was removed, the appellant found himself detained in a small dark room. The appellant received a small amount of dry bread, rice and sauce each day. During this time, the intelligence agents played what the appellant considered to be 'psychological games' on him, repeatedly locking and unlocking the door. At other times he was threatened that a decision had already been made in his case and that he would "follow [his] father".

After three days in detention, the appellant was brought before another officer for questioning. In contrast, he was provided a cigarette, good quality food, and seated in a comfortable chair before being questioned about his relationship with the Communist Party and who he was working for. The appellant denied being involved with the Party and claimed that the book on Lenin confiscated from his home belonged to his father. He also claimed that the poem he wrote which also had been confiscated generally concerned the Middle-East, and was not in any way directed at Saddam Hussein. The appellant denied being involved with the Communist Party, claiming he merely wanted to complete his education. The officers, not believing the appellant, began to kick and hit him with their fists. After a while he was transferred to another room known as the "Operation Room".

The appellant described the "Operation Room" as being outfitted with various devices used to apply torture. On his first day in this room, the appellant was interrogated much as before. His hands and feet were beaten by an officer using a plank of wood, while other officers punched him with their fists causing him to fall to the floor and break two of his teeth. The appellant was then handcuffed, with his hands behind his back, before being suspended from the ceiling. A heavy tyre was placed around his neck causing his body to go downwards and his hands behind his back to

go upwards. At the same time, his body was being rocked up and down while men pulled on his legs. This caused extreme pain. This treatment lasted some 15 minutes before the appellant was dropped to the floor.

The officers continued to beat the appellant on his head and face and poured water over him. He was also prodded with sticks charged with electrical shocks. These were applied several times to his genital area, his ears, lips and other sensitive areas of his body.

The appellant was detained for some four months. During this time, he was suspended from the ceiling and tortured in the same manner as described above two or three times. He was frequently prodded with the electrical device several times. Within two weeks of being detained, the appellant sustained a broken left wrist as a result of his being beaten with an iron bar. The appellant was given sedatives and his arm was bandaged. He was told by the officers that he would be sent to hospital once they had completed their questioning of him. This never happened.

The appellant also described to the Authority how his feet were tied onto a plank of wood which had two holes. Rope inserted through the holes bound his feet tight onto the wood causing his feet to turn blue. Two men held the plank of wood, one at each end, causing the appellant to be suspended upside down with both his hands and feet bound. His back and feet were then whipped by other officers using thick plastic hoses.

On another occasion, the appellant was placed in a chair. His wrists were tied to the chair. The chair would be spun round for a short time and then stopped. The appellant would be asked to tell the truth about his activities. When he tried to protest his innocence, the officers reminded him about his father and his background and would not accept the appellant's claim that only his father had been involved in the Party and not himself. The officers would then turn the chair at high speed and suddenly stop, causing the appellant to fall on the floor and become physically ill. After being left for a short while, the officers continued beating him. He was then forced to hold a telephone and told to ring his friends who, it was alleged, had evidence of his activities. When the appellant put the receiver to his ear he received an electric shock.

The appellant claimed that whenever he was taken to the "Operations Room" he was subject to torture for about an hour or more. Each time, the officers demanded that he tell the truth about his Communist Party involvement, who he was working with and for, and his activities. Each time the appellant denied any involvement. The officers would beat him whenever they considered that he was not giving them the answers they wanted. The appellant claimed that even when he became very weak, he would continue to be questioned, and if he did not respond after some five minutes or so, the officers resumed beating him again.

After four months in detention, the appellant was transferred to another prison in southern Iraq where he was kept a further three months, although not tortured. He was subsequently released having been forced to sign a statement undertaking not to become involved in anti-government activities, and that if he was found doing so, that he would be liable to execution. After being warned not to involve himself in such activities and being slapped in the face, the appellant was finally released in January 1987.

At the time of his release, the appellant was physically very weak and required medical treatment from a specialist. Because the appellant's wrist had not healed properly, his wrist was broken again, and re-set in plaster to heal. He was also given painkillers. The appellant estimates that it took approximately three to four months for his wrist to heal. The appellant complains that he has lost strength in his left hand and can no longer carry heavy items using that arm. His left wrist is also thicker than his right one. The appellant attributes these lasting effects to the delay in his obtaining medical treatment for his wrist. The appellant also received treatment for the wounds sustained from the beatings directed at his feet which had, in the absence of treatment, become inflamed with pus. He was also given vitamins to rectify the low haemoglobin count he had developed as a result of his detention, and because of his nerves, sedatives to help him sleep.

In support of this aspect of his claim, counsel submitted a medical report issued by Dr Daniels dated 27 March 1997, the original x-rays of his left wrist, together with a report from Dr Stewart, the radiologist to whom the appellant was also referred. Following a physical examination of the appellant, Dr Daniel concludes in his report that the appellant's physical scars are consistent with the appellant's account of injuries sustained while

in detention. In terms of the appellant's wrist, Dr Stewart finds that the appellant suffers a deformity "of the distal shaft of the radius and ulna consistent with an old healed fracture" which, it is suggested by Dr Daniels, confirms the appellant's account. Dr Daniels also finds that the fact that the appellant's shoulders were "painful to pressure", was also consistent with his account of being slung up by his hands and of having his arms tied behind his back for prolonged periods of time. Finally, the appellant's scar on his outer right ankle, and numerous scars on both left and right lower legs were also consistent, both in their appearance and distribution, to the beatings alleged.

Following his recovery, around March 1987, the appellant returned to university only to be informed by the university dean that the Minister of Education had closed his file, and that he could not continue his studies. The appellant was over 18 years of age by this time, and therefore required to present himself for compulsory military service. The appellant did not report to the military as required, on grounds of conscience. The appellant did not want to be part of a war he did not believe in. He considered that millions had died during the Iran-Iraq war for no reason other than the personal dispute between the leaders of those two countries. When asked whether he knew the likely punishment for evasion of military service, the appellant told the Authority that no military call-up was carried out and it was expected that all eligible men of conscription age would present themselves as required. Failure to do so, however, was not considered a serious offence. Following a law change in 1986, however, as regards a person who had joined and subsequently deserted from the army and committed other criminal offences, the appellant said that severe punishment and even execution was provided for. An 'ordinary' army deserter, he said, would receive a lighter prison sentence.

Subsequently the appellant sought guidance from his friend, JIJ, a well-known artist, writer and poet, who established a world library in Baghdad. JIJ was granted asylum in Iraq from Syria in 1948 and was well-known and respected by the Iraq authorities. The appellant said that he wanted to find a way to pursue the same ideas and thoughts that his father had died for and also believed that JIJ could offer advice and protect him.

In April or May 1987, JIJ helped the appellant publish a collection of his poetry under a pseudonym, G A-R, which he then distributed to bookshops for sale. These poems while not overtly political, nevertheless contained hidden meanings through his use of symbolism. His book of poems had been approved for publication by the Ministry of Culture. Some 10 days after its publication, intelligence authorities, who considered that there were underlying political themes in the poems, questioned JIJ about the book, and asked for the author's address. JIJ did not disclose the appellant's name, telling the authorities that the writer had merely handed him the poems to read, without giving a contact address. He also said that he considered there was nothing political about the poems written. The intelligence authorities appeared to accept JIJ's explanation and left, warning him to be careful about the people whose works he helped publish. Following this incident the appellant refrained from giving material to JIJ for publication, but continued reading and writing.

On 19 or 20 July 1987, the appellant visited his aunt and cousin in A-F, a district of Baghdad which was a predominantly Shi'a neighbourhood. Within two hours of the appellant's arrival, secret police surrounded the area. The appellant went up to the roof of the house to hide, and saw that the police were firing indiscriminately into the area. Two other residents climbed onto their roofs and began returning the gunfire at the police. The police after entering the cousin's house came onto the roof and arrested the appellant, accusing him, despite being unarmed, of firing at the police. The other two residents who fired at the police were similarly arrested.

The appellant told the Authority that the police had in fact raided this area on two or three occasions before this incident. The police were looking for army deserters and persons considered to be against the government. The appellant claimed that his cousin's neighbourhood, comprising predominantly Shi'ite Moslems from southern Iraq, was perceived by the government to be pro-Iran and anti-government.

The appellant was detained at a police station in Baghdad. The appellant protested his innocence, claiming only to have been visiting his cousin, but was not believed. The appellant had yet to fully recover from the police maltreatment during his first arrest and suffered further maltreatment while in detention. At least once a week, he was beaten by the police using

plastic hoses, electric cables and a wooden plank, much in the same way as had occurred during his arrest in 1986. The appellant was also made to walk over broken glass and hot charcoal, and on one occasion was injected with an unknown substance causing him dizziness. Having been detained for some 48 to 49 days, the appellant was informed that he would be brought before the judge on a charge of resisting the police.

At his trial which was held two days later, the judge perused the appellant's file and proceeded to question the appellant about the shooting incident. After approximately half an hour's deliberation, the judge declared the appellant innocent of the charges brought against him, but ruled that the appellant, having previously failed to comply with his military service obligations, be required to do so now.

The appellant was subsequently sent to N in southern Iraq where, after being detained for some two to three days, he was released to join the new recruits. As a new recruit, the appellant was entitled to and subsequently granted three days leave.

The appellant objected to having any involvement or participation in the war, and for this reason absconded once his leave had expired. Thereafter the appellant went into hiding, staying at the homes of various relatives in Baghdad. The appellant spent most of his time reading and writing poems rarely going out of the house. While in hiding the appellant received news that the police had gone to the family home looking for him and that his mother was being pressured to present him to the authorities. Occasionally he returned home for a few hours to obtain an update from his family on the situation.

The appellant continued his Communist Party activities and by April or May 1988 was chosen as leader of a district Party cell in Baghdad. As leader of his cell, he reported to two other Members. He secretly met his fellow cell Members on a regular basis at various friends' houses. There they would discuss how they could educate people to recognise that the present dictatorship was wrong and that they had a right not to be slaves. The appellant continued to be involved in writing leaflets, which as previously referred, criticised government actions, such as the execution of army deserters due to their being designated 'traitors', and promoting Communist

principles. He also continued his involvement in posting leaflets on the walls and in the streets. These activities were never discovered by the authorities.

After some eight months in hiding, the appellant was arrested by the authorities during one of his visits home. He was detained a few days before being brought before the Second Special Court, where he stood trial for deserting from the army. The judge confirmed during the proceedings that the appellant had deserted the army, that his father had been executed and that he had also been arrested previously on other charges and accordingly sentenced him to two years' imprisonment.

The appellant was sent to A-G prison in west Baghdad. The appellant described the prison conditions as poor and unsanitary. He was often beaten by prison wardens using hoses and was placed in solitary confinement for no specific reason. In July 1990, having served one year of his sentence, the appellant, together with 20 other prisoners, was released pursuant to an amnesty issued by the Republican Palace. The appellant does not know whether the other prisoners released were similarly army deserters or had been imprisoned for committing other offences.

Following his release, the appellant resolved to leave Iraq and began to make arrangements to obtain a passport. The appellant's friend, who told him that he had connections with the head of the Passport department, said that he could arrange for a passport to be issued to him for the sum of 30,000 dinars. The appellant's family subsequently moved house to live with relatives, and the appellant put the house on the market for sale. The appellant was able to pay the 30,000 dinars from the sale proceeds of this house, and requested his friend to obtain a passport for him in the name of his missing brother, HJ. Until his travel plans were finalised, the appellant remained in hiding and frequently changed addresses. The appellant knew that the police were still looking for him. The appellant had decided to leave Iraq for Jordan, as this was the only country along Iraq's border that did not require an entry visa. He maintained contact with his family through friends whom he would telephone, the last such contact having occurred around September 1991.

On 9 July 1992, the appellant obtained his passport. The following day he left Iraq and crossed the border to Jordan. He was granted a six months residence visa. Once there, the appellant applied to the Syrian authorities at the border for refugee status in Syria but was refused due, he claims, to the bad relations between Iraq and Syria. Subsequently the appellant applied for refugee status at the embassies of Turkey, Libya, Lebanon, Canada and Denmark situated in Jabba Anman, all of which were rejected. He also applied for a visa to Egypt and the United States, both of which were unsuccessful. The appellant was finally advised by the Danish embassy to go to the office of the United Nations High Commissioner for Refugees (UNHCR) based in Jordan.

Having stayed in Jordan for some six months, the appellant went to the local UNHCR branch office to apply for refugee status. By this time, the appellant was an illegal overstayer, he not having renewed his residence visa which had since expired. It is appropriate to record that as a result of their enquiries, UNHCR Canberra confirmed to the RSB that the appellant was, in fact, interviewed by UNHCR Jordan in October 1992, and that this claim was rejected by that office on 3 November 1992. A précis only (as opposed to a transcript) of the appellant's interview with UNHCR Jordan was provided by UNHCR Canberra, under cover of its letter of 4 October 1996, and this response also formed part of the Authority's file.

While there were aspects of the appellant's claim before this Authority that were able to be corroborated by the précis obtained, such as his status as a poet and the fact that his father had been killed by the authorities, there were some quite different claims made. For example, in his interview with UNHCR Jordan, the appellant is said to have been an army deserter in 1985, of having been accused of killing a member of the Ba'ath Party resulting in seven months detention in July 1987, of having been sentenced to death by court martial in 1988 but subsequently being granted an amnesty some 22 months later. The appellant also claimed to having been detained and tortured, having been accused of firing at and resisting the authorities in January 1992 but subsequently being released. He also claimed to having been arrested after his poems, allegedly anti-government, were confiscated by the authorities in 1992, and of having been arrested a month later for having criticised the massacres ordered by the Minister of Defence.

When these inconsistent claims were put to the appellant for comment, he described to the Authority the considerable unease he felt within a short period of time of being interviewed by the UNHCR officer in respect of his refugee application. Initially, the appellant was asked relatively simple questions, in respect of which he was forthcoming in giving the answers. However, the interview seemed to the appellant to develop into more of an interrogation rather than an interview, and the appellant became frightened due to the nature of the questions being asked of him. The appellant also explained that he was extremely fearful and the spectacle of Jordanian police guarding the entrance to the UNHCR office and the fact that he was being intensely questioned by an officer of Arab descent caused him to panic. The appellant told the interviewing officer that he had expected that the UNHCR staff would all be foreigners, and was informed that only the head of the UNHCR office was in fact a foreigner. He feared also that Iraqi agents could be monitoring his movements and might, therefore, be aware that he had sought political asylum at the UNHCR Jordan branch office. The appellant thought of escaping but feared he would be shot by the policemen guarding the UNHCR doors, and so tried to extricate himself from the interview process as quickly as possible by fabricating a story. In its entirety, the interview lasted only 10-15 minutes.

After the UNHCR interview, the appellant decided that he should find a way to leave Jordan for another country, but was not able to do so until some two years later in 1995. The appellant stayed in various modest hotels at different locations in Jordan until he finally made his way to the port city of Akabar around 1994 -1995 from where he intended to leave.

In the intervening years, the appellant continued with his writing, and published an article in a Jordanian newspaper at the beginning of 1993, criticising the enmity between Arab states. Although the appellant was questioned and cautioned by the Jordanian authorities about the article, he was not otherwise seriously affected by its publication and encountered no further problems with the authorities. The appellant continued to write privately, but did not publish any further articles.

The appellant occasionally telephoned friends in Iraq to learn of any news about his family but was not informed whether his family was being troubled

by the authorities. The appellant was supported in his living by his uncle, who sent him money periodically which was delivered to the appellant by truck-drivers travelling to Jordan from Iraq. Occasionally, the appellant found work, such as house-painting, which also supplemented his living.

In 1995, a few months prior to departing Jordan, the appellant wrote to his wife explaining that he wanted to divorce her. The appellant explained that he did not know what would happen to him, and that he thought it unfair to make his wife wait for him when he did not know whether he would resolve his problems or whether he might be apprehended. He therefore decided to give his wife "her freedom". After initial disagreement, his wife finally agreed that this was the best thing for him to do. The appellant was able to obtain a divorce by making the appropriate declaration at a mosque prior to leaving Jordan.

On 11 March 1995 the appellant finally managed to stow away on a ship bound for Saudi Arabia and, upon his arrival there, applied unsuccessfully to stay. He subsequently boarded another ship bound for New Zealand, arriving at Port Nelson on 8 April 1995.

Since being in New Zealand, the appellant has been unable to make contact with his family in Iraq and has no information on whether his family have been troubled in his absence by the Iraq authorities. The appellant fears, however, that the fact of his refugee application in New Zealand may have become known to the Iraq authorities, and fears that he would be arrested, and similarly tortured at their hands, should he return to Iraq. The appellant having continued to pursue his poetry writings since his arrival in New Zealand, also expressed his intention to continue doing so, even if he returned to Iraq.

In support of the appellant's claim, counsel also submitted the following documentation:

1. A selection of the appellant's poetry and writings translated into English;
2. A report by Dr Gail Ratcliffe, registered psychologist, dated 14 April 1997, in which she states, inter alia:

"[The appellant] described typical symptoms of Post-traumatic Stress Disorder. The long term effects of [the appellant's] torture as described by him are consistent by those experienced with people who have been through a situation of profound and uncontrollable fear and been unable to remove themselves from this. His description of the symptoms he now experiences fulfill nineteen of the twenty-one symptoms found in Post-Traumatic Stress Disorder. In order for the disorder to be diagnosed, seven of these symptoms must always be present, together with an additional three of the remaining four symptoms - a total of ten.

I would not have expected [the appellant] to have known enough of Post-Trauma symptomology to have been able to fabricate such a picture. It would take an expert in the field of emotional and physical abuse to have done so.

Given that [the appellant's] symptoms indicate that he has experienced trauma while in Iraq and that he is reminded of this on almost a daily basis, I consider that his fears of returning to Iraq are genuinely held. I have no doubt that [the appellant] feels he will be killed if he returns to Iraq." (sic)

It is also appropriate to record that at the conclusion of the hearing, counsel was granted a further seven days leave within which to lodge the original version of the appellant's statement in support of his refugee application, written in Arabic. An issue as to the accuracy of the translation previously submitted had arisen in the course of the appeal hearing, given the apparent contradiction in the appellant's evidence as to the nature of charges against him in 1987. Counsel's further requests for extensions of leave within 28 days were subsequently entertained. By letter dated 9 July 1997, counsel advised the Authority that although the Arabic translator employed to review the original statement and its translation had suffered a heart attack, and therefore could not complete the job, counsel had been able to confirm with the appellant, having orally gone through the statement with him, that the translation lodged was a true record of the Arabic statement.

All of the documentation submitted, together with counsel's submissions, have been taken into account in determining this appeal.

THE ISSUES

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."

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), 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 persecution?

ASSESSMENT OF THE APPELLANT'S CASE

We first consider the issue of the appellant's credibility.

Apart from some minor inconsistencies, the appellant's narrative before the Authority was generally consistent with that given to the RSB. There is, however, the issue of the appellant's account being materially different from that given during his interview with the UNHCR Jordan in 1992. The appellant has explained the circumstances in which he gave false evidence to the UNHCR, this being primarily to hasten the interview process and extricate himself from the position of danger he believed himself to be in.

In giving his explanation, the Authority found the appellant to be entirely credible. Certainly there was a marked change in his demeanour which served to convey his fear and the uncertainty of his predicament which the Authority found particularly compelling as well as plausible. We are therefore prepared to accept his evidence before the Authority as true.

Moreover, in all other aspects of the appellant's account the Authority found the appellant to be an honest and credible witness. The appellant delivered his evidence in an unaffected manner, presenting as someone who was recounting real-life experiences that had in fact occurred to him. He was able to give the Authority a detailed account of his experiences, and illustrate his narrative by pictorial means. He gave full answers to the Authority's questions, was not evasive, and proffered evidence that, objectively, did not always advance his

claim. All of this was maintained by the appellant over a two-day hearing during which the appellant gave his evidence entirely in English.

The appellant also impressed the Authority as an intelligent, expressive and well-read individual who was well versed in politics and philosophy. The Authority has no doubt that the appellant was a poet and writer and one who, due to his own individual make-up, was compelled to write on matters which offended his moral conscience.

We therefore accept that the appellant was a member of the banned Communist Party in Iraq, and that he was subsequently arrested by intelligence agents in June 1986 following the confiscation of his book on Lenin, and own personal writings. The Authority also has no doubt that during the seven or so months spent in detention, the appellant was subject to the various extreme forms of torture that he claimed. The Authority further accepts the appellant's accounts of his further arrests and treatment while in detention in July 1987 and later in 1989, and in particular, the medical evidence which substantiates that the appellant continues to feel the effects of such treatment even until today. That is, that as a result of these experiences, the appellant suffers from Post-traumatic Stress Disorder.

It is against this background that the Authority turns to consider the primary issue of whether, objectively on these facts, there is a real chance of the appellant being persecuted if he returns to Iraq.

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

It is clear that the appellant has been consistently targeted by the Iraqi authorities who perceive him to be politically unreliable and a threat to the Iraqi regime. This is evidenced by the fact of his arrest as a suspected Communist Party member in June 1986, his subsequent inability to resume his university studies following his release, and his second arrest in 1987 when the appellant was caught up in a raid in a predominantly Shi'a area traditionally regarded with suspicion by the authorities. Later, despite being the subject of the 1990 amnesty granting his release from prison for army desertion, the appellant was subsequently released from prison only to find that he was wanted by the Iraqi authorities yet again.

Country information clearly shows that Iraq continues to be a major abuser of human rights generally and that the government's security apparatus play a central role in maintaining the environment of intimidation and fear upon which the Iraqi government's power rests (See section 4.3 of *Background Paper on Refugees and Asylum Seekers from Iraq* (September 1996) obtained from UNHCR Refworld country information service). From the *IRBDC Country Profile on Iraq* (June 1990) at page 21, the position in Iraq is stated as thus:

"The combination, on the one hand, of the exacerbating effects of warfare and the pre-existing deep religious and ethnic divisions that exist in Iraq's sharply divided society with, on the one hand, the Ba'ath Party's drive to centralize control in Baghdad, the regime's desire to pursue a policy of Arabization at the expense of other groups and Hussein's authoritarian desires to root out all opposition to his rule, has almost inevitably given rise to a situation in which human rights are abused as the regime moves against those minority groups that oppose the government's measures to impose its will." (sic)

In the *United States Department of State Country Report on Iraq for 1996* (published February 1997) at page 1265, the human rights situation in Iraq is said to have worsened in 1996:

"Tens of thousands of political killings and disappearances remain unresolved from previous years. As socio-economic conditions deteriorated, the regime punished persons accused of economic crimes, military desertion, and a variety of other charges with torture and cruel and inhuman penalties, including the extensive use of amputation. Prison conditions are poor. The authorities routinely use arbitrary arrest and detention. The judiciary is not independent; the President can override any court decision. The Government continues to deny citizens the right to due process and privacy. Max van der Stoep, the Special Rapporteur for Iraq appointed by the U.N. Human Rights Commission (UNHRC) confirmed again that freedom of speech, the press, assembly, and association do not exist, except in some parts of the northern areas, beyond control of the Government. The Government severely limits freedom of religion and movement, discriminates against women, children, religious minorities, and ethnic groups. It also restricts worker's rights...Citizens do not have the right to change their government." (sic)

Further, while amnesties have occasionally been granted by the Iraq authorities in the past, as recently as July 1995 for certain persons convicted of political offences, such measures "in the absence of the abrogation of repressive laws quelling the freedoms of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions...warrant virtually no confidence" and raise questions as to their underlying aims (see comment of *Special Rapporteur* of the UNHRC for Iraq referred in section 4.1 of *Background Paper on Refugees and Asylum Seekers from Iraq* (September 1996), supra).

The Authority finds that there is a real chance that if he returned to Iraq the appellant would be arbitrarily detained and tortured as has occurred to him in the past, and that such treatment would constitute persecution. In reaching this conclusion, the Authority has taken into account the appellant's history of being consistently targeted by the Iraqi authorities as one in whom they have no confidence as to his loyalty to the regime. It is also clear that the fact of the appellant's family background (his father was executed for his political beliefs and actions) and own previous history as a political offender were all factors taken into account by the judge in convicting and sentencing the appellant for the ostensibly criminal offence of army desertion. Following his release pursuant to the amnesty granted, the appellant was nevertheless still wanted by the Iraqi authorities and this resulted in the appellant remaining in hiding until he was able to flee Iraq.

While there is no evidence to suggest *the fact* of the appellant's application for refugee status in New Zealand is known to the Iraqi authorities, there is a real chance that his lengthy absence from Iraq may serve to heighten the authorities' distrust and suspicion of the appellant and would result at the very least in him being questioned in relation to his activities while overseas. Given the previous history and background of this particular appellant having been targeted and punished by the authorities, the fact that he was wanted by the authorities at the time he left Iraq, and his subsequent lengthy absence from his home country, we find that if the appellant returned to Iraq there is a real chance that the appellant would be questioned, detained and tortured by the Iraqi authorities for political reasons, as has occurred to him in the past.

As previously noted, the appellant has submitted to the Authority samples of his written work which he has completed while in New Zealand and the Authority is satisfied that the appellant is a *bona fide* writer. While there is no suggestion that any of the appellant's works left in Iraq have been discovered in his absence, we further consider that the appellant's political views would sooner or later find expression through his poetry and writings once again, and that this, coupled with his politically suspect background, would also bring him into conflict with the Iraqi authorities in the future.

2. If the answer is yes, is there a Convention reason for that persecution?

The Authority finds that the persecution likely to be meted out to the appellant would be by reason of the Convention ground of imputed political opinion. That the appellant has been identified as politically suspect can be attributed to his father's Communist Party background, the appellant's own political profile as a suspected Communist Party member and having been discovered with writings impliedly critical of the regime.

CONCLUSION

For these reasons we find the appellant to be a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

.....
Chairperson