

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76417

AT AUCKLAND

<u>Before:</u>	M A Roche (Chairperson) D Henare (Member)
<u>Counsel for the Appellant:</u>	M Hanif
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	8 December 2009
<u>Date of Decision:</u>	21 January 2010

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (“RSB”) of the Department of Labour (“DOL”), declining the grant of refugee status to the appellant, a national of Iraq who was formerly resident in the Kurdistan region of Iraq (“KRI”).

INTRODUCTION

[2] The appellant is a married man aged in his late 20s. He arrived in New Zealand on 8 September 2006 on a visitor’s visa that had been issued for the purpose of his culturally arranged marriage to a New Zealand resident whose family is also from the KRI. On 16 October 2006, the appellant married his wife and on 6 November 2006, lodged an application for permanent residence based on the marriage. This application was approved in principle on 23 May 2008, however a residence permit was not endorsed in his passport which expired in January 2008. In October 2008, the appellant and his wife separated. His wife subsequently withdrew her support for his permanent residence and accordingly, the application was declined. Following two unsuccessful applications for work

permits, on 14 July 2009 the appellant lodged a claim for refugee status. He was interviewed by the RSB on 6 August 2009. His claim for refugee status was declined in a decision dated 30 September 2009, leading to this appeal.

[3] The appellant, like the other male members of his family, worked as a *peshmerga* (soldier) for the Kurdistan Democratic Party (“KDP”) from the time he was a teenager until he left Iraq. In this capacity, he, along with a large number of other KDP *peshmerga*, assisted the American forces to take control of the area around the city of Kirkuk in April 2003. The appellant believes that the KRI is unsafe and that following the planned withdrawal of American troops, its Kurdish population will once again become vulnerable to the enemies that surround them. He is particularly fearful however, that he will be killed by former members of the Ba’ath Party in revenge for his participation in the campaign on Kirkuk in 2003.

[4] The central issue to be determined in this appeal is whether the appellant’s fear of being harmed by former Ba’athists in the KRI is well-founded.

THE APPELLANT’S CASE

[5] What follows is a summary of the appellant’s evidence. It will be assessed later in this decision.

[6] The appellant is a member of a large Kurdish family. He is from a large city in the KRI. The appellant’s father and older brothers were all KDP *peshmerga*. His father had no other source of income. Three of the appellant’s older brothers were killed in action. One brother was killed during fighting with Iraqi forces in 1988 during Saddam Hussein’s Anfal campaign (a large scale military offensive against the Kurdish population, intended to break the Kurdish resistance movement). Another brother was shot in 1994 during the Kurdish Civil War (the clash between the KDP and its rival, the Patriotic Union of Kurdistan (“PUK”)). The third brother was killed in 1997 by an exploding mine which the appellant believes was planted by Ba’athists.

[7] The appellant attended school for eight years. In or around 1994, when he was about 14, he began to work for the KDP *peshmerga*. Initially, his duties consisted only of delivering food to a *peshmerga* base on the outskirts of the town he was living in. He was given some weapons training around this time.

[8] In 1995, the appellant officially joined a *peshmerga* unit. One of his duties as a member of this unit was to deliver messages to people in Kirkuk on behalf of the KDP. He did this secretly, dressed in plain clothes to avoid detection as a KDP *peshmerga*. The messages were delivered regularly, sometimes monthly, sometimes fortnightly. He was usually accompanied by a friend who was a similar age to him (the appellant was 15 or 16 around this time).

[9] In August 1996, the appellant was shot in Kirkuk while delivering letters. Two men dressed in plain clothes fired at him with an automatic weapon, leaving him with severe injuries to one of his arms and one of his legs. The appellant lost consciousness during the attack and when he recovered, he found himself in hospital in his city. His friend (who had witnessed the attack) told him that he had hired a taxi to take him there from Kirkuk because he feared for their safety in Kirkuk. The appellant's friend, and other KDP members who visited him in hospital, were of the view that his assailants had been Ba'athists, although they were never identified.

[10] The appellant spent two months in hospital and then a period of one to two years as an outpatient having a series of operations.

[11] While recovering, the appellant lived with one of his older brothers. He began working as a painter and plasterer. He also resumed his role as a KDP *peshmerga*, but not as actively as previously.

[12] In April 2003, his KDP *peshmerga* unit assisted the American forces to locate and clear Ba'ath strongholds around Kirkuk. The KDP *peshmerga* moved ahead of the American forces, "clearing" sites that had been attacked by air for the Americans. In the course of "clearing" the sites that had been bombed, the *peshmerga* (including the appellant) threw grenades at the sites they were attacking. During this time, there was a "friendly fire" incident where American fighter planes attacked Kurdish troops on the ground by mistake. One of the appellant's cousins was killed in this incident. The appellant was some distance away from this attack, but saw its aftermath. This event has had a lasting effect on him, as it left him with a strong feeling that Kurds were unsafe in the KRI and that they could be attacked at any time by anyone.

[13] Following the fall of Kirkuk to American forces, the appellant returned home and resumed working as a painter, although he was still a member of the KDP *peshmerga* and received a salary from them.

[14] In the months following the invasion, he formed the view that people like him who had assisted the American troops were in danger of being targeted for revenge attacks by Ba'athists. The appellant became increasingly fearful and gradually ceased his *peshmerga* activity because of his concerns about his security. He stayed at home as much as possible although he also continued to work as a painter for one or two days a week. His friend (the one who had delivered messages with him to Kirkuk in the mid-1990s) who also assisted the American troops to invade Kirkuk, told him about the existence of a list of the names of the *peshmerga* who had assisted the Americans. His friend told him that people on the list were targeted for reprisals from Ba'athists.

[15] On 1 February 2004, simultaneous suicide bombings were carried out at the KDP and PUK party offices in Erbil in the KRI. Although this attack has been blamed on Ansar al-Islam (a militant Islamic group), the appellant believes that former members of the Ba'ath Party were responsible. This attack contributed to the appellant's feelings of insecurity in the KRI.

[16] In 2002, two of the appellant's sisters had travelled to New Zealand in order to enter into arranged marriages with New Zealand residents who were also from the KRI. The appellant's sisters in New Zealand were aware the appellant was in some danger and introduced him (by telephone) to a young Iraqi Kurdish woman who was a permanent resident in New Zealand. With the consent of their families, a marriage was contracted between the appellant and his future wife and, on 22 August 2005, the appellant was issued a visitor's visa.

[17] In late June 2006, the appellant spent a week in Jordan and then returned to Iraq. While in Jordan he was fearful that he could be attacked by former Ba'athists and spent most of his time in his hotel room.

[18] On 11 August 2006, the appellant flew from Arbil to Jordan and remained there for three weeks before departing for New Zealand on 6 September 2006. The appellant's marriage was initially very happy. However, after about a year, his father-in-law began to treat him condescendingly in the presence of his wife and other relatives. In October 2008, the appellant's wife left him after he and her father had had a serious argument. He wishes to resume his marriage with his wife and believes that she is being prevented from doing so by her father.

[19] The appellant has remained in regular contact with his family members in the KRI since arriving in New Zealand. His father recently died of natural causes.

Prior to his death, he had warned the appellant that he must not return to the KRI, even for a visit. The appellant never discussed the reason for this warning with his father but believes that it was related to the risk he faces from Ba'athists because of his involvement in the 2003 invasion of Kirkuk.

[20] The appellant has four brothers remaining in the KRI. His two younger brothers are unmarried and live with his mother. They work as KDP *peshmerga*. They have not reported any particular difficulties in their regular telephone conversations with the appellant. The two older brothers are married and live with their respective families. One works as a taxi driver and the other operates a shop. Both are also still KDP *peshmerga*. Neither has reported any particular difficulties to the appellant.

[21] The appellant is extremely fearful of being returned to the KRI. He believes he will be targeted by Ba'athists and that he is also at risk as a Kurd because when the American forces withdraw, the Kurdish population in the KRI will be left vulnerable and surrounded by hostile neighbouring states.

DOCUMENTS FILED

[22] At the hearing, counsel filed an undated medical certificate, recording that the appellant had an injured left arm (the nature of the injury was described at length in the certificate). Of significance is the statement that multiple scar tissue on the lateral surface of the arm could possibly be consistent with a bullet injury. Counsel also filed written closing submissions dated 18 December 2009.

THE ISSUES

[23] The Inclusion Clause in Article 1A(2) of the Refugee Convention 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[24] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[25] Prior to determining the framed issues, it is necessary to make an assessment of the appellant's credibility.

[26] The appellant was at times a vague witness. When giving his evidence, he tended to talk collectively about KDP *peshmerga* activities and had some difficulty providing specific detail about his own participation. In aspects of his evidence, he exhibited little knowledge of the Kurdish Civil War between the KDP and the PUK, or the alliance between the KDP and Saddam Hussein in 1996 to defeat the PUK. Despite these difficulties, the appellant's account was consistent with the account he gave to the RSB. The Authority extends the benefit of the doubt to the appellant and, for the purpose of this decision, accepts his account in its entirety.

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO THE COUNTRY OF NATIONALITY?

[27] The appellant fears that, as a former KDP *peshmerga* who assisted the American forces in 2003, he is at risk of being harmed by former Ba'athists should he return to the KRI. The Authority accepts that the appellant genuinely believes that the Kurdish population of the KRI is vulnerable, and in particular that he is at risk of being targeted by remnants of the Ba'ath Party. In order to assess whether these sincerely held concerns are objectively well-founded, it is necessary to consider country information both concerning past events and the present circumstances in the KRI.

Country information

[28] The KRI was initially established as a safe haven by coalition forces in March 1991 following the Kurdish uprising against Saddam Hussein that followed

the expulsion of Iraqi troops from Kuwait. In April 1991, a United Nations resolution provided legal recognition of the region and protection for a no-fly zone. This provided protection and security enabling refugees to return home, and allowed a de facto Kurdish state to form, covering around 17,000 square miles.

[29] Following the establishment of the no-fly zone, Iraqi troops and administration were withdrawn from the Kurdistan region. In May 1992, general elections were held for the de facto Kurdish state. The two dominant Kurdish liberation organisations, the PUK and the KDP, received almost exactly the same number of votes. A power sharing arrangement was negotiated and, in June-July 1992, the Kurdistan Regional Government was created.

[30] Power-sharing arrangements between the PUK and KDP collapsed in 1994, leading to civil war and to two separate administrations, one in Erbil (KDP) and one in Sulaymaniyah (PUK). KDP strongholds were in the northwest, and those of the PUK were in the southeast. There were clashes along the dividing line between these two power bases.

[31] In late August 1996, the KDP invited Iraqi forces into the Kurdish region. Erbil and (temporarily) Sulaymaniyah, were then captured from the PUK.

[32] A ceasefire agreement was brokered in Washington in 1998. The parallel PUK and KDP administrations lasted until late 2002, when a reunified Kurdish parliament met and declared that Iraqi Kurdistan would be a federal state in post-Saddam Iraq.

[33] On 27 March 2003, United States paratroopers landed near Erbil signalling the opening of a new front in the United States-led invasion of Iraq. In April, United States forces assisted by Kurdish fighters took control of the Northern city of Kirkuk.

[34] The 2005 Iraqi constitution gave Iraq a federal structure and recognised the autonomy of the Kurdish area. The three governorates ruled by the Kurdistan Regional Government have been notably more stable, secure and prosperous than the rest of Iraq post-Saddam: Michael M Gunter, *Historical Dictionary of the Kurds* (Scarecrow Press, Lanham, Maryland, 2004); "Contemporary history", *Kurdistan Regional Government website*, www.krg.org/articles/detail.asp?Ingr=12&smap=03010600&rnr=143&anr=18710; "Timeline: Iraqi Kurds" *BBC News* (1 August 2009).

[35] The current political and security structure of the KRI is summarised in a United Kingdom Home Office operational guidance note issued in June 2009. This Guidance Note provides as follows:

“The KRG controlled area

2.17 The KRG area of Iraq is recognised as a federal region of Iraq. Its parliament has jurisdiction on all matters except foreign policy, diplomatic representation, security, defence and fiscal matters. Elections were held on 30 January 2005 and a 111 seat Kurdish National Assembly elected. Massoud Barzani is president of the KRG (head of the Kurdish Democratic Party) and Nechirvan Barzani is prime minister. The capital and seat of the KRG is Erbil. Elections were scheduled for 19 May 2009 but have been postponed. All political parties in the KRG are free to organise and have access to media coverage. The Kurdish Democratic Party and the Patriotic Union of Kurdistan (PUK) are the two major political parties in the region and each have 14 ministers in the unified government. According to the FCO, the KDP has the greater influence in the Dohuk and Erbil governorates and the PUK in Sulaymaniyah governorate.

2.18 Law enforcement and basic police functions in the KRG area are handled by local police and the *Peshmerga* - the militia of the main Kurdish political parties. In a letter dated 6 December 2006, the FCO reported that the *Peshmerga* is disciplined, has an organised structure, and is more effective than other parts of the Iraqi armed forces. While their allegiance is to the Kurdish leadership, they are integrating into the Iraqi Army. The FCO also noted that the Kurdish police are not driven by the same ethnic tensions as in other parts of Iraq and do a reasonable job in providing security and public order. According to the FCO, the public is generally not afraid of the Kurdish police although there may be cases where individuals designated as either ‘troublemakers’ or in opposition to the local political/economic power are treated less than appropriately or violently: United Kingdom Home Office Border Agency *Operational Guidance Note: Iraq* (June 2009).

[36] The *UNHCR Eligibility Guidelines for Assessing the International Protection Needs for Iraqi Asylum-seekers*, April 2009, identified a number of groups who may be unable to find protection through internal relocation to the KRI. These were Arab males suspected of supporting the insurgency, Turkmen or Arabs from Kirkuk, former members of the Ba’ath Party and members of the former intelligence services, and single women and female heads of households.

[37] In March 2009, the Danish Refugee Council published a report on security and human rights issues in the KRI and south central Iraq. This report followed a joint fact-finding mission conducted by the Danish Refugee Council and the Norwegian Country of Origin Information Centre to Erbil and Sulaymaniyah in the KRI and Amman, Jordan, from 6 to 23 March 2009. Regarding overall security in the KRI, the report recorded the views of international organisations based in Erbil that the authorities in the KRI are more in control of the security situation than in the rest of Iraq and that the KRI is “an oasis of security in Iraq”. An efficient government intelligence service operates in the KRI and the KRG is in full control

of the security of its three governorates (pp9, 10). The KRI controls entry and the movement of people in and out of the region is monitored by checkpoints.

[38] Despite the appellant's genuinely held apprehension that he would be at risk from attacks by Ba'athists because of his role as a KDP *peshmerga* in assisting the American troops in 2003, there is an absence of country information indicating that KDP *peshmerga* in general, or KDP *peshmerga* who assisted the coalition troops in 2003 in particular, are currently being targeted by Ba'athists, or any other group for that matter. The converse appears to be the case, given that Ba'athists have been identified in the country information quoted above as a group that cannot be expected to find sanctuary in the KRI.

[39] As noted above, there is an absence of country information supporting the proposition that current or former *peshmerga* are being targeted in any way in the KRI. The lack of country information accords with the appellant's own evidence concerning the situation of his brothers and his friend who have remained in the KRI. The friend, who accompanied him on his letter-delivering missions to Kirkuk in the mid-1990s and who also participated as a KDP *peshmerga* in the American invasion of Kirkuk in 2003, is in regular contact with the appellant and, although he has warned him about the risks posed by Ba'athists, he himself has reported no particular difficulties. Similarly, the appellant's older brothers have both had and continue to have a long history of involvement with KDP *peshmerga*, are living in their own homes and are operating businesses and, like the appellant's friend, have reported no particular difficulties.

[40] In addition to fearing reprisals for his activities as a KDP *peshmerga*, the appellant has a general fear of harm arising from a collapse of security in the KRI following the withdrawal of American forces from Iraq.

[41] The planned withdrawal of two thirds of the United States forces is currently scheduled for August 2010. The remaining third will remain until late 2011: Karen De Young, "Obama Sets Timetable for Iraq" *The Washington Post* (28 February 2009). As noted earlier, compared to the rest of Iraq, the KRI has been relatively secure since the ousting of Saddam Hussein in March 2003. The notion that, following the withdrawal of American forces, there will be a collapse in security in the KRI that will expose someone with the appellant's profile (former KDP *peshmerga* involved in campaign on Kirkuk in 2003) to a real risk of harm sufficient to constitute persecution, is speculative. The appellant's fears in this regard, while genuinely held, are not objectively well-founded.

[42] On the evidence before it, the Authority finds that the appellant's fear of being persecuted in the KRI is not well-founded. The first issue is answered in the negative, making it unnecessary to consider the second issue of Convention ground.

CONCLUSION

[43] For the above reasons, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"M A Roche"

M A Roche
Chairperson