

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75900

AT WELLINGTON

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	J Petris
<u>Appearing for the NZIS:</u>	No appearance
<u>Date of Hearing:</u>	22, 23, 24 August 2006
<u>Date of Decision:</u>	21 November 2006

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of Iraq.

INTRODUCTION

[2] The appellant fears return to Iraq for a number of reasons. Firstly, he fears he will be a victim of kidnapping because of his professional qualification. Secondly, he fears that he will be targeted by Sunni insurgent groups and by members of the Badr Organisation (formerly the Badr Brigade), the Shi'ite militia aligned to the Supreme Council for the Islamic Revolution in Iraq (SCIRI) or other Shi'ite militias because of work he undertook. Finally, in his opening submissions to the Authority on the first day of hearing, counsel raised a further basis of claim, namely that the appellant faced a well-founded fear of being persecuted simply by reason of his being a Sunni Muslim.

[3] What follows is a summary of the appellant's evidence before the Authority. An assessment follows thereafter.

THE APPELLANT'S CASE

[4] The appellant was born in Baghdad in 1975, the youngest of six siblings. He is a Sunni Arab. His father died in the late 1990s. At that time the appellant, his mother and his two sisters moved to X, a southern suburb in Baghdad. His three brothers lived elsewhere. The appellant resided in the family home in X until circumstances forced them to flee and he departed for New Zealand.

[5] Although the appellant and his family suffered from the same pressures faced by the population generally during the period when Iraq was controlled by Saddam Hussein, neither he, nor his family, encountered any particular problems with the regime.

[6] The family had no particular association with the Ba'ath Party. While the appellant had been at secondary school, he had also been required to attend compulsory lectures by the Ba'ath Party official at the school whose function was to indoctrinate the pupils with the aims and objectives of the Party. After completing school, when asked on the job application forms to declare their relationship to the Ba'ath Party, the appellant indicated that he was a "supporter". He and his brothers did this because this was the lowest possible association that it was possible to have. Failure to indicate any association whatsoever on such forms invited investigation and possible harm at the hands of the regime's internal security apparatus.

[7] The appellant went to university and gained a degree in his professional field in mid-1988. At that time, the regime required graduates in his field to undertake work for the relevant government ministry (the X ministry) and the appellant was assigned to CCC clinic. He was required to undertake work at the clinic as a requirement for being registered with the relevant Iraqi professional association. The appellant worked at CCC clinic from late 1998 until mid-2000 and obtained membership of the relevant professional association. At this time, he undertook a period of compulsory military service in Baghdad. He completed his military service in early 2002 and resumed his work in CCC clinic.

[8] In early 2001, the appellant opened his own private clinic in a northern suburb of Baghdad. He opened in that area because, in addition to his work for the X ministry, he had been doing further work in the evening for a practice that catered for poor people. That practice closed and the appellant, having obtained a good reputation amongst the population of the area, decided that he should open

his own clinic.

[9] In mid-2002, the appellant was reassigned from CCC clinic to another public clinic in a rural area on the outskirts of Baghdad. By March 2003, the appellant had completed all of his requirements to obtain his full professional qualification. From this time he began working at his private clinic in the afternoons and evenings.

[10] The appellant's work routine was disrupted by the invasion of Iraq by United States (US) forces in March 2003. By the time of the overthrow of the regime in 2003, the appellant's two sisters had left Iraq. Both sisters' reason for departure was for economic betterment. The invasion brought much violence and the electricity supply was disrupted. This caused the appellant to cease attending the rural and private clinic for two or three weeks in April 2003. However, by late April 2003, matters had settled sufficiently to allow the appellant to resume his normal routine of work at the rural clinic and his private clinic.

[11] The appellant, while encountering the problems Iraqis faced generally in Baghdad in the aftermath of the overthrow of the regime, encountered no personal problems until February 2004. At this time, a man came to his private clinic which was located on the first floor of a building. He asked the appellant to accompany him to treat a relative who was in severe pain. Consistent with his professional obligations, the appellant went with the man. However, because of the lateness of his attendance (it was around 10.00 pm), the appellant asked the building guard to come with him. As the appellant reached the ground floor, he noticed there was a car waiting with two other men inside, neither of whom appeared to be the injured relative. The man took the appellant's hand and asked him to get into the car to be taken to the relative. At this point the appellant realised that the man was trying to kidnap him. He yelled to the guard for help before wrenching his hands free from his would-be kidnapper. The guard, as well as guards from a nearby bank, began firing their weapons at the kidnappers who sped off in their car.

[12] After this incident, the appellant took precautions to insulate himself from a further kidnap attempt. He made an arrangement with a particular taxi driver to pick him up from his private clinic located in a north-western suburb of Baghdad and take him to his home in X in the south of Baghdad each night. He also instructed the building guard to close the main entrance gate and to only open it

for patients with appointments. The appellant realised that these were not entirely foolproof precautions but short of hiring three or four guards, which he could not afford, there were no other precautions he could take. He did not suffer any further kidnapping attempts after this time. He was aware, however, that many professional colleagues had been kidnapped or killed.

[13] A couple of months later, the appellant went to a bazaar held by the *Mujiheden-e-Khalq*, an Iraqi based Iranian exile group (hereafter MKO). The MKO were selling some equipment in Camp Ashraf, their base in Diyala province to the east of Baghdad. The appellant and his friend, AA, with whom the appellant had gone through university and who had the same professional qualification and occupation as the appellant, had developed a sideline business purchasing, repairing and selling equipment associated with their profession. At the bazaar a representative of the MKO noticed their interest in this equipment and enquired about their reasons. They explained their professional qualifications and employment. The MKO representative enquired whether they would wish to return to the camp for a meeting to discuss work opportunities. The appellant and AA agreed and within a month returned to Camp Ashraf where they met a similarly qualified professional who worked in the MKO's clinic.

[14] In this subsequent meeting, the MKO professional asked whether they would be interested in undertaking work for MKO members. Understanding the political sensitivity of the presence of the MKO inside Iraq in the aftermath of the downfall of the Ba'ath regime, the appellant and AA at first refused. After further discussion they agreed to do work for the MKO, only if they received formal clearance to do so from both the US and Iraqi authorities. The MKO professional undertook to make the necessary enquiries and obtain the necessary consent.

[15] A few days later they were telephoned and told that the necessary consent had been obtained and they should come to Camp Ashraf. They were picked up by an MKO driver and taken to Camp Ashraf. At the US-manned checkpoint outside the camp, they spoke to the senior US officer and representatives of the new Iraqi Intelligence Services. The appellant was shown a document issued by the military department responsible for Iraqi and US military affairs. This document indicated they had been cleared to do work with the MKO by both the US and Iraqi authorities.

[16] Over the next four or five months, the appellant and AA travelled to camp Ashraf on average between one to two times per week. There were no set dates for their attendance. Rather, they were telephoned by the MKO and told of specific days to attend when the MKO's own staff was unable to cope with the volume of work and extra help was needed. The appellant was not required to tell his employers in the X ministry that he was doing this work. He did not see the need to volunteer the information in any event. He had been cleared to do the work by the Iraqi authorities and, as far as the appellant was concerned, this was a matter of his private practice with nothing to do with his work for the X ministry.

[17] In mid-2004, the appellant went to another suburb in Baghdad to obtain supplies for his private practice. While there, he met WW, an acquaintance with whom he had been to university. WW was a Shi'a. WW told the appellant that he (WW) had been informed by a person associated with the Badr Brigade that the Brigade had become aware that professionals with the appellant's and AA's first names and qualifications had been doing work for the MKO. WW said he was told that they both had been placed on a list of persons to be killed. On hearing this news, the appellant ceased all work with the MKO. He also avoided going to any part of Baghdad that was dominated by Shi'a Muslims and confined himself to areas that were Sunni.

[18] In mid-2004, the appellant was introduced to a New Zealand citizen via a mutual acquaintance. The couple began contact via telephone and email and a relationship between them developed.

[19] Also in mid-2004, while working at the rural clinic, the appellant was told by colleagues that the X ministry was asking for people to volunteer to be attached to an Iraqi National Guard (ING) unit. The ING had been established in 2004 by the interim government of Iraq to constitute the future Iraqi army. The appellant volunteered to do so. His reasons were varied. At a practical level it was lucrative; he received salaries both from the X ministry and the Ministry of Defence. Secondly, it gave him particular privileges in respect of his continuing professional qualification. Finally, the appellant wanted to be part of the institution which was helping to stabilise Iraq and serve the Iraqi people.

[20] The appellant commenced work for the ING the following month. He was assigned to the unit headquarters. He did not receive any weapons training

although he was required to participate in operational drills. He was required to look after the soldiers and officers of the unit. He was not required to go on security related missions and was ordinarily based at the headquarters. From time to time, however, the appellant did receive orders from his superiors to go to other areas in Baghdad to collect supplies and transfer equipment.

[21] Soon after the appellant joined the ING, he learned that a laptop belonging to a high-ranking ING officer had been stolen when the officer was assassinated. The appellant was informed by the assassinated officer's replacement that the laptop contained biographical data of all of the ING personnel including the appellant. In particular, the laptop contained a file with his name, rank and residential address together with details of his work for the X Ministry.

[22] By this time, the appellant had his mother contact the family of the New Zealand citizen and request permission for the couple to be married. This was agreed to and, in accordance with their custom, engagement parties were held in both Baghdad and New Zealand, also in late 2004. From this time the appellant was officially engaged. In the course of their relationship, the appellant told his wife his occupation. She was also aware that he was working for the army, although she did not know the particular unit he was working in. An application was lodged with the New Zealand Immigration Service for the appellant to come to New Zealand for the purpose of facilitating a formal marriage.

[23] In late 2004, following the assassination of another officer, the appellant was assigned formal responsibility for collecting supplies from a depot in the north Baghdad and returning the supplies to the unit headquarters in the west. Shortly thereafter, on the second occasion the appellant received orders to collect supplies from the depot, he also was the victim of an attempted assassination. He had taken his usual security precaution of having his accompanying soldiers picking him up a short distance from his home on a motorway so as to hide the location of his home. The appellant entered the vehicle and sat in the rear passenger seat. He began looking at papers in his bag, which contained not only his orders, but also business cards and material relating to his private practice.

[24] A short way into the journey, the driver of the car mentioned to the appellant and the third passenger, a soldier called MM, that he thought a black BMW immediately in front of them looked suspicious. The appellant looked up and in a

quick glance noticed two women wearing *hijabs* in the front and two men in the rear. He thought nothing of it and indicated his belief that it was nothing suspicious. MM agreed with the appellant and they continued on their journey.

[25] The appellant continued with his ordering of his papers when the car came to a sudden halt. He looked up and noticed that the black BMW had stopped some four metres in front of their car. He saw the two men in the rear open their doors and get out of the car. The two men began cocking automatic rifles held in their hands. At this time the appellant, MM and the driver opened their doors. The two men from the BMW began firing. MM began firing back while the appellant and their driver ran from the car. The appellant ran in the opposite direction from which the gun men were firing and, being sheltered by the two open doors of the car, managed to escape down an alley without being struck by any bullets. As he ran down the alley, he noticed that he was being pursued by an Opel car. He tried to gain entry into some houses but was unable to do so. He eventually managed to gain entry into a shop where he hid for 10 minutes, after which time the owner of the shop indicated that there was an American patrol in the area and that the Opel car had departed from the scene.

[26] The appellant left the shop. He was informed by people in the street outside the shop that a man injured in the attack had been taken to a nearby hospital. The appellant went to the hospital and found MM. MM indicated that in the aftermath of the attack, the assailants had fled when a US patrol arrived. He said a crowd of locals had gathered around the car.

[27] After being at the hospital and talking to MM, the appellant was driven back to a nearby checkpoint by the Iraqi patrol that had brought MM to the hospital. There he saw the driver and the car. The appellant looked for his bag which had been left behind the car during the attack. He found that his papers had been scattered all over the car. While the bag and gun was there, he noticed his orders to pick up of the supplies and business cards for his private practice were missing. The military orders contained his photograph, name, rank and the business card had his name and address of his practice.

[28] From the checkpoint, the appellant and the driver went to the driver's aunt's house. On the way they changed cars because they thought they were being followed by a suspicious looking group of men in a vehicle. However, there was

no further attack on them. He stayed at the aunt's place for an hour or so before catching a taxi and going to see another of his friends, SS, at his house. From there, he tried to contact AA and, after doing so, travelled to AA's house that evening. He did not stay with SS because SS lived with his family and their house was small.

[29] The following day, the appellant telephoned his family. He was told by them that they had received in their garage threatening letters stating the appellant was to be decapitated by orders of the (then) head of the Al-Qaeda in Iraq, Abu Mus'ab al-Zaqawi. The appellant did not see the threatening letters as his family destroyed them. The appellant did not return home. He remained living with AA for the remainder of his time in Iraq.

[30] A couple of days after the attack, the appellant returned to the private clinic. He first made sure that there was nothing abnormal in the immediate area by telephoning his secretary and ascertaining the position. He needed to go to the clinic because he needed to see patients. This was his main source of income. On that occasion he stayed for a couple of hours and saw one or two patients. He also had to check the water connection to the premises as this had a habit of breaking and interfering with the electricity supply.

[31] Over the next two or three weeks, the appellant returned to his clinic on a further two or three occasions. On each occasion he worked later than usual and only having first ascertained from his secretary that there was nothing abnormal occurring in the location of his private practice. There were no attacks on him during these visits to his private practice.

[32] Approximately three weeks after the assassination attempt, the appellant went to his private clinic and was told by his secretary that she had received a threatening letter and a compact disc (CD). This letter was issued by a different insurgent group, namely *Jaysh Ansar al-Sunna* (Partisans of the Sunni Army). This letter also contained a threat against him and contained his name, rank and serial number. The appellant destroyed the threatening note because it had information particular to him. However, the appellant retained the CD and viewed it with AA. It contained a number of video clips produced by the Jihadi organisation in Iraq.

[33] After the assassination attempt, the appellant was given a week's paid

leave by the ING. At the end of that week, the appellant contacted his usual driver, DD, to collect the appellant and take him to the brigade's headquarters. Concerned about his safety, the appellant disguised himself as a Bedouin. When he entered the brigade headquarters he talked to the head of the brigade and requested a further week's leave. This request was also granted.

[34] At the end of this second week's leave, the appellant again contacted DD to arrange his transportation to the brigade's headquarters. The appellant, however, only managed to speak to DD's wife. She said she was worried because she had heard that DD had had an accident and was in hospital. She asked the appellant to ascertain what had happened. The appellant called an officer in his unit and was told that DD, along with another officer, had been assassinated. The appellant was told that the unit believed that the appellant had been the intended target of this assassination. This officer killed with DD had been assigned the appellant's responsibilities for collecting supplies for the period the appellant was on leave and DD had been assigned to drive him.

[35] The appellant did not return to the base for a further two weeks. By this time a month had passed from the assassination attempt. At this time, he returned to the base, again in disguise, and armed with a letter from a high-ranking officer in the ING. He secured a further month's leave to early 2005. However, his Ministry of Defence salary was suspended but the appellant continued to draw a salary from the X ministry for the next two or three months.

[36] At the end of this second month's leave, the appellant did not, however, return to service with the brigade. By this time the brigade headquarters had been transferred to a new location in the north of Baghdad, in an area situated close to the appellant's private clinic. He was concerned this proximity would increase the risk of him being identified as a member of the ING. The appellant did not return for duty.

[37] The following month the appellant decided to travel to Jordan to try and secure a contract with a Saudi ministry. He was only given permission by the Jordanian authorities to be in Jordan for one week. He returned to Iraq within three or four days. He signed a contract but thereafter received no further communication from them.

[38] He returned to Iraq and remained living with AA. He sold his clinic in mid-

2005 to his friend, AA, for the sum of \$3000. Because AA did not have all of the money at that time, it was agreed that the appellant would receive approximately half of the sale price and AA undertook to forward further monies to him in due course. There was also an agreement between the appellant and AA that AA would sell some of the medical equipment they had purchased together and would forward the appellant his share of the proceeds of sale once all expenses relating to the sale had been deducted.

[39] He retained possession of his military issue identity (ID) card and a pistol until approximately early/mid 2005. At this time, he gave the pistol and ID to a fellow officer and asked them to take these things to the brigade centre. This constituted, insofar as the appellant was concerned, his act of formal resignation from the ING and thereafter he had no further involvement with the ING. In mid-2005, an order notifying the termination of his employment with the ING was issued and he was formerly reassigned back to work at the rural clinic where he had worked previously. The appellant reported to the rural clinic but was told by the head of the unit that it was not safe for the appellant to return to work there as it was a largely Sunni area and that people were aware of his work in the ING.

[40] Thereafter, the appellant departed Iraq using his genuine Iraqi passport. He travelled by taxi from Baghdad to Jordan. However, he once again disguised himself as a Bedouin for his safety.

[41] The appellant arrived in New Zealand on 1 September 2005. On 4 September 2005 the appellant married the New Zealand citizen (hereafter the wife) in an Islamic ceremony.

[42] Soon after the marriage, the relationship between the appellant, his wife and the wife's family began to deteriorate. This culminated in the appellant leaving the family home some six weeks later. Although there was a reconciliation between them in mid-2006 (which saw the appellant returning to live with the wife at her family's home), this reconciliation only lasted some weeks and the appellant again left the matrimonial home. He is now separated from his wife.

[43] Following the problems with the wife and her family, the appellant decided he had no option but to approach the authorities and apply for refugee status. His claim was lodged on 25 October 2005.

[44] Since being in New Zealand the appellant has remained in contact with his family in Iraq. He has learned that one brother went to live in Jordan in October 2005. He was concerned that the circumstances of the appellant may have had some consequences for him. Also, his place of residence in the west of Baghdad was a major insurgent "hotspot" and for his own safety he decided to live in Jordan. The appellant has also learned that some three or four weeks prior to the hearing before the Authority, his mother moved to Jordan to live with this brother because of the deteriorating security situation.

[45] Of his two remaining siblings in Iraq, one has been captured by a Shi'ite militia in June 2005 and has not been heard of since. His remaining brother has not encountered any particular problems. However, he maintains a low profile out of fear of suffering the same fate as the brother kidnapped by the Shi'ite militia and often moves from house to house.

[46] The appellant was interviewed by the RSB on 30 November and 1 December 2005. By letter dated 24 May 2006, the RSB dismissed the appellant's application. The appellant duly appealed.

Other Documentary Evidence

[47] The appellant had filed a number of documents with the RSB. There are numerous documents relating to his professional qualification and occupation on the file. Further documents filed with the Authority include:

- (a) a copy of Coalition Provisional Authority of Iraq Interim Travel Document;
- (b) a copy of original and certified translation of the appellant's curriculum vitae;
- (c) an original compact disc received in the appellant's private clinic on 22 December 2005;
- (d) a copy of the appellant's Iraqi passport.

[48] Before the Authority, counsel filed further written submissions accompanied by a report, Washington Post Foreign Service *Iraqi Refugees Overwhelm Syria* (February 2005); a selective translation of the residency document of the appellant's mother; and a selective translation of the appellant's citizenship documents. The appellant also produced to the Authority a further document used

in the course of his professional practice. This was translated by the interpreter before the Authority.

[49] The appellant also produced to the Authority seven discrete bundles of news reports taken from the internet under the following general headings:

- (a) Bundle One – “Civil war and insecure situation”;
- (b) Bundle Two – “Losses in Iraq and US soldiers deadliest. Failure of new Baghdad security plan. Risks facing Iraqi soldiers”;
- (c) Bundle Three – “Al-Qaeda in Iraq. Their strength in Sunni areas”;
- (d) Bundle Four – “Iran and Shi’ite militias”;
- (e) Bundle Five – “The suburb where the appellant lived and connection with Al-Qaeda and operations in that area”;
- (f) Bundle Six – “Everything about risk that faced by his professional colleagues in Iraq”; and
- (g) Bundle Seven – “Insurgent groups and Mujahiden and al-Zaqawi’s picture. In this regard, the appellant further produced a report, “Death of a terrorist” *The Dominion Post* (10 June 2006), B1.

[50] By letter dated 4 September 2006, the Authority received from counsel a translation of the appellant’s business card that he claims was taken by insurgents’ agents in the aftermath of the assassination attempt in late 2004.

[51] On 28 August 2006 the Authority received from counsel a further bundle of documents comprising:

- (a) an order issued by the Ministry of Health consigning the appellant to a particular department in the Ministry “in order to have an agreement in the Iraqi army”;
- (b) a copy of a ministerial order transferring named individuals, including the appellant, to a specific department “in order to have an agreement to serve in the Iraqi army”;

- (c) a medical examination of the appellant issued by the Ministry of Health to “clarify his suitability for work in the new Iraqi Army”;
- (d) a request by the appellant for agreement to work in the armed forces;
- (e) a copy of a letter relating to the appellant’s request for contract with the Iraqi army;
- (f) a letter from the Ministry of Health confirming commencement of the appellant’s work in the Ministry of Health;
- (g) a copy of the appellant’s service summary in the Ministry of Health;
- (h) a letter from the Ministry of Defence confirming the appellant’s service in a unit of the Iraqi army between mid-2004 and mid-2005;
- (i) a letter from the Ministry of Health regarding the appellant’s commencement of duties in mid-2004; and
- (j) the envelope in which the aforementioned documents arrived.

[52] On 21 September 2006, the Authority received a further bundle of documents relating to the appellant’s employment in both the rural clinic and his secondment to the ING, together with written confirmation by the manager of the administrative unit in which the rural clinic was located. On 24 October 2006, counsel filed *BBC News* report “Iraq war death toll ‘at 655,000’”.

[53] The Authority has considered all information in reaching its decision.

THE ISSUES

[54] 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.”

[55] 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

[56] The appellant was examined closely by the Authority over the course of three consecutive days. He spoke mainly in English although from time to time used the interpreter. The appellant's evidence before the Authority was spontaneous, detailed and consistent with the statement he had given in his lengthy interview before the RSB. From the Authority's inquiry, it transpires that the appellant's fears are multiple but can be summarised as follows:

- (a) a fear that he will be targeted for assassination or other forms of serious harm by members of the Badr Brigade or other Shi'ite militias because of his work for the MKO;
- (b) that he will be targeted for assassination by Sunni insurgent groups because of his past association with the ING;
- (c) that he will be kidnapped because of his professional qualification and occupation; and
- (d) that he will be the victim of sectarian attacks because of his Sunni religious identity.

[57] There are thus a number of key facts upon which the appellant's claim for refugee status rests, namely:

- (a) his professional qualification and occupation;
- (b) his religious affiliation as Sunni;
- (c) his working for the MKO for some months in early 2004;

- (d) his work for the ING in mid-late 2004; and
- (e) the assassination attempt in late 2004 and subsequent removal by insurgents or their agents of documents identifying him as working for the ING and threatening notes.

Findings of Fact In relation to Key facts

Professional qualification and occupation

[58] The Authority notes the plethora of documentary evidence on the file relating to the appellant's professional qualification and occupation. It notes there is written confirmation from a New Zealand employer confirming he has been employed in New Zealand in a capacity deriving from his professional qualification. It is therefore accepted that the appellant is professionally qualified as he claims.

The appellant's Sunni Religion

[59] The Authority accepts the appellant is a Sunni. There is no reason to doubt this.

The appellant's involvement with the MKO

[60] The appellant was questioned closely by the Authority in relation to his claim that he undertook some work for the MKO in a private capacity. The appellant indicated he entered Camp Ashraf via its main entrance and he was questioned closely as to what a person entering the camp by this entrance would see. His description of what would be seen matched photographic evidence taken by US servicemen serving in Iraq assigned to guard Camp Ashraf, which detailed the front gate area and which had been sourced by the Authority. Not only was the appellant's description objectively corroborated by these photographs, but the manner in which he recalled the detail of the front gate environment was consistent with a person seeking to recall the particular details of somewhere he had visited some years previously but had not committed to memory for any specific reason.

[61] The Authority further notes that country information confirms that Camp Ashraf is as described by the appellant; something akin to a town. Its facilities include two hospitals with a total of 100 beds, a supermarket, a library, a mosque, and ornate sculpture - see "From the streets of Britain, to fighting against Iran", *The Scotsman* (22 April 2003) (Lexus/Nexus); "In Iraq, an odd refuge for Iranians. Disarmed militants pose a dilemma" *The Philadelphia Inquirer* (31 March 2005) (Lexus/Nexus).

[62] As for the fact the MKO was, as the appellant claims, engaging in a sale of its possessions in 2004, the Authority notes that country information confirms that the group lost its primary sponsor after the fall of Saddam Hussein - see *Political Handbook of the World 2005 - 2006* Arthur S. Banks et al (eds.) CQ Press, Washington (2006 at p541). Against this background it is entirely possible the MKO would be, as an established institution in the area, engaging in the sale of some possessions.

[63] The Authority therefore accepts that the appellant was, for the four or five months in early 2004, undertaking work at the request of the MKO relating to the MKO members themselves.

The claim to have been involved with the ING

[64] The Authority notes that the appellant has filed a number of documents relating to his being involved in the ING, as he claims. However, there are a number of concerns in relation to this aspect of the appellant's evidence.

[65] Firstly, the appellant's evidence regarding joining the ING was notable for its proximity in time to his claim to have ceased working for the MKO because of threats he had received from the Badr Brigade. The significance of this is that country information confirms that the ING, while established on the basis of purported inclusiveness, have nevertheless been staffed by officers predominantly drawn from Kurdish Peshmerga Forces or the Badr Brigade itself – see International Crisis Group *The Next Iraqi War? Sectarianism and Civil Conflict* (27 February 2006) at p.20 (The IGC Sectarian report). Given the appellant's claimed job in the ING, there was at least the possibility that some of the personnel with whom he would be interacting would be drawn from the very militia by which he was claiming to fear being assassinated.

[66] At first, when asked by the Authority to explain what he understood about the composition of the ING at that stage, his answers were evasive, notable for his reluctance to confront the issue raised. His first glib answer was they must have been Iraqi. He then indicated that all he had heard was that the ING was being joined “by Shi’ites”. It was only with some reluctance that the appellant agreed that, as a respected member of his local Sunni community, he would have been aware of the concerns expressed in that community about the composition of the ING. He somewhat belatedly agreed that he had heard, from discussions within his community that at the time he volunteered to join the ING, it was at least in part comprised of members of “parties supported by Iran”. Plainly, this is a reference to SCIRI (the party to which the Badr Brigade belongs) which was founded in Tehran in 1982 and based in Iran until the overthrow of the regime in 2003 - see generally International Crisis Group *Iraq Backgrounder: What Lies Beneath* (1 October 2002) (ICG Backgrounder report) at p31.

[67] The appellant then indicated that while he had heard of this, he discounted it for two reasons: firstly, it was only in the nature of rumour or dinner party discussion and not something to be taken seriously. Moreover and more importantly, he believed that whatever the composition of the ING, it was controlled by the Americans and at the time he was more concerned about the risk he faced from Sunni insurgent groups by volunteering for this organisation.

[68] The appellant’s evasiveness on this point raises concerns. While having some doubts about the appellant’s evidence in this regard, the Authority notes the appellant’s detailed and spontaneous answers to questions about his role in the ING. Furthermore, it notes the appellant’s production of documentary evidence that appears credible to support this aspect of his claim. In the end, the Authority is left in some doubt as to this fact and in accordance with the usual principle that applies in this jurisdiction, the benefit of the doubt must be extended to the appellant. The Authority therefore accepts he was a member of the ING as claimed.

The subsequent assassination attempts, removal of documents by insurgents agents and threats

[69] This aspect of the appellant’s account is ringed by a number of implausibilities which cast substantial doubt on whether the assassination attempt

did, in fact, take place as claimed.

[70] Firstly, the appellant's claim that, at the time of the assassination attempt, he had in his bag not only his formal orders to collect the supplies, but also his documents relating to his private practice (which included his name and the address of the private practice), is inherently implausible.

[71] His evidence was that he effectively kept his ING life as a secret life, something he hid from all but his immediate family and closest friend, AA. And yet, at the very same time, he claims to be taking with him to his place of ING work, documents which breach this wall of secrecy and which could potentially expose his dual but compartmentalised and secret ING existence. His explanation for adopting a risky strategy, given the frequent attacks on ING members that take place in his own account, was unconvincing.

[72] He claims that as the bag itself was locked and the appellant had been issued with a pistol, he could thwart any attempt to steal the bag. If he failed and the contents connecting his private practice and his ING were discovered, it was, essentially, too late; he would have been killed anyway. Even taking this at face value, it fails to explain why he needed the documents relating to his private practise with him in the first place.

[73] The appellant claimed he needed to have these in his possession because he may need to hand out the business cards to friends, relatives or other people. This explanation is fanciful. He stated his daily routine was to travel from his house directly to the unit's base and then, at the end of his shift, travel directly to his private practice. From his private practice, he returned late at night to his home in X, before being picked up the following morning and taken to the unit's base. It is difficult to see where in this routine the need would arise for him to have the documents relating to the private clinic in his actual possession. The people he was treating at the base were soldiers and there was no need to hand them out his cards. He could see them at the base. Furthermore, he would have a supply of these cards at his private clinic to give out to actual or prospective patients as needs be. Friends and relatives, he could just tell.

[74] Moreover, the appellant's claim that the orders he carried in his bag had not only the instructions, but also his name, rank and even his photograph, is also implausible. The appellant told the Authority that he had been issued with a

military ID card which contained all of these particulars. He was required to produce his ID card to secure entry to military base. He had no convincing explanation as to why he could not just present his ID card which had been prepared and issued for this very purpose. His claim that papers with his full particulars and photograph were necessary to show that he was entitled to have the supplies he was requesting does not answer the concern. His military ID would suffice.

[75] Finally, the Authority notes the sheer implausibility of the appellant's claim to have returned to his private clinic within a couple of days of the attack and thereafter to return a further two or three times in the next 14 to 21 days. This is the very clinic he claims was identified in the documents said to have been taken by insurgent's agents in the aftermath of the assassination attempt on him. It must be remembered that these claimed visits take place at the same time he claims he was first directly targeted by the insurgents for his ING work. According to the appellant, by the time of his first visit to the private clinic after the assassination attempt, the agents of *Al-Qaeda* in Iraq had not only identified his place of residence, but had gone there and deposited threatening notes in his parents' garage.

[76] The appellant states that he went to the clinic only after ascertaining from his secretary that there was nothing abnormal in the immediate environment around the clinic. He also went to the clinic later than he usually did. Yet, given the significance and gravity of the claimed events, this represents a minimal and implausible precautionary exercise.

[77] His explanations that he was both professionally obliged and financially compelled to go to the clinic are rejected. Firstly, his professional obligations would not extend to placing his own life in imminent danger. Secondly, his claim of financial necessity was contradicted by his later claim that he continued to draw a full salary from both the Ministry of Defence and the X ministry for the month in which he claims to have visited the clinic - salaries he claims were lucrative and which formed part of his reasons for volunteering to join the ING in the first place.

[78] For these reasons the Authority rejects the appellant's account of the claimed assassination attempt, the taking of military orders and documents relating to his private practice and subsequent threats. His factual possession of

the CD is of scant probative value: such CDs are readily available in Iraq and can be easily purchased.

Summary of Credibility Findings

[79] The Authority accepts that the appellant is a Sunni Arab. He has his principal place of residence in X, a predominately Shi'ite suburb located in the south of Bagdad. The Authority accepts that he went to university and qualified in his professional qualification. It accepts his claim to have worked for the Ministry of Health in the various positions he claims and it accepts that he opened a private practice in a north western suburb of Bagdad in 2001.

[80] The Authority accepts that since the downfall of the Ba'ath regime in March/April 2003 the appellant :

- (a) was the target of a failed kidnapping attempt in late 2003;
- (b) in early 2004, worked for the MKO providing professional services to their members in Camp Ashraf, the main MKO base;
- (c) was warned in mid-2004 by an acquaintance, WW, that the Badr Brigade had learned that a professional with his qualification and possessing his first name was supplying professional services to the MKO and, for this reason, had been listed as a suitable target for assassination;
- (d) in mid-2004, had applied and was accepted for secondment to a specific unit in the ING to provide his professional services to ING members, remaining in this position until mid-2005.
- (e) in mid-late 2005, travelled to New Zealand for the purposes of marriage to his fiancée.

[81] His claim will be assessed against this factual background.

A well-founded fear of being persecuted

[82] It will be apparent from the Authority's summation of its findings in relation to the appellant's claim that with the exception of the one failed kidnapped attempt in 2003, the appellant has not been targeted by either the Badr Brigade or by any

insurgent group. In no sense can it be argued that the appellant was in a state of being persecuted in the past by reason of his professional qualification, involvement with the MKO, involvement with the ING or his Sunni Muslim faith.

[83] However, it is an elementary principle of refugee law that it is not necessary for a refugee claimant to establish a state of being persecuted in the past to found a successful refugee claim. In *Refugee Appeal No 70366/96* [1997] 4 HKC 236, the Authority cogently explained that the assessment of whether an appellant has a well-founded fear of being persecuted is an assessment that must be made as at the date of the hearing. It does not follow that where this state had existed in the past, the claimant would *ipso facto* meet the requirements of Article 1A(2) of the Refugee Convention. The Authority emphasised, however, that the evidence of past persecution was “unquestionably an excellent indication of the fate that may await the individual upon return to the country of origin”. Equally, however, the fact that the claimant cannot show a prior state of being persecuted does not preclude a finding that, as at the date of the decision, the claimant possesses a well-founded fear of being persecuted - see *Refugee Appeal No 70366/96* (*supra* at p263D).

[84] The Authority also reminds itself of the recent decision of Winkleman J in the New Zealand High Court in *A v RSAA* (CIV 2004-4-4-6314 19 October 2005) in which it was emphasised that in conducting its forward looking assessment of risk, the Authority must look at an individual claimant’s characteristics in the round and enquire whether, in the event none individually give rise to a well-founded fear of being persecuted, aggregated they nevertheless do so.

[85] Having reminded itself of these relevant principles of law, the Authority finds that the appellant does possess a well-founded fear of being persecuted for a Convention reason. This derives from his previous associative relationships with the MKO and the ING.

[86] In relation to the MKO, a useful summary of this group can be found in B Szajkowski *Revolutionary and Dissident Movements of the World* (2004) at p192. Szajkowski describes the MKO as a left wing Islamic movement which attracted support from educated middle classes in Iran and which had been active in opposing the Shah’s regime for many years. He notes that following the establishment of the Islamic Republic which the MKO helped establish, it soon

became embroiled in a factional dispute with pro-Khomeini groups and in particular *Hezbollah* (Children of the party of God). Following a bomb explosion in Teheran in 1981, for which Khomeini held the MKO responsible, a round-up of MKO activists began resulting in a decline in its influence and power. It became an exile movement firstly in France and, by 1986, had established itself in Iraq where it established its headquarters (Camp Ashraf). It then relaunched attacks against Iran. It supported Iraq in the war against Iran during the 1980s and its cadres were used by Saddam Hussein to suppress the Kurdish and Shi'ite rebellions in the aftermath of the Gulf War in 1991.

[87] Banks (2006 *op cit* at 541), also notes that while MKO operations against Iran became less frequent, the group was nevertheless claiming responsibility for sporadic attacks in Iran in 2000 and 2001. Importantly, Banks notes that it was the political wing of the MKO that presented satellite photographs and details of an underground nuclear facility in Iran.

[88] Finally, W Buchta, *Who rules Iran? The Structure of Power in the Islamic Republic* (2000) at p 111, notes that the MKO has largely been discredited inside Iran because of its pro-Saddam positioning during the Iran/Iraq war: "It has only a small, dwindling power base in Iran."

[89] From the above, it seems that whilst the influence of the MKO inside Iran and its ability to influence Iranian affairs has dwindled over time, nevertheless it remains firmly opposed to the Iranian regime. It has played an important part in bringing to the attention of the international community the extent of the Iranian nuclear programme and to that extent, remains a thorn in the side of the Iranian regime, even if one whose potential for harm remains more imagined in the streets of Paris than real in the streets of Teheran.

[90] However, the Authority finds that this is a nuance that is unlikely to be in the minds of the members of the Badr Brigade (operating either inside the Iraqi security apparatus or outside it), so as to mean it can be confidently found that the appellant faces no risk because of his past association with the MKO.

[91] One of the main features driving the current dynamic of Sunni-Shi'ite violence is the ability of Shi'ite militia to undertake revenge attacks now that they have taken over effective control of the Ministry of Interior - see generally the ICG *Sectarianism report* (*op. cit.* at pp17-20). In a comprehensive review of the Iraqi

conflict, Antony H Cordsman, Chair in Strategy at the Centre for Strategic and International Studies (CSIS), has produced a voluminous report *Iraq's Evolving Insurgency and the Risk of Civil War* (27 September 2006). Dealing with the presence of Shi'ite Militias in Iraq, Cordsman (at p13) states:

“Collaboration between security forces and the militias ranks among the most sensitive and potentially volatile issues in Iraq.”

[92] Recent reports issued by the United States Department of Defence, pursuant to its statutory obligations under the Department of Defence Appropriations Act 2006, also point to a growing concern as to the role of militias in general, and, at pp29-30, deals with the position of death squads. Whilst caution is plainly warranted in terms of reliance on every aspect of this report, the report is notable for the fact that the United States Department of Defence is now recognising the significant security concerns raised by the presence of death-squads and armed militias including the Badr organisation – United States Department of Defence *Measuring Stability and Security in Iraq Report to Congress* (August 2006) pp29-30.

[93] As mentioned earlier, the Badr Brigade is the armed wing of SCIRI, an organisation that was formed in Iran in 1982 as an umbrella organisation of Iraqi exile Shi'ite groups. The ICG *Backgrounder Report* (*op cit* at 31-32) is notable for its detailing of the closeness of the relationship between the SCIRI leadership and the Iranian regime. Against this background, it is entirely likely that for Badr Brigade members, the appellant's collaboration with an organisation with such an anti-Iranian regime history is likely to elicit a more basic and visceral response than its dwindling sphere of influence might otherwise suggest. The Authority therefore accepts that elements within the Badr Brigade may regard the appellant, a Sunni Muslim who helped an organisation dedicated to the overthrow of its principal benefactor, the Iranian regime, as a person who was to be assassinated.

[94] When this profile is added to the fact that the appellant was a person who volunteered for service in the ING, his claim to have a well-founded fear of being persecuted becomes overwhelming. A cursory glance at a timeline for Iraq for the year 2006 will reveal multiple attacks on persons associated with the security apparatus of the post-Saddam political structure – policemen, police recruits and members of the security forces (see for comparative purposes “Iraq Timeline: 2006” *The Guardian* <http://www.guardian.co.uk/Iraq> accessed 27 July 2006). A

similar pattern emerges in previous years. As noted by the United Nations Assistance Mission for Iraq (UNAMI) *Human Rights Report: 1 May–30 June 2006* (at paragraph 6), police officers and new recruits are the “primary targets of the insurgency and have suffered significant losses”.

[95] As for the nature of the insurgency itself, the International Crisis Group report *Reading the Iraqi Insurgency* (15 February 2006) makes the point that the aim of the insurgency is the restoration of “natural” Sunni Arab order and political control in Iraq. The report stresses a tactical, if temporary, unity between Jihadi and nationalist strains to the insurgency in the hope of achieving this broad aim. Viewed thus, the destabilisation of the post-Saddam nation-building exercise through attacks on the institutions of state such as the army becomes an integral part of the strategy. Those leading the Sunni insurgency will be alive to the central role played by the army, as an institution, in the post-independence task of nation-building – as to which, see International Crisis Group *Iraq: Building a New Security Structure* (23 December 2003) (the Security Structure report) at pp1-2. The ICG observe that under the Ba’athist regime, the army:

“... had become a vast social and economic institution, by almost any measure the nation’s foremost corporatist entity was in part a unifying institution.”

[96] The potential for the ING, as the successor institution to the old Iraqi army, to play a similarly central role in the post-Saddam nation-building exercise undoubtedly provides significant motivation for those opposed to this exercise. By targeting those associated with it, they undermine the ING’s capacity to play such a role. While he has resigned, plainly his past association with the ING is something that he cannot undo. It will continue to place the appellant in a situation of risk.

[97] This strategic goal of destabilisation of the post-Saddam nation-building exercise also explains, at least in part, why many professionals have been targeted for kidnapping and/or execution - see UNAMI *Human Rights Report 1 March-30 April 2006* (at p9) which records that 100 professors have reportedly been killed since 2003 and a large number of lecturers, teachers and intellectuals have reportedly stopped work or fled the country. The UNAMI Report *1 May 30 June 2006* (*op. cit.* at pp5–6) records that 134 judges have been killed since April 2003, while some 102 doctors, 164 nurses and 142 non-medical staff have been killed between April 2003 and 31 May 2006. Some of this, no doubt, is simply

criminality with extortion for private gain as the motive. However, there can be little doubt that the disruption to social services in the fields of health, education and law aids the cause of those seeking to destabilise the nation-building exercise by adding to the sense that the current institutional set-up is incapable of ensuring the delivery of services usually expected in society.

[98] The recent attack on a prominent scientific research institute in Baghdad is a case in point. Responding to this attack, a Shi'a Interior Ministry official has commented:

“In truth, we don't know whether the kidnappers were terrorists, militias, criminals or interior ministry renegades. *Whatever the explanation, it will do nothing for people's trust in us.*”
(emphasis added)

[99] The report goes on to state that in response, the Minister for Higher Education has ordered the suspension of all academic programmes and the closure of all universities for a period of time; see M Howard “Five Iraq Police Held Over Baghdad Kidnappings” *The Guardian* (14 November 2006).

[100] Against this conflict dynamic, the appellant's professional qualification adds to the risk of serious harm that he faces.

Conclusion on well-foundedness

[101] The aggregation of these discrete personal characteristics causes the Authority to find that the real chance threshold is met in this case. The Authority is satisfied that the appellant does have a well-founded fear of being persecuted. It is not, therefore, necessary to address counsel's submission that the appellant faces a well-founded fear of being persecuted by reason of his Sunni Islamic faith alone.

Convention ground and nexus

[102] Plainly each of these groups, the Badr Brigade in relation to his MKO involvement and Sunni insurgent groups in relation to his involvement in the ING, would be imputing to the appellant a negative political opinion by reason of his actions.

[103] While there can be no doubt that there does exist a political motivation behind some of the targeting of professionals by Sunni insurgent groups, it is far from clear that in all cases a negative political opinion is being imputed to the

victims. It is not however, on the facts of this case, necessary to explore this issue in any detail as the negative political opinions being imputed to the appellant in relation to his association with both the MKO and ING suffices to establish the nexus requirement.

[104] That, however, is not the end of the matter. The Authority has received information which has been disclosed to the appellant suggesting that, even though he may have a well-founded fear of being persecuted, he should be excluded from doing so. It is to this issue that the Authority now turns.

Exclusion from refugee status

[105] Article 1F of the Refugee Convention provides:

“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”

[106] The allegations break down into two broad categories. The first category relates to his familial relationship to specified individuals. Specifically it is claimed:

- (i) the appellant is a relative of a high-ranking Ba’ath Party official included in the US Military’s “pack of cards” as persons of interest to them in the aftermath of the regime;
- (ii) two of his cousins were shot dead “because they were terrorists”;
- (iii) one of the appellant’s brothers was a chief engineer involved in military research and development;
- (iv) another of the appellant’s brothers left Iraq because he was “a Ba’athist”.

[107] In relation to all of these allegations, the Authority observes that, in fact, no specific allegation has been raised against the appellant, apart from a familial relationship to these people. The appellant denies any relationship to the high-ranking Ba’ath official, claiming that the only point of commonality is their tribal

name which applies to all persons of that tribe. Whilst he does not deny his relationship to his brothers and his cousins, he disputes the substance of the allegations.

[108] The Authority observes, however, that even if these allegations were true, they would provide no basis for excluding the appellant under the grounds of Article 1F. Whilst exclusion may be on the basis of participation in these prohibited acts as an accomplice, the appellant is not alleged to have done anything that could remotely bring him within the provisions of Article 1F of the Refugee Convention on the basis of these familial relationships.

[109] The second broad allegation is that he is an ex-member of the Iraqi Republican Guard. The appellant denies this allegation. The Authority has made enquiry of all relevant government agencies and has not had made known to it any information to support the allegation that has been made.

[110] Even if it were the case, again there is no allegation made that he either personally, or as an accomplice, has been engaged in any act that would amount to an act in contravention of Article 1F. The only possible way in which the appellant could be excluded on this is that if the Iraqi Republican Guard could be categorised as a limited brutal purpose organisation such that mere membership at any level was sufficient to warrant exclusion under the provisions of Article 1F.

[111] The Authority is not, however, satisfied that it could be so described. Country information available to the Authority suggest that while the Republican Guard began as an elite force tasked with regime protection and drawn exclusively from the ranks of young men from Saddam Hussein's home town (not the appellant's), its character changed during the Iran-Iraq war. During this conflict, it became more akin to a traditional armed ground force carrying out conventional military operations, albeit with superior training and weaponry. Thereafter, its "Praetorian" functions became the province of a different organisation – the Special Republican Guard; see ICG *Security Structure Report* at p2; *Backgrounder* at pp34-35; J. Borger "The Crucial moment: US Must Defeat Elite Iraqi Troops" *The Guardian* (25 March 2003); Janes Defence Weekly *Republican Guard form core of Iraqi Defence* (31 March 2003); GlobalSecurity.Org Report *Iraq Military: Republican Guard* <http://www.globalsecurity.org/military/world/iraq/rg> (accessed 8 November 2006); see also BBC News *Fact File: Iraq's Republican*

Guard <http://www.bbc.co.uk> (accessed 8 November 2005).

[112] Crucially, the Authority has not seen, and knows of no information to show, that all or a sufficient number of units within the Republican Guard at any time after its transformation, routinely engaged in human rights abuses or breaches of the laws of war such that it could be characterised as a limited brutal purpose organisation. Thus, even if there was evidence before the Authority that the appellant was indeed a member of the Iraqi Republican Guard, mere membership in the post Iran/Iraq War period would not ordinarily be, in the Authority's view, something which would mean that, as a member, he would, *ipso facto*, be excluded. There is no allegation that the appellant was at any time a member of the Special Republican Guard.

[113] In light of the forgoing, the Authority has no information before it to establish there is any basis for excluding the appellant from the protection afforded by the Refugee Convention.

CONCLUSION

[114] For the above reasons, the Authority is satisfied the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is allowed. Refugee status is granted.

.....
B L Burson
Member