

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76060

AT AUCKLAND

Before: S L Murphy (Chairperson)
C M Treadwell (Member)

Counsel for the Appellant: E Griffin

Appearing for the Department of Labour: No Appearance

Date of Hearing: 23 August 2007

Date of Decision: 18 December 2007

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.

INTRODUCTION

[2] The appellant is a man in his 20s who arrived in New Zealand on 7 August 2006. He arrived here with his wife who has since given birth to a son whilst in New Zealand. He was interviewed by the RSB on 14 & 15 September, 24 October and 19 December 2006 and a decision declining his claim was delivered on 9 May 2007. Whilst it was determined that the appellant had a well-founded fear of being persecuted in Iraq based on his Christian religion, he was excluded from refugee status under Article 1F(a) of the Refugee Convention. His wife and son were, however, granted refugee status.

[3] The appellant appeals from the decision to decline his refugee status to this

Authority.

[4] Counsel filed written submissions prior and subsequent to the appeal. These have been taken into account in this decision.

[5] The principal issues in this case are whether the appellant faces a risk in Iraq due to his Christian religion, and whether his role as a prison guard under Saddam Hussein's regime excludes him from protection under the Refugee Convention.

THE APPELLANT'S CASE

[6] The appellant was born in Al Basra but moved to Mosul when he was very young. He is a Chaldean Christian. When he was growing up his father worked for Al Qalaa prison. In 1986, Al Qalaa prison was closed and the prisoners and staff, including the appellant's father, were transferred to Badush prison.

[7] The appellant's father was not a member of the Ba'ath party, nor did the appellant ever become one.

[8] The appellant's schooling was discontinued when he was 15 because the only suitable school in the area was too expensive. He was unemployed for the next two years.

[9] When the appellant turned 18, he became eligible for military service. He did not wish to serve, as his eldest brother had been mistreated on account of his religion during his service. Service as a prison guard could be undertaken as an alternative to service so the appellant undertook a training course to become a guard in Badush prison. The course comprised three months of theoretical training and three months of practical training. The appellant was the only Christian trainee of 120 recruits on the course. After the training, he started working in the prison. One of his brothers was already working at the prison together with his father.

[10] The prison was divided into three departments: the 'heavy' department, the 'light' department, and the 'special' department. The appellant worked in the heavy department, which dealt with prisoners serving sentences of more than seven years for common crimes. The light department held prisoners serving sentences of less than seven years for common crimes. The special department

was run by the *Mukhabarat* and housed political prisoners. The prison administration had a legal department, an accounts department, a human resources department, a medical section and social workers. Around 40 or 50 people worked there in total.

[11] The prison was run by a manager who held the rank of colonel. The acting manager of the prison held the rank of captain. The appellant was a guard, which was the lowest rank.

[12] The appellant's duties included counting the prisoners, supervising food distribution, cleaning, transferral of sick prisoners to the prison hospital, patrolling the grounds and manning the guard towers. When inside the prison, guards would have access to wooden sticks for controlling prisoners who breached discipline. When manning the guard towers, he and the other guards would be armed with Kalashnikov rifles. Day-to-day guarding duties within the prison dormitories were delegated to prisoners appointed by the guards.

[13] The appellant occasionally worked in the light department when they were short of staff. On two occasions he worked in the guard tower adjacent to the special section. He had no knowledge of the goings on inside the special section as it was run by the *Mukhabarat*.

[14] In 2002, the appellant undertook officer training and was promoted to the rank of lieutenant. In that year he met his wife.

[15] The appellant did not himself witness prisoners being beaten or otherwise mistreated. He did, however, become aware on two or three occasions that guards in the previous shift had beaten prisoners. He observed some prisoners who had had body parts amputated prior to their arrival at the prison. He was aware that it was possible that the amputations had resulted from court-ordered punishments, however, to his knowledge, such punishments were not undertaken at the prison or immediately prior to prisoners entering the prison, because he never saw any fresh wounds. He was never involved in restraining or questioning prisoners who committed disciplinary offences as this was undertaken by higher ranked officers.

[16] In October 2002, all prisoners in Iraq were released by decree of Saddam Hussein. The appellant and other guards continued nominally guarding the prison, albeit empty of prisoners.

[17] In April 2003, Saddam Hussein's regime was overthrown by the US-led coalition forces. In the ensuing chaos, Badush prison was damaged and looted, and the guards, including the appellant, his father and his brother, left their posts. Some time after this, the Americans made an announcement through the media requesting all Badush prison employees to return to their jobs. The American forces started rebuilding the prison and all the previous staff (other than the *Mukhabarat* members) were re-employed, including the appellant, his father and brother. Prior to recommencing their jobs, the guards were put through a training course run by American officers.

[18] The appellant worked at the prison under the American administration until 5 February 2004. On that date, one of the guards handed the appellant a threatening letter telling him to leave the job because he was a Christian like the Americans. The letter to the appellant also included accusations that he was a spy for the United States forces. The appellant understood that the Muslim prison guards were resentful that he was an officer and believed he was being favoured by the Americans. A similar letter was sent to his father but not to his brother.

[19] After receipt of the letter, the appellant decided to leave the prison. His brother and father, however, decided to stay on. They realised it was dangerous but they needed money to support their families.

[20] The appellant resigned and moved, together with his wife, to CD, a village near Mosul, where another brother lived. He and his brother started a business importing cars from Germany, with the help of a relative based in Germany.

[21] In 2004, the appellant and his wife began preparations to be married. Shortly before the wedding celebrations, the Ansar Al Islam group sent them a letter threatening to bomb the hall in which the wedding was to take place.

[22] The appellant and his wife went ahead with the wedding plans and were married, without incident, on 17 September 2004.

[23] In December 2004, the liquor shop in Al Basra belonging to the appellant's wife's sister and her husband was bombed. The husband was injured and lost the use of his left eye. A male relative of the husband in Al Basra was shot by Muslim extremists around that time.

[24] In August 2005, the appellant, his wife, his wife's sister, brother-in-law, their children and the wife's parents travelled by taxi to Syria, via Jordan. From there

they travelled, with the aid of a smuggler, to Greece. The wife's sister and children subsequently came to New Zealand and were granted refugee status in June 2006.

[25] In Greece, the appellant undertook casual work such as labouring. The appellant and his wife did not apply for asylum as they understood from other Iraqis that asylum seekers were not accepted into the country.

[26] In June 2006, the appellant was arrested when it was discovered he was working in Greece without a permit. A deportation order was issued against him.

[27] In early August, prior to the execution of the deportation order, the appellant and his family left for New Zealand on false passports, with the help of a smuggler. They arrived in New Zealand on 7 August 2006.

[28] The appellant's father still works at Badush prison on a part-time basis, as his attempts to obtain a pension have been fruitless. He is in constant fear of attack and takes a taxi to work rather than his own vehicle for security purposes. The appellant's younger siblings no longer attend school for their safety. The family have applied for passports and are intending to try to escape the country. The appellant's brother continued working at the prison until October 2006 whereupon he went to Syria and registered with the UN as a refugee.

Witness A, the appellant's wife

[29] The appellant's is also a Chaldean Christian. She met the appellant in 2002 and they married on 17 September 2004. She confirmed that her husband had elected to work as a prison guard in substitution for military service because his brother had faced a lot of difficulties during his military service on account of his Christianity. Moreover, the appellant would have been required to perform military service far from home, which he considered undesirable.

[30] The appellant's wife was told by the appellant that he had received a threatening letter from his colleagues in early 2004. He did not show her a copy of the letter.

[31] The appellant's wife did not discuss with the appellant the conditions in the prison in which he worked, but he had told her he did not like his job.

Witness B

[32] Witness B is a priest at a Chaldean Catholic church in Auckland. He met the appellant and his wife initially at a wedding in Greece and subsequently met them after they arrived in New Zealand when they attended his church. Since coming to New Zealand, the appellant and his wife have been regularly attending the church, as well as social gatherings at the church and Bible study classes. Witness B christened the appellant's son in January 2007.

[33] Witness B is unaware of the reasons that the appellant left Iraq.

DOCUMENTS

[34] The documents submitted by the appellant in support of his appeal include the following:

- a. identity card, dated 28 December 1999, plus translation, referring to appellant as a Christian;
- b. Iraqi citizenship certificate, dated 25 August 1997, plus translation, referring to the appellant as a Christian;
- c. baptism and confirmation certificate of appellant, dated 8 November 2004 plus translation;
- d. Regional Corrections Centre card for appellant, dated 9 November 2003, describing him as a lieutenant, plus translation;
- e. marriage certificate, dated 30 September 2004, referring to place of wedding as St George Church in CD, plus translation;
- f. military service booklet, dated 23 June 2001, with selective translations describing the appellant's occupation as "Correction Centre Guard"; and
- g. letter, dated 10 February 2004, from the appellant to Ninewa Province Governor's office, Iraq.

THE ISSUES

[35] 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."

[36] 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

[37] The Authority accepts the appellant's evidence. A more detailed discussion about our credibility findings in respect of the appellant's work in Badush prison is contained in paragraphs [48] to [57] below.

COUNTRY INFORMATION - THE SITUATION FOR CHRISTIANS IN MOSUL

[38] The Authority has analysed country the situation of Christians in northern Iraq in a number of recent cases.

[39] In *Refugee Appeal No 75730* (25 August 2006), the Authority found that Christians returning to Northern Iraq may face a well-founded fear of being persecuted for reason of their religion. The Authority noted in that case that violence has continued to escalate "alarmingly" in Baghdad and central Iraq since 2005 and that unsafe conditions now pervade the whole country [56]. It noted that the lawlessness and insecurity affects all Iraqis and found that Christians continue to be targeted for kidnappings, killings, assaults and intimidation and attacks on their churches and facilities by extremist Islamic groups. It also referred to an increase in discrimination against Christians in the spheres of employment and basic social services [46]. The Authority also detailed large numbers of internally displaced persons in Iraq, a situation which is generating new sources of tension and conflict. It concluded, at [58], that while the region near Dohuk may be

"...relatively less dangerous than Baghdad ... with no realistic prospect of an end to the sectarian violence in the short term and the increasingly unsafe conditions throughout the country, caution is called for."

[40] In *Refugee Appeal No 75724* (19 December 2006), a similar approach was adopted. In that case, after an extensive review of country information detailing the deteriorating situation in the northern Mosul region, it was found that an Assyrian Christian appellant from a village near Mosul faced a well-founded fear of being persecuted. The decision noted reports of attacks on a church in Mosul on 24 September 2006, and another on the same church two days later - "Three or more attacks of Iraqi churches in Baghdad and Mosul" www.barnabasfund.org (29 September 2006); telephone threats to 30 families in Mosul on 30 September 2006 telling them to leave the city within three days or face death - "Growing violence against Christians in Iraq" www.barnabasfund.org (20 October 2006); the attack on a Dominican convent in September 2006, and the October kidnapping, brutal killing of an Assyrian priest in Mosul, and subsequent distribution of a video of his death to Christian churches in the area - John Pontifex "Flight from fear" *The Tablet* (27 November 2006).

[41] In *Refugee Appeal 75879* (12 February 2007), it was observed that the situation had deteriorated further since *Refugee Appeal No 75724* (19 December 2006), including, within a week of that decision, letters with bullets in them being delivered to Christians reading "Leave crusaders, or we will cut your heads off" - "Leave, crusaders or we will cut your heads off" threats leave Iraqi Christians too afraid to put up Christmas decorations" *The Sunday Telegraph* (24 December 2006). It also noted that several killings of Christians were reported each week in January 2007. On the basis of that country material, it determined that the appellant, who was from a village near Mosul, faced a well-founded fear of being persecuted on account of his Christian faith.

[42] The reports from Mosul since the publication of *Refugee Appeal 75879* (12 February 2007) indicate that the situation remains serious for Christians in the Mosul area. In June this year, a media report described Mosul as having become the principal focal point of Sunni Wahabi extremism in Iraq, with an agenda of eliminating Christians. The report states as follows:

"Mosul, north west Iraq, has now become "the principal focal point of Sunni wahabi extremism in Iraq", which aims to create an Islamic state at all costs in the zone and to re-establish the caliphate. This project is being supported by "outside countries". The alarm arrives from *AsiaNews* sources in Iraq, who warn: these fundamentalists believe to possess the only truth and this is why they aim to eliminate anyone who refuses to recognise this. First amongst those are the Christians, but also Shiite Moslems. For the moment they content themselves with extorting money from their opponents, through kidnappings or the jizya – the "compensation" tax demanded by the Koran from non-Muslim subjects – but in time they will also begin to force them from their homes.

The violence with plagues Mosul's Christian community reached its' climax with the brutal murder of the Chaldean Priest Fr. Ragheed gain and his three sub deacons June 3rd last following mass. But the violence persists. A married Chaldean has been in captivity for over a week; his family has already paid his ransom twice over, but have yet to receive news of his release. On August 3rd a command group of terrorists erupted into the home of Christian, Tamir Avox, in the central Al Habda'a district, they wanted to take him away; eye witnesses tell that the well built man resisted, saying he would not leave his family alone abandoned to an unknown destiny and that in the end he was killed. 'The small flock of Christians – says a local diocesan priest – is once again the grips of fear and panic, they feel isolated'." "Focal point' of Wahabi extremism in Iraq" *Asia News* (8 June 2007).

[43] A more recent report in August also described the continued targeting of Christians in Mosul as follows:

"They have been threatened because of their Christian faith, their distinctive clothing and their success in business. They have been killed because of a controversy over a cartoon. They have fled to wherever they can find a minimal amount of safety – to Iraqi Kurdistan, abroad to Syria, or just to the countryside outside their city.

The Christians of Mosul can recite one horror story after another. Once a solid, middle-class community in this northern city, thousands of them have fled their homes under threat from militants. Their churches have been bombed, their clergy murdered, and community members regularly face threats and kidnappings.

The story of Mosul's Christians is not dissimilar to that of millions of other Iraqi citizens who live in a state of fear. But their religion makes them especially vulnerable, in a city where governance and the rule of law are non-existent, allowing criminal gangs and Islamic militant groups such as al-Qaeda to intimidate and kill with impunity...

Father Ragheed Ganni, a Chaldean Catholic priest at the Church of the Holy Spirit, and three of his deacons were gunned down in Mosul in June following a Sunday service. Ganni had been threatened and his church bombed prior to the attack.

Less profile kidnappings, threats and killings of Christians rarely make the news, but they occur almost daily. The Assyrian National Assembly tracks violence against Assyrian Christians in Iraq, and the daily online log of murders and other violent acts includes a plethora of kidnappings targeting Mosul's Christians. " ("Mosul Christian Community Dwindles; *Geschrieben/von/Written by News*, (12 August 2007))

IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED?

[44] The appellant is a Christian from a small village near Mosul. Prior to leaving the country, he was the subject of two death threats. Both threats were demonstrative of a pattern of intimidation and violence that is occurring against Christians in Mosul as outlined in the country material above.

[45] The particular threats against the appellant were more by way of intimidation than actual endeavours to eliminate him: his family members continued to work at the prison and his wedding was not, in the event, bombed. However, irrespective of whether the appellant is at risk from the particular

persons who have previously threatened him, it is clear from the country information that he faces a real chance of being persecuted for his Christian religion were he to return to Mosul. There is a risk of him being subjected to kidnapping, bombings, or even death at the hands of Islamic extremists. The clear difficulties the Iraqi authorities have in controlling the sectarian violence means that little if any state protection would be available.

[46] It is noted that there have been some general improvements in the security situation in Iraq since the last report cited on Mosul; see, for example, International Crisis Group, *Crisis Watch 52* (1 December 2007). However, it is not possible to conclude from this recent and general information that the security situation for Christians in Mosul has improved sufficiently to eliminate the risk of persecution the appellant faces.

[47] We find there to be a real chance of the appellant being persecuted upon his return to Iraq on account of his Christian religion.

EXCLUSION

[48] As the appellant was a prison guard under Saddam Hussein's dictatorship, we have considered the applicability of Article 1F(a) of the Refugee Convention.

[49] Article 1F(a) of the Refugee Convention provides as follows:

"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."

[50] Numerous reports record that torture was routinely committed against political prisoners in Iraq during Saddam Hussein's rule, including a detailed report published by Amnesty International in 2001 -*Iraq: Systematic Torture of Political Prisoners* (August 2001).

[51] Torture, when committed as part of a widespread or systematic attack directed against any civilian population, is a crime against humanity (see Article 7(1)(f) of the Rome Statute of the International Criminal Court). Accordingly, were the appellant to have undertaken or been complicit in acts of torture against prisoners, he would most likely be excluded under Article 1F(a).

[52] We closely questioned the appellant about Badush prison and his work therein during Saddam Hussein's reign. He has been consistent, from the outset, in his evidence as to having worked in the heavy department of the prison, which housed common prisoners only. We are satisfied that he has given a candid exposition of the prison conditions observed by him and his role therein.

[53] We have conducted exhaustive inquiries as to the situation under Saddam Hussein's regime with regard to common prisoners, and have found no material to suggest that common prisoners were targeted for torture. The reports indicate that torture was committed against political prisoners only.

[54] We have also conducted comprehensive inquiries into the situation in Badush prison and have located only two references to torture having occurred there. One report was prior to the appellant's tenure at the prison and appeared to relate to a political prisoner, as the victim had initially been detained in a *Mukhabarat* office; UN Economic and Social Council Commission on Human Rights – *Report on the situation of human rights in Iraq*, submitted by the special Rapporteur Mas van der Stoep in accordance with Commission resolution 1995/76 E/CN.4/1996/61 (4 March 1996). The second reference was a brief and general reference to torture having occurred at Badush prison - Dugan P *Commonwealth of Pennsylvania Legislative Journal: 190th Session of the General Assembly* 15 March 2006. In light of the other country materials, it is highly likely that the torture referred to in the second report related to political prisoners.

[55] We accept the appellant's evidence that, while he learned of three instances of beatings of prisoners, he did not himself partake in or witness any mistreatment of prisoners. Given that he guarded common, rather than political prisoners, this evidence accords with the relevant country information.

[56] Given that the political section of the prison was run by the *Mukhabarat*, and that the appellant had no involvement with that section other than guarding the adjacent tower, if torture did occur in that part of the prison, the appellant's lack of involvement or knowledge of it means that he cannot be considered complicit therein.

[57] In light of the above, we find the evidence does not establish there to be serious reasons for considering that the appellant was involved or complicit in crimes against humanity during his time as a guard in Badush prison. He is not excluded.

CONCLUSION

[58] For the above reasons, the framed issues are answered in the affirmative. Objectively, on the facts as found, there is a real chance of the appellant being persecuted if returned to Iraq, for reason of his religion.

[59] The appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"S L Murphy"
S L Murphy
Chairperson