

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 75248**

**AT AUCKLAND**

<b><u>Before:</u></b>	B Burson (Member)
<b><u>Counsel for the Appellant:</u></b>	I Chorao
<b><u>Appearing for the NZIS:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	17 November 2004
<b><u>Date of Decision:</u></b>	19 May 2005

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**DECISION**

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[1] This is an appeal against a 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 is a single male born in the late 1960s in Iraq. He arrived in New Zealand on 24 December 2001. He lodged a claim for refugee status with the RSB on 22 October 2002. He was interviewed by the RSB on 22 November 2002 which, by letter dated 31 May 2004, declined his application. The appellant duly appealed to this Authority from that decision.

[3] The central feature of the appellant's claim is whether he has a well-founded fear of being persecuted because he is from a family that has been associated with the Assyrian Democratic Movement (ADM), an ethno-political party in Iraq.

[4] Before considering the well-foundedness of the appellant's fears, the Authority will set out a summary of his evidence.

### **THE APPELLANT'S CASE**

[5] The appellant was born in X, a village near Mosul. He lived there with his mother, father and siblings. X is comprised of approximately seven or eight thousand people, the majority of whom are Yezidi, a distinct ethno-religious group of Kurdish origin. After the Yezidis, Muslims form the next largest population group, comprising of 25 per cent of the population, of which 17 per cent are Kurds and the remaining 8 per cent are Arabs. Chaldean Christians form the remainder of the population. There is no Turkoman population in X. The appellant is from the Chaldean Christian community.

[6] The demographic composition of X is unusual in the area. Other villages nearby were overwhelmingly populated by one ethnic group or the other. Indeed, some villages to the east of X are well-known because they are populated solely by Christians.

[7] X was spared the policy of Arabisation of the former Ba'ath regime under which non-Arab ethnic populations were forcibly displaced or made to adopt Arab ethnicity so as to change the demographic composition of the area. There was, however, an ill-fated attempt by the Ba'ath Party in the mid 1980s to have Christians in X read the Quran. They objected and the leader of the Assyrian Christian church went to see the relevant minister. Following this meeting, the plan was not pursued.

[8] Generally, inter-communal relationships in X were good and the appellant experienced no particular problems growing up.

[9] He was conscripted into the Iraqi army in 1985 and was discharged in 1990. During this time he suffered harassment from non-Christian soldiers who would mock and laugh at his prayers he said before eating his meals.

[10] After he was discharged he worked for two companies in Mosul for brief periods of time. He encountered verbal harassment from co-workers who would

call him derogatory names and would mock his religious beliefs. Unwilling to continue working in such an environment, in 1993, the appellant commenced work for his father.

[11] The family was well-known in X being an ADM family; his father had been a member for many years and indeed, from at least 1980, had been elected the local leader for X. In the late 1980s, the appellant became involved in the ADM.

[12] The ADM was not allowed to have an office in X. Rather, the appellant's father spoke to local ADM members in public places frequented by Christians, giving instructions as to what needed to be done. The ADM members in X, were all instructed by the appellant's father to keep watch over their community. Thus, if any Christian person was arrested, this had to be brought to his father's attention. Similarly, if there was any movement by Iraqi military or security units through the X area, this too would be reported to his father.

[13] As a local leader the appellant's father was required to report to the overall ADM leader in D. The appellant occasionally went with his father to such meetings. After the establishment of the Kurdish Autonomous Region (KAR) in the aftermath of the first Gulf War, the ADM opened an office in D with the consent of the regional Kurdish leadership and the appellant became involved in ferrying information from X to the leadership at this office. This required him to frequently travel over what was the de facto border between the KAR and that part of Iraq under Ba'ath Party control. He carried out such activities until he left Iraq. While the appellant's father had ceased being the local leader in the late 1980s, he remained active in ADM and in the community.

[14] The appellant had no trouble until early 2001, when the police came to his house asking for him. He was in D at the time. While there, a relative came to see him who told him the news. He waited in D for a few days and then he went back to X. Two months later, on returning home with his family from a celebration, they were told by a neighbour that the police had come to the house looking for the appellant.

[15] The next visit by the police was in late 2001. The appellant's house was raided that night and the appellant was taken to a local police station. He was held for four days, during which he was questioned each day about his

involvement in the ADM. The questioning would last for approximately an hour to an hour and a half. He was assaulted with a hose and punched in his face. The appellant's father secured his release by payment of a bribe. After this incident, the appellant ceased all his activities and he kept a low profile, staying at home.

[16] He left Iraq towards the end of 2001. After he left, the appellant's family fled to another town although they returned to X with the fall of the Ba'ath Party. Since he has been in New Zealand, the appellant has kept in regular contact with his family over the telephone. He has learned from them that the authorities visited the family home as an order had been issued stating that all young men of his age must report back to the army.

[17] He has learnt that the situation for Christians in Iraq has deteriorated since the fall of the regime. Many churches in Iraq have been bombed and his family have told him that the church in X has closed out of fear. He fears he will be targeted by either Muslims or Kurds because he is a Christian. He fears the fact that his family were well-known in the area for being an ADM family, will increase the prospect of him being targeted at some stage.

[18] On 8 March 2005, the Authority served on counsel information relevant to the appeal and on 30 March 2005, the Authority received counsel's submissions together with further country information. This has been considered in reaching this decision.

[19] On 11 May 2005, the Authority received from counsel a brief medical note from the appellant's medical practitioner stating the appellant is suffering from anxiety. Counsel submits that the uncertainty regarding his immigration status is contributing to this.

## **THE ISSUES**

[20] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"...owing to a 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."

[21] 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**

[22] The Authority accepts the appellant is a Chaldean Christian as claimed. There is a corroborating letter from the head of the Chaldean Church in New Zealand to this effect. The Authority has been provided with a certified copy of the appellant's Iraqi identity which shows his religion as being Christian. It also accepts his evidence as to his and his family's involvement in the ADM and that he has been visited and detained by the police while the Ba'ath Party were in power because of his involvement with the ADM.

### **A well founded fear of being persecuted**

[23] There can be no doubt that Iraq remains a generally violent place as the continuing campaign of car and suicide bombings in Baghdad and other places testifies – see for example "Dozens die in Iraqi suicide Bombings" *The Guardian* (11 May 2005); "Iraq Timeline January 1 2005 – present" *The Guardian* (12 May 2005).

[24] As to violence against Christians, this has recently been extensively addressed in two decisions of this Authority, namely *Refugee Appeal No 74838 & 74839* (14 July 2004) and *Refugee Appeal 74686* (26 November 2004). The former dealt with the situation of attacks on Christians in Iraq to the period to July

2004 concluding at paragraph [44], on the information available at that time, there was no real chance of an Iraqi Christian being persecuted on that basis alone.

[25] In the latter decision, the Authority reviewed the position in light of subsequent developments up to the end of November 2004. It concluded that at least insofar as Iraqi Christians from Baghdad who are regular church attendees are concerned, the real chance threshold had been reached. The Authority found at paragraph [38], that recent anti-Christian violence had all the hallmarks of an organised campaign having its genesis in the coterminous religious identity of this section of Iraqi society with that of the occupying military forces.

[26] This decision has since been followed in a number of appeals - see *Refugee Appeal 75023* (20 December 2004), *Refugee Appeal No 75374* (26 January 2005) and *Refugee Appeal No 75931* (3 February 2005). The common feature of all these appeals is that they related to practising Christians from Baghdad. In *Refugee Appeal No 74800* (14 December 2004) the appeal of an Iraqi Christian was also allowed. It is not clear from the decision where the appellant was living and attended church, but a significant factor was the profile that the appellant's family had within the local church.

### **Anti-Christian Violence in the North**

[27] The Authority accepts that anti-Christian violence in the northern parts of Iraq occurs and finds that it is increasing.

[28] Thus there are reports of an unsuccessful attempt to attack the Christian church in Bartilla, near to X in October 2004 - see *An Attack on the Guards of Bartilla* Assyrian International News agency (3 February 2005) <http://www.aina.org/news/20050203140145.htm> (accessed 4 March 2004). This town also came under mortar attack on 19 November 2004 – see <http://www.bartella.com/forums/viewtopic.php?t=1669&sid=be7b477051b949af465606ea30fda461>. A town called Bagheda, also has come under mortar attack – see Naby “The Fate of Iraqi Christians” (13 September 2004) <http://www.juancole.com/2004/09/fate-of-iraqs-christians-edden-naby.html> accessed 8 March 2005). In December 2004, there were attacks on two churches in Mosul – see “Churches Bombed in Mosul” *Reuters* (8 December 2004)

reported on <http://www.juancole.com/2004/12/churches-bombed-in-musul-reuters.html> (accessed 3 March 2005).

[29] Naby (ibid) refers to an increase in attacks on Christians in the north during the latter half of 2004. He cites the killing of two men on 2 September 2004 who were well-known in Mosul for defending and assisting other Christian families; the assassination of three Christian women and their driver on their way home from work in a hospital in Mosul on 8 September 2004; the running down and killing of an Assyrian political activist from a different party to the ADM on 9 September 2004 (although the report does say that this victim was also a private in the newly formed Iraqi army). While he suggests that the situation in more isolated villages may be more deadly, no examples are given to support this suggestion. The report "Continuing Attacks on the ChaldoAssyrians of Iraq" *Assyrian International News agency* (3 February 2005) <http://www.aina.org/news/20050203140145.htm> (accessed 4 March 2004) refers to three separate assaults on Christians by KDP peshmerga in December 2004 and January 2005.

[30] Naby (ibid) states that many of the problems for Chaldean Christians in this area stem not from the Sunni Arab insurgency, but rather from the Kurds, who wish to expand their area of territorial control to include resource rich areas inhabited by Chaldean communities. This may explain the failure of ballots, voting boxes and other election necessities to arrive at many districts inhabited by Chaldean community – see *Assyrian "Democratic Movement Protests ChaldoAssyrian Vote Lockout in North Iraq" Assyrian International News Agency* (1 February 2005) (<http://www.aina.org/news/20050201115432.htm> (accessed 4 March 2005)). The was, in the run up to the recent election, an increase in the level of violence directed against the Chaldean community – see "Kurdish Attacks on Assyrinans In Iraq Intensify as Election Nears" *Assyrian International News Agency* (17 January 2005) <http://www.aina.org/releases/20050117124917.htm> (accessed 2 May 2005); see also "KDP deprives Iraqi Christians of Right to vote" *Jubilee Campaign Press Release* (3 February 2005) at p.2 (<http://www.jubileecampaign.co.uk/word/wilf38.htm>).

[31] Counsel in her further written submissions emphasised the increasing problems faced by the Chaldean community at the hands of the Kurdish Democratic Party. Country information supports her submission. Certainly, Kurdish aspirations to control Kirkuk have proved a stumbling block in the

negotiation of an agreed governing coalition between Kurdish parties and the Shi'ite dominated United Iraqi Alliance – see “Iraqi power blocs fail to agree on government” *The Guardian* (14 March 2005); “Iraq Assembly holds first meeting” *The Guardian* (16 March 2005); see generally International Crisis Group *Iraq: Allaying Turkey's Fears over Kurdish Ambitions* (26 January 2005).

[32] In light of this information the Authority accepts that in general terms, there is an increasing level of violence being visited on the Chaldean community in the area around X, both in common with the rest of Iraq as a result of the Sunni Arab insurgency, but additionally at the hands of the local Kurdish power, the KDP, as the territory becomes a contested strategic resource. This violence is being visited upon the community in the form of attacks on individual Christians and there is at least one report of a church being attacked and a Christian village coming under mortar attack.

[33] While the situation in the north of Iraq is one of increasing violence, there is nothing in the country information to suggest that attacks on Christian churches, villages or on individual Christians have reached such a level, that the risk of the appellant suffering serious harm on this basis alone crosses the real chance threshold. In this sense the situation in the north may be distinguished from that in Baghdad. While it is impermissible to reduce the issue of “real chance to the exposition of a bald statistical probability, the fact that by November 2004 nearly 25 per cent of the Christian churches in Baghdad had been bombed underscores just why the Authority found in *Refugee Appeal No 74686* (29 November 2004) at paragraph [39] that the real chance threshold was met in these circumstances.

[34] In conversations he has had with his family the appellant has not been told of any attack on X or on its church. This is not, however, determinative as the assessment of risk is forward looking.

[35] In this regard, the risk that X itself, or its church, may nevertheless come under attack, is one which in light of the country information, cannot be absolutely dismissed. Nevertheless, the associated risks to the appellant are highly serendipitous. It is plain from the reports of these attacks, that while individuals were either injured or killed as a result, the attacks were not so intensive as to cause widespread injury or loss of life and thereby indicate a real chance of risk of serious harm on this basis. The victims were simply randomly unfortunate.



[36] Similarly, that the church in X may come under attack is a risk that cannot be entirely dismissed. However, it must be remembered that X is one of many Christian villages in the north of Iraq. Country information available to the Authority does not establish that attacks on churches have reached such a level that the risk of serious harm befalling the appellant, were he to try to manifest his religious belief by attending church, rises above mere conjecture or surmise.

[37] As to the risk to the appellant simply by being Christian, the risk to him is essentially random and conjectural. It is not well-founded. Country information shows that this is how the Christian community sees the risk to ordinary civilians – see the report “Middle Eastern Christian Conference: Safeguard the Assyrians of the Nineveh Plains” *Assyrian International News Agency* (10 October 2004) - it refers to KDP pressure in the lead up to the recent elections and refers to the “random killing of civilians”.

#### **Status of appellant as member of prominent ADM family**

[38] The Authority accepts the appellant’s evidence that he and his family are well-known in X because of their involvement in the ADM generally. Country information that is available shows that there is a targeting of community leaders. Naby (ibid) reports of the “methodical killing” of Turkoman and ChaldoAssyrian leaders. The report “Middle Eastern Christian Conference: Safeguard the Assyrians of the Nineveh Plains” *Assyrian International News Agency* (10 October 2004) draws a distinction between the random risk to civilians and the “targeted assassination of leaders”.

[39] In light of this information, the Authority accepts that those persons who hold positions of leadership in the community will be at an increased risk. Yet the appellant himself has never held a prominent position. There is no country information to show that mere membership of the ADM is creating a risk of being targeted.

[40] In any event, insofar as leaders are being targeted, in the contact he has had with his family, they have not mentioned any threats to his father (a former leader) or other family members as a result. The appellant’s father ceased any leadership role in the ADM in X some 16 years ago. There is nothing to indicate that this former status has had any implication for his father beyond that which is

faced by the general population. The risk associated to the appellant from his father's former status is even more remote.

[41] It is also significant that the appellant's only detention was a brief one at the hands of the Ba'ath regime which is no longer in power. Although the authorities continued to look for him after his departure this was in relation to an obligation to serve in the Iraqi army and not related to the ADM. Official interest in him on the latter basis appears isolated and historical. There is no evidence that he has any particular ADM profile with Muslims generally or the Kurds.

[42] As a result, the Authority finds that the risk to the appellant falls below the real chance threshold. It answers the first principal issue in the negative. It is not necessary to consider the second.

### **CONCLUSION**

[43] 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.

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B Burson  
Member