

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

**REFUGEE APPEAL NO 76142**

**AT AUCKLAND**

**Before:** A N Molloy (Member)

**Counsel for the Appellant:** E Griffin

**Appearing for the Department of Labour:** No Appearance

**Dates of Hearing:** 6 & 7 November 2007

**Date of Decision:** 4 December 2007

---

**DECISION**

---

[1] The appellant is a Chaldean Christian from Iraq. He claims that if he were to return to Iraq he will be persecuted because of his Christianity. He appeals against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining his application for refugee status. The appeal turns upon whether the appellant's fear is well-founded. A summary of his account is outlined below.

**THE APPELLANT'S CASE**

[2] The appellant is one of five siblings from a Chaldean Christian family. He was born in Baghdad during the early 1970s. He explained that the atmosphere for Christians began to change to some extent after the first Gulf War in 1991. Even then the appellant's Christianity did not cause him any particular difficulties. The problems which led the appellant to leave Iraq and come to New Zealand did not arise until after the invasion of Iraq by the armed forces of the United States in

March 2003. However, events prior to that are outlined in order to place this decision in some context.

[3] After leaving school during the late 1980s, the appellant attended university in Baghdad. Like many other young Iraqi men at the time, the appellant prolonged his period of study as a means of lawfully deferring military service.

[4] The Immigration New Zealand (INZ) file contains various documents, including a document produced by the appellant in connection with his university study (the academic document). The University issued this standard document in order for him to demonstrate to the military that he had a justification for not reporting at the age of 18.

[5] At the time the appellant did report to the military in the mid-1990s, after completing his degree, the law required graduates to complete 18 months compulsory service. However, it was by then possible to lawfully exempt oneself from all but two months of that period by paying a large fee, which the appellant did. This is apparent from the appellant's military service card, which also appears in the INZ file. It discloses that the appellant was demobilised from the Presidential Staff Guard in December 1995, having been exempted from military service as a result of paying the exemption fee. He also managed to avoid serving almost all of even the lesser period by payment of a bribe.

[6] The appellant's military service card also bears endorsements which indicate that he completed two periods of compulsory training as a reservist. The first was for a period of one month in 1998; the second was for a similar period in 2001.

[7] After his release from military service during the mid-1990s the appellant began to work for his father in the family business, driving a bus. Like all other bus drivers the appellant was vulnerable to the whims of the Iraqi state. It was not uncommon for members of the authorities to arbitrarily commandeer a vehicle for whatever purpose they desired. This happened to the appellant in early 2001. When he protested that this would interfere with his obligation to collect waiting school children, the appellant was detained and beaten.

[8] While that incident did not cause the appellant any ongoing difficulties with the authorities, the experience left him demoralised. He decided that he had no

future in Iraq. At the end of 2001, the appellant left Iraq unlawfully by making his way overland to Turkey. From there, he made three attempts to travel to Greece.

[9] On each of his first two attempts the appellant was immediately rounded up by Greek authorities and returned to Turkey. On his third attempt, the appellant succeeded. He made his way to Athens, where he stayed with a relative who had already been living in Greece for some years. On the advice of the relative, the appellant registered with the Greek authorities and obtained a permit which authorised him to remain in the country for three months.

[10] The process by which the permit was obtained was arduous and the prospect of having to repeat the exercise every three months was unattractive. The appellant therefore paid a bribe to procure a work permit. While language difficulties meant that work was only sporadically available to him, he managed to survive.

[11] The appellant hoped that the fall of Saddam Hussein's regime in early 2003 would bring to an end the type of problems which had previously existed in Iraq, and decided to return home to be with his family. At the suggestion of his father, he remained in Greece until the end of 2004 in order to save money to take back with him. He then returned to Iraq illegally, retracing his steps through Turkey with the aid of an agent.

[12] After returning, the appellant married in early 2005. At first the appellant and his wife lived with his parents. However in mid-2005, amidst the deteriorating security in Baghdad, they obtained their own place in a different suburb which the appellant hoped would be safer.

[13] In early August 2006, an anonymous note was delivered to their door, demanding that they convert to Islam. Two days later, four masked men abducted the appellant and his wife. They were bound, blindfolded and taken to separate hiding places. The appellant and his wife were eventually released within a day of each other after their families paid significant amounts in ransom money. Both the appellant and his wife were physically mistreated by their captors.

[14] This incident led the appellant and his wife to leave Iraq. With the assistance of an agent, they were able to make their way to Turkey. They entered New Zealand using false passports on 2 December 2006, and each of them applied for refugee status at the airport.

[15] Since their departure, the appellant's parents and siblings have left Iraq. They are currently in Syria, as are the wife's parents.

[16] After interviewing the appellant on four separate occasions between February and July 2007, a refugee status officer of the RSB issued a decision dated 14 September 2007 declining the appellant's application for refugee status on the grounds that he is excluded from the Refugee Convention.

[17] The appellant's wife was interviewed in respect of her own claim. A separate decision was issued on 14 September 2007 accepting the wife's claim and recognising her as a refugee.

#### Evidence of witness, AB

[18] The appellant called one witness. AB is an Assyrian Christian from Iraq. He has lived in New Zealand since 2002, when he joined his sister here after the death of his wife the previous year. AB is now a New Zealand citizen. He had been a friend of the appellant and the appellant's father in Iraq. All three of them had been bus drivers on a common route in Baghdad throughout the 1990s.

[19] While he had no personal knowledge of the appellant's recent circumstances or the events which led the appellant to leave Iraq in 2006, AB confirmed that the appellant is a Chaldean Christian.

#### Material Provided

[20] Counsel lodged written submissions under cover of letters dated 2 November 2007 and 23 November 2007, together with the appellant's signed supplementary statement dated 2 November 2007, a written statement signed by AB, and items of country information outlining problems experienced by Christians in Iraq. During the appeal interview the appellant handed up six photographs which had been taken at various times since the early 1990s. They depict the appellant and members of his family at various times and functions in Iraq.

## **THE ISSUES**

[21] 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."

[22] 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**

The appellant is a Christian

[23] Believing that he lacked candour, the refugee status officer rejected much of the appellant's account, including his claim to have been abducted and mistreated by Islamic extremists in 2006. Even so, the RSB accepted that the appellant and his wife are Chaldean Christians from Baghdad.

[24] The Authority also finds that the appellant is a Chaldean Christian. He gave spontaneous and plausible evidence about the nature and practice of his faith, and corroborated this aspect of his claim through AB.

[25] He also provided the Authority with various photographs. Some were of his wedding and depict the appellant and his wife in a Christian church wearing western wedding dress. A Christian icon can clearly be seen in the background of another photograph which shows members of the appellant's family in a domestic context.

[26] The Authority is satisfied that they are authentic photographs taken at various different times. They were only produced at the interview in response to a question from the Authority and there is no reason to believe that they have been fabricated for the purposes of the appellant's refugee claim.

[27] The finding that the appellant is a Christian is pivotal to the Authority's decision in this appeal. Before turning to the issues, however, it is necessary to refer briefly to the ground upon which the appellant was declined at first instance, namely exclusion.

### The RSB decision

[28] While the process by which an appellant comes before the Authority is an appeal, the Authority's enquiry is conducted by way of a *de novo* hearing. The enquiry is embarked on by the Authority afresh, and the Authority makes its own decision, both as to the facts upon which the decision is to be made and as to the application of the law. It is therefore unusual for the Authority to need to refer to the basis upon which the RSB reached the decision in respect of which an appeal has been lodged.

[29] However, in this case it is necessary to place in context the process by which the RSB reached its decision to exclude the appellant from the protection of the Refugee Convention while simultaneously granting his wife refugee status.

[30] The RSB found that the appellant should be excluded from the protection of the Refugee Convention by virtue of Article 1(F)(a) of the Convention, which provides that:

"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".

[31] No criticism of the RSB is to be inferred from the fact that the Authority has reached a different decision. Indeed, it is clear that various untruthful aspects of the appellant's original account were only uncovered as a result of a comprehensive forensic effort on the part of the refugee status officer.

[32] For the sake of completeness, it is noted that there were three particular aspects of the appellant's account which he has subsequently conceded were

untruthful (none of which undermine the appellant's core claim for refugee status, which is that he is a Chaldean Christian from Iraq). They were:

(i) *Simultaneous arrival of a relative*

[33] It was apparent that a relative of the appellant arrived in New Zealand on the same flight as the appellant and his wife. Despite having several opportunities to admit that they are related, the appellant continued to deny any familial relationship. The appellant has since conceded that they are relatives. He said that he had been afraid to acknowledge the connection and claimed that his agent had advised them to deny any relationship.

[34] The fact that the appellant did not disclose that he had travelled contemporaneously with his uncle is regrettable, but does not go to the core of his account.

(ii) *The appellant did not, in fact, undertake reservist military service*

[35] The second matter relates to the appellant's period of military service. The appellant's military service card bears endorsements which indicate that he completed two periods of service as a reservist in 1998 and 2001. By close enquiry of the appellant, the RSB eventually persuaded him to admit that he did not complete either period. The appellant now admits that he paid a bribe to have those endorsements placed upon his military service card without having to undergo the training.

[36] The appellant explained that he originally persevered with this aspect of his account because he thought that admitting to having paid bribes would complicate his account.

[37] While the appellant's attempt to pass himself off as having served two periods as a reservist in 1998 and 2001 is again regrettable, his dishonesty about this does not undermine his claim to be a Chaldean Christian.

[38] It is also important to note that enquiries made by the RSB indicate that the military service card is authentic, notwithstanding the means by which the two reservist endorsements were obtained.

(iii) *The appellant sought asylum in Greece prior to coming to New Zealand*

[39] The RSB obtained information from the Ministry of Public Order in Greece, indicating that the appellant submitted an application for asylum in Greece in March 2002. This was “examined” in December 2002, and the appellant was issued with a visa entitling him to remain in Greece for six months.

[40] According to the Ministry of Public Order, the appellant’s last request for asylum was “under review” as at 13 June 2007, “with no progress”.

[41] Slightly conflicting information was obtained through the Ministry of Interior and the Prefecture of Athens/Department of Aliens and Migration. According to records held there, the appellant entered Greece in mid-2004, and he lodged an application for permanent residence in Greece in June 2006. The result was reportedly that finally, his request was rejected.

[42] The appellant eventually admitted that he went to Greece in 2002, but denies making any application for permanent residence in Greece in June 2006. He says that he does not know why the Greek immigration records disclose that such an application was made. He maintains that he returned to Iraq after leaving Greece in 2004 and says he has never been back there.

[43] Given the appellant’s evidential shortcomings, the Authority shares the refugee status officer’s concerns with regard to the veracity of the appellant’s claim to have been abducted and mistreated in Iraq. A claim to have been abducted and mistreated because of one’s Christianity is not inherently implausible, but the appellant’s claim is clearly undermined by the information obtained from the Greek Immigration authorities, which indicates that the appellant may still have been in Greece at the time he claimed to have been abducted in Iraq.

[44] In the event, for reasons which are set out in the analysis of country information which follows, it is unnecessary, in the particular circumstances of this case, to make a finding in connection with the claimed abduction.

[45] While the Authority cannot go so far as to give this particular appellant the benefit of the doubt in this connection, conversely, caution is required before placing too much weight on the Greek information. For example, as at 13 June 2007 (by which time the appellant was clearly in New Zealand) it records that;

“Currently, according to the records of the Min. of Public Order, it seems that he is still living in Greece/Athens ...”



[46] That is not to say that the Greek information is unimportant. On the contrary it shows that the appellant's residence application, whenever it was lodged, was rejected. The point is that, however coy the appellant may have been about his time in Greece, he has no right of lawful return to Greece, and his claim to refugee status in New Zealand need not be measured against that country.

#### RSB decision to exclude

[47] The RSB took cognisance of the appellant's military service card, which states that the appellant was demobilised from the "Presidential Guard". It then relied upon various aspects of country information to conclude that the Presidential Guard was an organisation with a limited brutal purpose and concluded that the appellant, as a member of the Presidential Guard, was accordingly complicit in crimes against humanity. On that basis, the RSB found that the appellant was to be excluded.

[48] It was the appellant's claim that he paid the necessary sum to excuse himself from 16 of the compulsory 18 months of military service, and that he paid a bribe to avoid even the compulsory two month period. However, the RSB relied upon apparent irregularities in the academic document to find that the appellant was not studying during the period of five years from 1989 to 1994. It then drew the inference that he must therefore have been a member of the military throughout that period. The RSB inferred that the appellant fabricated the academic document in order to mask the fact that he was a member of the Presidential Guard.

[49] The Authority is unable to reach the same conclusion. Whatever apparent irregularities may have been noted by the RSB, the academic document has no obvious lack of authenticity and has not been subjected to expert analysis. There is no basis upon which the Authority should find that the academic document is unreliable.

[50] Further, even if the document were to be found false, the finding that the appellant must therefore have been a member of the Presidential Staff Guard from 1989-94, involves a quantum leap of logic.

[51] In this context, the Authority also bears in mind that the military service card was found to be legitimate by the RSB's examiner. It discloses that the appellant was discharged from military service after paying "the exemption fees", which is

consistent with the appellant's account. His evidence that he avoided performing military service as a reservist in 1998 and 2001 is also at least consistent with his claim to have avoided military service altogether.

[52] The Authority does not find that there are serious reasons for considering that the appellant should be excluded from the protection of the Refugee Convention by virtue of the provisions of Article 1(F)(a) of that Convention.

### **SUMMARY OF CREDIBILITY FINDINGS**

[53] The Authority finds that the appellant is a Chaldean Christian from Iraq, and that he studied at a university in Iraq between 1989 and 1994. It is accepted that he was a conscript into the Iraqi military and that he was exempted from further service in December 1995 after performing a very short period of his compulsory military service. It is on this basis that his claim falls to be considered.

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

Country information

[54] Since the fall of the Ba'athist regime in 2003, the Authority has granted refugee status to several Iraqi Christians from Baghdad; *Refugee Appeal No 74686* (26 November 2004), *Refugee Appeal No 75023* (20 December 2004) and *Refugee Appeal No 75202* (27 January 2005); and from the north of Iraq: *Refugee Appeal No 75724* (19 December 2006) and *75879* (12 February 2007).

[55] While it is not intended to traverse in detail the country information outlined and analysed in those decisions, some general points bear repetition. In *Refugee Appeal No 75730* (25 August 2006), the Authority observed, at [56], that violence had continued to escalate “alarmingly” in Baghdad and central Iraq (at para [56]). It found further that conditions for Christians had by then become unsafe throughout the whole country (para [58]). In *Refugee Appeal No 75724* (19 December 2006), the Authority referred to ongoing attacks on churches in Baghdad and Mosul in September 2006 [44], and attacks on clergy [45] and [46].

[56] In granting refugee status to a Chaldean Christian from Mosul, in *Refugee Appeal No 75879* (12 February 2007), the Authority cited at least one commentator who stated that “Mosul joins Baghdad as one of the most insecure Iraqi cities for Christians to live in right now”; “Christian leader in Mosul kidnapped and killed” (6 December 2006) *Asia News* <[www.asianews.it](http://www.asianews.it)>.

[57] In *Refugee Appeal No 75724* (19 December 2006), the Authority noted the existence of several reports documenting the fact that Christians are leaving Iraq in significant numbers. It cited the *United Nations Assistance Mission of Iraq Human Rights Report* for the period 1 September 2006 - 31 October 2006 (the UNAMI report), according to which 44 percent of Iraqis seeking asylum in Syria were Christian. To place this in context, Christians at that time represented approximately four percent of the Iraqi population in total.

[58] According to the AI report, the “mass exodus of refugees” from Iraq “shows little sign of abating” (p1). It confirms that “the number of Iraq’s non-Muslim religious minorities, such as Christians ..., continues to be disproportionately high among the refugee population [in Syria]” (p8).

[59] Circumstances can of course change for the better as well as for the worse. Recent reports suggest that improved security in Baghdad has led Iraqi refugees to return home from places of refuge such as Syria in “dramatic” numbers; Oliver August and James Hider “Better security sees Iraqi refugees flood home” *The Times* (21 November 2007). However, it would be premature to assume that the reduction in violence is necessarily durable, and the information to this effect does not indicate whether those returning are from the Christian diaspora.

[60] In all the circumstances, there is no evidence that conditions for Christians in Iraq have improved since the decisions issued by the Authority in *Refugee Appeal No 75724* (19 December 2006) and *Refugee Appeal No 75879* (12 February 2007). The Authority accordingly finds that objectively, on the facts as found, there is a real chance that, if this appellant were to return to Iraq, he would be at risk of serious harm from which he could expect no state protection.

#### Convention reason

[61] The risk arises for reason of his religion.

#### **CONCLUSION**

[62] The Authority finds that both of the principal issues identified 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. The Convention reason is religion.

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

“A N Molloy”  
A N Molloy  
Member