

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

**REFUGEE APPEAL NO 76051**

**AT AUCKLAND**

<b><u>Before:</u></b>	J Baddeley (Chairperson) A N Molloy (Member)
<b><u>Counsel for the Appellant:</u></b>	D Mansouri-Rad
<b><u>Appearing for the Department of Labour:</u></b>	C Hurren
<b><u>Date of Hearing:</u></b>	5, 6 & 7 December 2007
<b><u>Date of Decision:</u></b>	9 April 2008

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**DECISION**

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[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) cancelling the refugee status of the appellant, a national of Iraq, pursuant to s129L(1)(b) of the Immigration Act 1987 ("the Act").

**JURISDICTIONAL ISSUES**

[2] Pursuant to s129L(1)(b) of the Act where recognition of a person as a refugee has been given by a refugee status officer and where it appears such recognition may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereinafter referred to as "fraud") a refugee status officer may determine to cease to recognise the person as a refugee. Such a decision may be appealed to this Authority pursuant to s129O(2) of the Act.

[3] Where the Authority is considering an appeal against a decision of a refugee status officer under s129L(1)(b) of the Act there are two stages to the Authority's enquiry. First, it must be determined whether the refugee status of the

appellant may have been procured by fraud. If so, it must then be determined whether it is appropriate to cease to recognise the appellant as a refugee. This determination will depend on whether the appellant currently meets the criteria for refugee status set out in the Refugee Convention: *Refugee Appeal No 75392* (7 December 2005) [10-12].

[4] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of burden or onus of proof. Nonetheless it is the Authority's view that in cancellation proceedings it is the responsibility of the DOL to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also our view that the term "may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information" is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006).

## **BACKGROUND**

### **The appellant's case to the RSB**

[5] The appellant was born in Kuwait in 1971 of Iraqi parents. He remains an Iraqi national. The appellant and his family moved to Baghdad in 1989. Three years later he began studying music at the University of Baghdad. In 1994 or 1995 he was elected head of the student union. His father's two brothers opposed the regime of Saddam Hussein. One was executed for refusing to obey an order of his commanding officer during the Gulf War and the second was imprisoned for belonging to the opposition Al-dawah Party. Their political activities began to impact on the appellant's immediate family when his father was initially demoted and finally dismissed from his position with the Ministry of Health in 1996.

[6] In the same year the authorities began to suspect that the appellant was taking his uncle's place in the Al-dawah Party and inciting unrest among university students. He was detained twice and beaten severely. On the second occasion his release was obtained by the intervention of his father's influential friends.

[7] In April 1997, and again in August 1999, he was detained by the authorities. Each time, he was released at his father's intervention. The 1999 arrest resulted from the appellant having assaulted a neighbour. His father apologised to the

neighbour and arranged the appellant's bail. In 1999 the appellant withdrew from university which meant that he was no longer exempt from military service.

[8] In 2001, the appellant refused to participate in an opera arranged to celebrate Saddam Hussein's birthday. As a consequence he was severely tortured by intelligence agents, and sentenced to an unspecified punishment. After he had been in prison for approximately one month he was transferred to another prison. During the course of this transfer the guards allowed him to escape. He fled to where his father and a group of friends were waiting in a nearby location pre-arranged with the guards whom his father had bribed.

[9] The appellant remained in hiding for several months until his illegal travel to Turkey was arranged by an agent. In Turkey he was sold a photo-substituted Kuwaiti passport with which he travelled to New Zealand arriving here in January 2002 and claiming refugee status on arrival. He was interviewed by the RSB on 21 January 2002 and granted refugee status on 31 January 2002.

[10] The refugee status officer determined that the appellant had a well-founded fear of being persecuted for reason of his religion (Shi'a), his family background, his perceived political opinion, his previous mistreatment, his escape from custody, his evasion of military service and his illegal departure from Iraq. On 3 May 2002 the appellant was granted permanent residence in New Zealand.

### **Grounds for cancellation**

[11] The RSB began to investigate the validity of the appellant's account of events on which his claim to refugee status was based as a result of some of the subsequent claims to refugee status lodged by members of his family: his father KK (in Jordan and Australia), his brother MM (in Thailand), his sister SS and his step-mother LL.

### **The appellant's father**

[12] The appellant's father, KK, arrived in New Zealand on 8 April 2002 and claimed refugee status on arrival. He had travelled to New Zealand on an Australian passport in the name of KB which he destroyed en route to New Zealand. He claimed that he had experienced persecution at the hands of the Iraqi authorities because of his two brothers, one of whom was executed and the other arrested, by officials of the Saddam Hussein regime. He had left Iraq

illegally on 18 January 2002 and travelled to Syria where he had obtained the Australian travel document in the name of KB. The appellant's father was granted refugee status on 29 April 2002 on the grounds of having a well-founded fear of being persecuted for reason of his family background, his religious beliefs (Shi'a) and his illegal departure from Iraq while under house arrest. He subsequently lodged an application for residence which included his wife, his two sons, MM and AA, and a daughter.

[13] Immigration New Zealand subsequently received information from the Australian authorities which demonstrated that the appellant's father KK had previously made a successful claim for refugee status in Australia in the name of KB in 1999. This caused Immigration New Zealand to make further enquiries of the Department for Immigration and Multicultural and Indigenous Affairs (DIMIA) concerning KB's application.

[14] These enquiries revealed that KB, his wife and three of his children had registered with the UNHCR in Jordan on 17 September 1995 and claimed refugee status there. He did not register his two sons whom he advised were at university in Baghdad. Accompanying this registration was a copy of an Iraqi passport in the appellant's name, showing that he had entered Jordan on 27 August 1997. The passport had been issued on 15 May 1990. The UNHCR declined to recognise KB as a refugee in 1995.

[15] KB travelled to Australia in 1999 and lodged a claim for refugee status there. He claimed that he and his family (including the appellant) had lived in Kuwait until returning to Iraq in 1990 after the first Gulf War. In 1996 KB was detained by Iraqi authorities and tortured because he had made enquiries about his Kuwaiti brother-in-law, a prisoner-of-war in Iraq. The family was then ordered to leave Baghdad to live in Alnasiriah near the Kuwaiti border. In July 1996 KB and his family travelled to Jordan where they remained for two years and thence to Syria. A month after arriving in Syria KB travelled alone to Australia. He was recognised as a refugee by the Australian authorities on 31 December 2000. On 21 November 2001, he left Australia with his wife LL, a Kuwaiti national, and returned to Syria on his Australian travel document.

#### **The appellant's brother MM**

[16] The appellant's brother, MM, arrived in Thailand on 10 April 2003 and was detained because he had travelled on false documents. The appellant travelled to

meet his brother, MM, in Thailand and remained there for several weeks. The appellant returned to New Zealand on 2 July 2003. MM was recognised as a refugee by UNHCR in Thailand. In support of his refugee claim to UNHCR, MM, like the appellant, claimed persecution by the Iraqi authorities because of his uncle's political activities. He claimed that both he and the appellant had been detained and regularly mistreated. According to documentation supplied by UNHCR he stated that he and the appellant and his father left Iraq in March 2001 (contrary to the appellant's account). MM had remained in Jordan for two years before leaving for Thailand. MM arrived in New Zealand on 28 October 2003 on a residence visa.

### **The appellant's sister SS**

[17] The appellant's sister, SS, arrived in New Zealand on 30 November 2006 together with the appellant's step-mother, LL. His sister, SS, applied for refugee status on arrival in New Zealand. She had destroyed her passport en route. SS was granted refugee status by this Authority on 10 November 2006 on the grounds that she faced a real chance of being persecuted on return to Iraq as a single woman without any male protection. Her account of her family's political problems with the regime which she had advanced as her principal claim to refugee status was rejected as not credible.

[18] The appellant's step-mother, LL, subsequently applied for refugee status. Her appeal was dismissed by this Authority because her evidence was found to be not credible. See *Refugee Appeal No 76009* (27 March 2007).

### **The cancellation inquiry**

[19] From the foregoing information (in particular, the information relating to the appellant's father) the refugee status officer identified, inter alia, the following matters which, on a preliminary view, indicated that the appellant's grant of refugee status may have been obtained by fraud:

- (a) The account his father advanced to the Australian authorities in 1999 on which his (KB's) claim to refugee status was based, was significantly different from the one the appellant gave to New Zealand authorities in 2002.

- (b) His father was in Jordan from 1995 to 1998, in Syria from November 1998 to 1999, and from 1999 to 2001 in Australia. At these times, according to the appellant's account to the RSB, his father was in Iraq and assisted the appellant to escape from the Iraqi authorities.
- (c) In response to concerns raised in the cancellation proceedings, the appellant claimed he was unaware of his father's true whereabouts from 1995 to 2001. In particular, he said he was unaware that his father had previously claimed refugee status in Jordan and Australia. It was not until July or August 2002 that the appellant discovered that his father had applied for refugee status in Australia. This was four months after his father's arrival in New Zealand. It was not credible that the appellant had remained ignorant of this and therefore had not included this in his father's refugee claim which he had helped his father to prepare.
- (d) A copy of his brother MM's passport submitted by the appellant, bearing the name MM, differed from a copy of the same passport attached to the appellant's father's DIMIA file which did not show the Z family name. This strongly suggested that the name had been subsequently added to the passport prior to MM's arrival in New Zealand. This raised concerns as to the true identity of both the appellant and his brother, particularly whether or not they both were related and carried the same Z surname as they claimed.
- (e) His sister SS's account, which repeated much of the history of the family's problems in Iraq as recounted by the appellant, was found to be not credible by both the RSB and this Authority.

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

[20] To the Authority the appellant confirmed the account of events in Iraq he had presented to the RSB which formed the basis of his claim to refugee status. The following is a summary of the further evidence which the appellant presented to the Authority at his appeal hearing, including oral evidence from the appellant's brother MM.

## **1. The appellant's father's assistance to the appellant in evading the Iraqi authorities**

[21] From the evidence supplied by DIMIA and UNHCR Jordan, it is apparent that the appellant's father was not in Iraq throughout most of the period from 1995 to 2001. The Authority therefore questioned the appellant about his father's assistance to him as described in the appellant's original refugee claim. In his refugee claim the appellant had described how he had been detained and mistreated for one month by the authorities in 1997 and that his father had obtained his release. At the appeal hearing the appellant modified his account by saying that he was not sure whether his father was in fact in Iraq at that time, but if he was, he would have helped the appellant.

[22] The appellant had told the RSB that he was arrested in 1999 because of an altercation with a neighbour. His father had apologised to the neighbour and had paid bail to obtain his release. To the Authority, his evidence was that he did not know where his father was in 1999; he thought he was in Jordan. It was not his father personally but the appellant's uncle who had obtained his release and apologised to the neighbour.

[23] The appellant was also asked about his account to the RSB of his escape from prison in 2001 which, in his written statement dated 16 January 2002, he described thus:

"My father, uncles, relatives and friends tried to help when they transferred me to another prison ... my father bribed the guards with a big amount of money ...."

[24] In the record of the RSB interview the appellant had stated that after escaping from the prison guards he ran off for about 15 to 20 minutes then:

"I found my father along with another group in a car ... then they took me ... to the farm ... after I entered the farm I was told by my father that I had to leave Iraq ...."

[25] In view of the fact that his father was not in Iraq at the relevant time, the appellant was asked to explain his earlier statements which showed that his father had been personally involved in assisting him. The appellant attempted to explain this contradiction by attributing it to an error of interpretation at the time his statement was translated from Arabic to English; by "father" he had meant not his father in person but his father's relatives and acquaintances in respect of each of the incidents in 1999 and 2001.

[26] The relevant passages in the Arabic version of his written statement were double-checked by the interpreter at the appeal hearing. In each case, the interpreter's translation made the same distinctions between the words "father" and "relatives" or "acquaintances" as were recorded in the English translation of his written statement provided to the RSB. The appellant then attempted a further explanation of this contradiction by saying that at the time he wrote his statement he was stressed because he was being held in detention by Immigration New Zealand and only had two days in which to check the statement.

## **2. The appellant's father's travels and whereabouts**

[27] The clear impression from the appellant's account to the RSB of the events in Iraq from 1996 to 2001 was that his father was in Iraq during that entire time. It was apparent from the information received from the Australian authorities by Immigration New Zealand that this was not the case.

[28] When he arrived in New Zealand and sought refugee status, the appellant had completed a Confirmation of Claim form. On it he had indicated that his father was in Iraq at that time (January 2002). He now concedes that he knew his father had been in Jordan at that time (he later qualified this by saying his father could have been in Jordan or Syria). His excuse for the misleading information on the Confirmation of Claim form was that he was under pressure and confused and did not know what he was saying.

[29] To the Authority, the appellant stated that his father had been out of the country in Jordan for medical reasons for long periods (up to six months at a time) in the late 1990s. During all this time he did not speak to his father while he was out of Iraq. The first time they spoke was in 2001 when his father was in Syria.

[30] Further, in his written statement of 16 January 2002 to the RSB the appellant had advised:

"All my family now still in Iraq except for my brother [...] he is now in Jordan."

[31] To the Authority, he explained this misleading statement by saying that his father had been travelling to get medical care and he expected that he would be returning to Iraq at that time.



### **3. The appellant's preparation of his father's refugee claim in New Zealand**

[32] When his father arrived in New Zealand in April 2002, he was in such poor health that the appellant had to devote all his time to caring for him. The appellant wrote out his father's statement to the RSB in support of his refugee claim. He followed his father's directions. In spite of his intimate knowledge of it, his father's statement contradicts the appellant's evidence to this Authority in some significant aspects.

- (a) His father described how he was subjected to weekly confrontations with the Iraqi authorities from 1996 onwards (during this time the appellant's evidence is now that his father was frequently out of Iraq for many months at a time seeking medical treatment).
- (b) His father stated that he tried to get the appellant released when he was detained on several occasions and also assisted him in leaving the country (the appellant claims he left Iraq in October 2001, but at that time the appellant's father was in Australia and could not have helped him leave Iraq).
- (c) The appellant's father referred to leaving Iraq only once: on 18 January 2002 and, furthermore, referred to the authorities in Iraq as coming "to harass my daughters in front of my eyes and I could not do anything to prevent them". This statement gives the clear impression that his father had remained in Iraq throughout the period of the appellant's claimed detentions and problems with the authorities. When asked to explain why his father had described events as occurring "in front of my eyes" when his father was not in Iraq, the appellant offered the following explanation: "In front of my eyes" meant inside his father's own house because his father and his father's house are synonymous.
- (d) In responses to his RSB interview report, his father had stated that he was under house arrest in Iraq from 1996. The appellant told the Authority that he recalled that his father had been under house arrest from 1996 until 1998 or 1999. He was then asked how his father had travelled extensively and frequently to Jordan and Syria during this time (as the appellant had earlier told the Authority). The appellant

explained this inconsistency by saying that although under house arrest, his father was allowed to travel abroad on the provision of medical certificates.

- (e) When asked why the appellant had written his father's statement which gave the misleading impression that his father had been continually in Iraq from 1996 to 2002, when he knew this to be untrue, the appellant replied that when he met his father on arrival in New Zealand he was shocked at his father's condition. His father was unwell, in a wheelchair and he was not in a position to correct what his father had instructed him to include in his statement. It was put to the appellant that, having completed the process of claiming refugee status, he was aware of the need to give truthful evidence. His reply to this was that it was his father's statement not his, implying that he had no responsibility for its obviously untruthful content.

#### **4. The UNHCR evidence from Jordan**

[33] Immigration New Zealand received information by email from the UNHCR, Jordan in October 2005 which showed that an individual named KB (a name used by the appellant's father) had registered with the UNHCR in Jordan on 17 September 1995. This was the name that his father had used to apply for refugee status in Australia. It is also this name which appears on copies of his father's merchant identity card issued in 1994 and his Kuwaiti driver's licence issued in 1973 and a certificate issued by the general intelligence service in Jordan in 1999. Copies of all these documents were provided to the Authority and given to the appellant. The appellant confirmed that the name KB was one of his father's names.

[34] KB (the appellant's father) also registered with UNHCR Jordan his wife, two daughters and one son, AA, and advised the UNHCR that he had two other sons living in Baghdad who were at university there. Accompanying KB's asylum application to the UNHCR was a copy of a passport in the name of the appellant showing that he had entered Jordan on 27 August 1997. That passport had been issued in 1990 and renewed once in 1994. It expired in 1998. No copy of that passport was made available to Immigration New Zealand.

[35] When asked about this UNHCR record, the appellant stated that his father had applied for refugee status in Jordan and had submitted copies of the family's passports to the UNHCR. However, he denied that he himself had entered Jordan on 27 August 1997 as noted in the passport in his name. He could not explain that entry record beyond saying that he assumed that his father had done this.

## **5. The obtaining of a travel permit**

[36] In his original claim to refugee status the appellant had stated that he had attempted to leave Iraq in 1997 but had been unable to obtain a travel permit because there was a "danger note" on his record in the passport office. When asked to explain the significance of the "danger note" he offered various explanations:

- (a) The danger note related to what had happened to him and his family.
- (b) The passport office record had a false name in it. The false name was XYZ and this was what the appellant meant by a danger note or a sign of danger on his passport.
- (c) If the authorities checked they would find that this was a false name; the person did not exist and such enquiries would cause the appellant problems.
- (d) He later told the Authority that this name, XYZ, was the name he used for official purposes in Iraq from 1995 to 1999.

[37] The appellant was asked why he had used a false name in Iraq, knowing that it would be checked by the Iraqi authorities. He replied that he had done so to avoid military service but then admitted that this could have been checked and it would have revealed that XYZ was a "made up" name.

## **6. The Iraqi passport issued in 1998**

[38] The appellant, on arrival in New Zealand, omitted to mention that he had an Iraqi passport issued in Jordan in December 1998, even though this information had been specifically sought on the Confirmation of Claim form. When asked why he had not disclosed this passport he variously replied that he had not applied for the passport himself, he had not used it and his father had obtained the passport and kept it. This passport had come to the attention of Immigration New Zealand

only as a result of the enquiries made of DIMIA concerning the appellant's father's refugee application in Australia. The appellant had never volunteered this information to Immigration New Zealand. He stated that his father had not told him about applying for this passport because his father was a secretive man. The appellant himself had never seen the passport. His father kept all the family documents.

[39] When asked why the passport had been issued in Jordan in 1998, not in Iraq (where the appellant claims he was living at the time), he replied that it was easier to get Iraqi passports issued from Jordan than from Iraq. If an application for an Iraqi passport was made from within Iraq a large number of documents were required: military service documents, proof of address and proof of residence and a citizenship certificate. If an application for a passport was made in Jordan however, fewer documents were required and most of the time no checks were made on the information provided. There had been problems in the past with Iraqi passports issued from Iraq which had been prepared in Switzerland. The appellant admitted that the passport issued in 1998 was not in the same name as that of his first passport which had been issued in the early 90s. However, the appellant said that the Iraqi Embassy in Jordan would (on the payment of a bribe) issue a passport in a different name from that which appeared on the previous one.

[40] When asked why his father would apply for a new passport for the appellant in Jordan in December 1998, he replied that it was in order to get him out of Iraq by including the appellant in his father's application to the UNHCR in Jordan. It was then put to him that this application had already been dismissed by UNHCR on appeal in November 1998 and therefore this could not have been the reason for his father's applying for the appellant's new passport. The appellant could not give any further explanation beyond saying that this was just his assumption.

[41] His counsel later suggested, in apparent contradiction to the appellant's "assumption", that the appellant was not in fact included in his father's application to UNHCR Jordan because he was an adult and his father had applied for refugee status for himself, his wife and his three younger children only.

## **7. The family name**

[42] The appellant claims that he has had many problems because of his family name, Z, which the Iraqi authorities associate with his uncles and their anti-regime

activities. On his arrival in New Zealand, the appellant had applied for refugee status using his family name Z as the last of six names. On a copy of his Jordanian passport issued in 1998, three of the same names are used, another name is added and the Z name is omitted. The appellant claimed that he used the names which appear on his 1998 passport for official purposes to avoid problems with the Iraqi authorities. On arrival in New Zealand he had not disclosed these names to the New Zealand authorities despite a requirement that all names (including aliases) be disclosed on the Confirmation of Claim form. The appellant stated that he had partially acknowledged that official name (although not all of it is included in his Confirmation of Claim form). When questioned about the omission from the Iraqi passport issued in Jordan of the Z name the appellant stated that it is common for the family name to be omitted from Iraqi passports. He provided evidence in the form of a statutory declaration by an Iraqi interpreter in New Zealand stating that due to the length and complexity of their names it is the frequent practice of the Iraqi authorities to omit the family name from official documents including passports. He cited examples of this practice which he had come across in his personal experience.

[43] This issue was given close scrutiny by the RSB because his brother, MM, had subsequently altered his own passport, also issued in Jordan in 1998, by adding the Z family name.

## **8. The appellant's brother's evidence**

[44] The appellant's brother, MM, gave evidence in support of the appellant. He stated that the appellant's refugee claim is based on truth. One of his paternal uncles was executed and the other detained because of their political opposition to the regime of Saddam Hussein. Like the appellant, his brother states that he did not know his father's whereabouts from 1998 to 2001. He also did not know (contrary to the appellant's evidence) his father had worked as a merchant and that the appellant had been involved in his father's businesses in Iraq.

[45] MM had completed a Re-Settlement Registration form with the UNHCR in Thailand in 2003. A copy of this form was made available to the Authority. The form records an interview between MM and a UNHCR official in which MM states that the appellant and his father had left Iraq in 2001 for New Zealand via Turkey. When this was put to him, he denied having said this although he conceded that the other facts contained in the record of the interview were correct. MM admitted

to having altered his own passport by adding the Z family name in order to be accepted as a member of the Z family for the purposes of the family reunification application made by his father to the New Zealand authorities in 2002.

[46] This passport (like the appellant's) was issued in Jordan in December 1998. MM stated that his passport was also obtained by his father. A copy of this passport was produced to UNHCR Jordan by his father. MM stated that he did not know of this or the fact that his father had applied for asylum with the UNHCR in Jordan.

## 9. Military service

[47] The appellant initially claimed, *inter alia*, to have a well-founded fear of being persecuted in Iraq because he would be forced to perform military service. He stated his opposition to military service in the following terms in his written statement to the RSB dated 16 January 2002:

“By now I am wanted to perform military service .. and as soon as I return to Iraq under any circumstances .. I be taken to serve my military service, which I was deferred of serving it on the bases of being a student at the University of Baghdad ... and I am threatened to be executed or imprison as soon as I return to Iraq. This is based on the reasons that I have mentioned earlier and that are related to the regime as well as to my family's full record of persecution .. and of course it is hard for me and against my principals to perform my military service and serve the bloody regime in Iraq”. (*sic*)

[48] It was put to the appellant at the appeal hearing that in order to obtain an Iraqi passport he would either have had to complete military service or be exempted from it. The appellant advised that it had not been necessary to pay bribes to obtain an exemption for the appellant from military service in order to have his passport issued in 1998 because at that time he was still a student and therefore exempt from military service. He did not, therefore, at that time evade military service. The appellant also referred to the establishment of a reserve army by the government in the mid-1990s which required everyone to complete three to six months reserve duty. The appellant supplied a report from the Canadian Immigration and Refugee Board “Update to Response to Information Request RQ27014.E (18 June 1997) “Whether Military Service Remains Compulsory” which states that:

“... male citizens are required to perform a reserve duty for a total of six months”.

[49] The refugee status officer in the original decision granting refugee status relied on the grounds, *inter alia*, of his objection to performing military service. The officer's finding was as follows:

"In addition to facing a political sentence and further punishment for escaping prison, [the appellant's] period of being exempt from military service, throughout the four years of enrolment in his Bachelor's Degree in English Literature, appears to have expired. [The appellant's] objections to performing military service are based upon his moral objections to the repressive internal function of the military. Moreover, given his past experiences with the Iraqi authorities, [the appellant] is unable to support any part of the Iraqi government. There were no doubts as to the moral and political nature of [the appellant's] aversion to serving in the Iraqi military."

[50] To the Authority the appellant maintains his objection to military service and argues that he remains at risk of being persecuted for this reason.

## **10. Illegal departure**

[51] In the decision granting refugee status to the appellant, the refugee status officer acknowledges that his illegal departure from Iraq gave rise to a well-founded fear of being persecuted because he would face imprisonment for having left Iraq illegally and found that the term would be exacerbated by his political profile. The appellant's counsel submitted that, even were the Authority to find that the appellant held no well-founded fear because of his family or political problems, his grant of refugee status should be upheld on the grounds of his well-founded fear of being persecuted because he had left Iraq illegally and that this evidence had not been challenged by the DOL.

[52] The appellant provided to the Authority various documents in support of his case. These included:

- (a) Statement of the appellant dated 2 December 2007.
- (b) Statement of the appellant's brother dated 2 December 2007.
- (c) Statutory Declaration dated 4 September 2006 with attachments.
- (d) Various legal authorities referred to in paras [79]-[85].

## **11. Subsequent events**

[53] The appellant states that he is in telephone contact with his mother in Baghdad. She reports that the situation in Iraq is sad. Members of his family are

being killed and the situation is unsafe and unsettled. When asked whom he now fears in Iraq, the appellant referred to three groups: Almadhi, Badar and Sadri. He claims that he will be at risk of being killed in the fighting among these groups and cited the case of his father's cousin who was shot in Alnasriah city on 6 November 2007 by a supporter of the Almadhi faction. His brother AA was also a victim of the same Almadhi group. He was kidnapped in Najaf and subsequently released upon payment of a ransom. AA left Iraq for Syria about six months prior to the hearing. The appellant's extended family who are large and well-known are being targeted by other families in Iraq.

### **THE RESPONDENT'S CASE**

[54] The respondent's case consists mainly of documentary evidence compiled in the course of the refugee status officer's determination concerning the loss of the appellant's refugee status.

[55] The respondent filed written opening submissions dated 4 December 2007 and closing submissions dated 7 December 2007.

[56] A statement dated 30 November 2007 was filed by the refugee status officer Wayne Newth who, although not the refugee status officer making the initial determination cancelling refugee status, was familiar with the appellant's file. Mr Newth appeared as a witness for the respondent and presented documents to the Authority from the appellant's father's DIMIA file relating to his time in Kuwait, Iraq and Jordan and a copy of the appellant's father's death certificate.

### **FINDINGS**

#### **Refugee recognition procured by fraud**

[57] The Authority finds that the refugee status of the appellant may have been procured by fraud.

[58] The Authority did not find the appellant to be a truthful witness. Having heard his evidence over three days it is satisfied that:



- (a) The appellant's father was not in Iraq from 1996 to 2001 at the times the appellant claimed his father helped him escape various detentions. It follows that the appellant was never detained by the Iraqi authorities as he claimed and they were not adversely interested in him because of his political opposition or because of his membership of a family identified as political dissidents.
- (b) The appellant was aware that his father was not in Iraq at that time and misled the refugee status officer, claiming that his father, while in Iraq, had helped him evade detention. He did so in order to fabricate a refugee claim.
- (c) The appellant knowingly collaborated in his father's fraudulent refugee claim to Immigration New Zealand so that his father's account would appear to be consistent with his own earlier claim. Although not on its own a ground for our finding that the appellant's refugee status may have been obtained by fraud, it does reinforce this finding.
- (d) The appellant obtained a validly issued Iraqi passport in Jordan in 1998. He deliberately omitted to disclose this passport to the refugee status officer in order to promote his claim to refugee status.
- (e) The appellant left Iraq for Jordan in 1997 and obtained an Iraqi passport in 1998 while in Jordan (contrary to his claim to be in Iraq at that time).
- (f) The appellant did not experience any difficulty obtaining an Iraqi travel permit in 1997 and was not forced to leave Iraq illegally for any of the reasons he claimed.
- (g) The appellant did not refuse to participate in military service because of his objections to the policies of the Iraqi regime and did not leave Iraq for that reason.

The reasons for these findings follow.

## **1. The appellant's father's assistance to the appellant to evade the Iraqi authorities**

[59] In his initial account to the refugee status officer (including his written statement in support of his claim) the appellant claimed that his father had intervened to obtain his release from detention in 1997, 1999 and 2001. When it became apparent that his father had been absent from Iraq over much of the period of his claimed detentions, the appellant attempted to explain his earlier false account as arising from interpretation or translation errors; the interpreter had used the English word "father" whereas the correct translation for the Arabic term used by the appellant in his statement was "father's relatives and acquaintances".

[60] It was put to the appellant that he had never made any changes to the relevant parts of his statement (either when invited to by the refugee status officer in 2002 or subsequently) until he was interviewed in 2005 in respect of the proposed cancellation of his refugee status. To the Authority, he stated that he had had no time to do so.

[61] We reject that explanation as specious. The appellant had filed his initial statement in January 2002. He was interviewed by the refugee status officer and the interview report sent to him in April 2002. The RSB decision was published on 1 May 2002. In the intervening months the appellant had every opportunity to make any alteration to his written statement or to the interview report in respect of the evidence of his "father's" assistance. The Authority does not accept his excuse that he had insufficient time to do so.

[62] Furthermore, the appellant is someone who has considerable fluency in English. He had studied English at university in Baghdad, including courses on English plays, literature and culture. He began working as an interpreter (from English to Arabic and vice versa) at the Auckland Refugee Centre in 2002, shortly after his arrival. He continued to do this for a year. Given his fluency in English the Authority concludes that, if he had concerns about the accuracy of the English translation provided in the case of both his written statement and his RSB interview, he was quite capable of addressing these concerns and would have done so given the importance of this evidence to his refugee claim.

[63] The Authority finds that the appellant did not attempt to make any alterations to his written statement or the RSB interview report concerning his father's personal intervention in his escapes from detention because he had no

intention to do so. The appellant intended to present this version of events to the refugee status officer and maintained it until (in the course of the cancellation proceedings) he was confronted with incontrovertible evidence that his father had been out of Iraq in Syria, Jordan and Australia at the relevant times.

[64] This attempt to resile from his initial description of events crucial to his refugee claim causes the Authority to conclude that none of these events occurred. He was not detained in 1997, 1999 or 2001. This casts strong doubt on core aspects of his refugee claim. This finding is reinforced by the appellant's evidence at the hearing as to his father's actual whereabouts during this period.

## **2. The appellant's father's whereabouts**

[65] The appellant's evidence is now that the last time he saw his father in Iraq was in early 1999 and that he did not know where his father was from 1999 until 2002, despite the fact that the appellant was living in the family home in Iraq with his mother and siblings. The explanation given for his ignorance about this was that his mother (who was kept informed of his father's whereabouts) would not tell the appellant because his father did not want his medical condition to become known nor did he want people to know he was outside Iraq. Such knowledge could cause people to conclude that the appellant's father was an "escaped person".

[66] The appellant was, at the time, a 28 year old adult. The Authority does not accept that such knowledge would be kept from him because he might disclose it and thereby cause his father danger. When asked whether he had written to his father during the four years from 1999 in order to obtain news of him, the appellant replied that his sister had done so but that she had ceased writing when his father had been unable to write back because of his health. When asked why she had not continued to give his ailing father news of his family, the appellant said that she did not want to tell him about the family because she could report only news which would be unhelpful to such a sick man. This evidence is simply not plausible. It would not be necessary for his sister to tell her father if there were any misfortunes befalling the family (which there were not). The Authority does not accept that this is a credible reason for his sister ceasing to write to her father (and the appellant failing to receive news of him). Nor is it sensible that his sister would be apprised of his whereabouts but not the appellant.

[67] The appellant's father arrived in New Zealand on 8 April 2002. He lived with the appellant who was required to devote all his time to nursing his father because of his serious medical condition. In spite of this intimacy, the appellant claims that he was unaware that his father had been living in Australia from December 1999 to November 2001, until he was told this by his father in July or August 2002. When asked why he had remained ignorant of his father's sojourn in Australia, although they had been living together and he was his father's full-time caregiver, the appellant replied that he had been too busy preparing his father's refugee claim, caring for him and taking him to the doctor to talk to his father and that his father had difficulty speaking (notwithstanding that his father was able to talk to the doctor, the interpreter and was able to be interviewed at length by the RSB during this time). It is implausible that the appellant and his father had no opportunity to discuss the fact that his father had been living in Australia for two years and had been granted refugee status there. Even more so given that, during those four months, the appellant was helping his father prepare his claim for refugee status in this country and therefore would have been discussing his father's recent experiences in order to ascertain all relevant information.

[68] The Authority concludes that the appellant's evidence concerning his father's whereabouts from 1996 to 2002 is untruthful. Further, we conclude that the appellant has fabricated his evidence about his ignorance of his father's whereabouts in an attempt to account for his own role in helping his father prepare his fraudulent claim to refugee status in New Zealand.

### **3. The appellant's preparation of his father's refugee claim**

[69] The Authority is left in no doubt that the appellant knowingly colluded with his father in the preparation of his father's false claim. He helped his father prepare a false account which repeated some of the same lies that the appellant had already related to the RSB in the course of his own claim; his father's personal assistance in his release from detention and eventual escape from Iraq. The appellant knew that his father had been in Australia, not in Iraq, from 1999 to 2001. He knew that his father had previously been out of the country in Syria and Jordan where he had applied for refugee status.

[70] The Authority also finds that it is highly unlikely that the Iraqi authorities would have allowed a political dissident such as the appellant's father, whom they

had supposedly placed under close surveillance, to frequently travel in and out of Iraq for medical purposes.

[71] The Authority also records that the account of events given by his father in support of the refugee claim he made in Australia differed in significant respects from the account he presented to the New Zealand authorities. The appellant (who was not involved in his father's refugee claim in Australia) claims that this was due to the mental impairment his father was suffering when in Australia. We make no comment on the veracity of the story told in Australia. We do, however, find that there is no truth in the story told in New Zealand – a story designed to 'fit' with the story told by the appellant.

#### **4. UNHCR evidence in Jordan**

[72] It is unfortunate that no copy of the appellant's passport issued in 1990 and renewed once in 1994, which showed his entry into Jordan on 27 August 1997, is available. The weight that could be given to the information contained in the email from UNHCR concerning this passport is accordingly limited and on its own would be inconclusive. However, when taken together with all the other fabricated and misleading evidence provided by the appellant we reject his explanation that his father had caused the entry to be made on the 1990 passport and we find that it is more likely to have been a genuine record showing that the appellant had travelled into Jordan and was there in 1997, and not in Iraq as he had claimed.

#### **5. The obtaining of an Iraqi travel permit**

[73] It is apparent to the Authority that the appellant had fabricated the evidence of the "danger note" on his record in the passport office and was unable to adequately explain this when required to provide a more detailed explanation to the Authority. The appellant's contradictory and evasive evidence about the difficulties he claimed to have had (or anticipated) when he attempted to obtain a travel permit to leave Iraq in 1997 is indicative of one of the many attempts he made to fabricate evidence.

#### **6. The Iraqi passport issued in 1998**

[74] The Authority rejects the appellant's explanation that his father had applied for his passport in Jordan unbeknown to the appellant. The Authority concludes that the appellant's Iraqi passport was issued in Jordan in December 1998

because that is where the appellant was living at that time. This accords with the other information contained in the email from UNHCR that the appellant had entered Jordan in August 1997 on an Iraqi passport which expired on 15 May 1998. This would have had to be renewed after this date, and it was in December 1998.

## **7. The family name**

[75] The Authority accepts the evidence contained in the statutory declaration provided by the appellant's counsel as to the Iraqi practice of omitting an individual's family name from some official documents and makes no adverse finding in respect of the omission of a family name from the appellant's Iraqi passport issued in Jordan. However, it does not accept that this was omitted in order to avoid adverse interest from the authorities. The appellant admitted that the name on the 1998 passport is the name that he used for official purposes in Iraq and therefore he could have been easily identified by the authorities from that name. Furthermore, in view of our other findings the Authority rejects entirely his claim that he avoided use of the Z family name; he had no reason to do so because his account of being persecuted because of his family name or any other reason is not credible.

## **8. The brother's evidence**

[76] The Authority does not accept that all the other facts contained in the UNHCR record of the appellant's brother's refugee decision are correct other than the statement, attributed to the appellant's brother, that the appellant and his father had left Iraq in 2001 for New Zealand via Turkey. We are satisfied that this, along with the other facts, was a correct record of what the appellant's brother had told the UNHCR official in support of his claim to refugee status.

## **9. Military service**

[77] The RSB decision granting refugee status noted at page 17:

"[The appellant's] evasion of military service, even if it were motivated exclusively by his desire to avoid the inconvenience of being a soldier, which it is not, is likely to be seen by the Iraqi authorities as a political act challenging the legitimacy of the government."

[78] The refugee status officer concluded that because of the Iraqi army's use of chemical weapons against civilians and other instances of gross violations of

human rights by the army, to be forced to serve in the Iraqi army would of itself amount to persecution.

[79] The appellant's counsel argues that, even if the Authority rejects the appellant's original account of his political problems and consequent detentions and mistreatment by the authorities, unless the remaining grounds on which the original grant were based are also rejected as fraudulent the first limb of the cancellation test would not be satisfied. In other words, each and every ground on which the refugee status officer found the appellant to have a well-founded fear of persecution would have to be shown to be fraudulent before it could be held that the grant of refugee status had been improperly made. Counsel contends that the grounds of the appellant's fear of having to perform military service and the fact of his illegal departure are distinct from the other matters considered by the refugee status officer and are sufficient on their own to have established a well-founded fear of persecution.

[80] In support of this submission, counsel cites an address given on 28 June 2005 by the Chairperson of this Authority. In a written resumé presented on that occasion, the then Chairperson of the Authority stated:

"The evidence must establish that the grant may have been obtained by fraud, not just one evidential aspect of the claim."

[81] Counsel further submits that there are certain essential requirements which must be met before refugee status can be cancelled on the grounds of fraud. These are set out in *S Kapferer Cancellation of Refugee Status*, Legal and Protection Policy Research Series UNHCR (March 2003). These requirements are:

- (a) The appellant's misrepresentations must relate to relevant or material facts on which the refugee status officer relied in reaching the decision granting refugee status. This is referred to as "the causality principle".
- (b) The original grant will be sustained even if there is some new evidence which establishes fraud in respect of some of the original grounds provided other grounds remain:

"The authority must decide whether despite the existence of the (new) evidence the applicant could have been found to be a refugee at the time." (*supra*)

[82] Counsel also cites “Note on Cancellation of Refugee Status” by the UNHCR Protection Policy and Legal Advice Section Department of International Protection Geneva (22 July 2006), which expands on the causality principle referred to by Kapferer, at paragraph [22]:

“‘Causality’ means that an applicant’s misrepresentations or concealment must relate to “relevant” or “material” facts, that is, elements which were clearly instrumental to the recognition. In practice, false statements often concern the applicant’s identity and/or nationality or the main circumstances triggering his or her flight. Since misrepresentations with regard to these elements are important and will raise issues as to the overall credibility of a claim, they are in principle decisive factors in determining the applicant’s status.”

[83] The UNHCR paper also recognises the principle that a final decision ought not to be cancelled in reliance solely on evidence which was before the initial decision maker (but wrongly assessed) or evidence which it did not consider because it failed to comply with its duty to make a full enquiry.

[84] In his evidence to the Authority, the appellant conceded that he could have lawfully avoided military service by payment of a fine or bribe. His counsel contends that the refugee status officer’s failure to consider whether the appellant could have avoided military service by payment of a fine is not a ground for cancelling refugee status because this is evidence which was available to the refugee status officer at the time, had the enquiry been made.

[85] However, the basis on which the refugee status officer accepted that the appellant’s objection to military service was genuine was that he had previously suffered at the hands of the regime by being detained and mistreated. Furthermore, the penalty that he would face for draft evasion would be exacerbated by the fact that he was a prison escapee such that this penalty would be sufficiently severe to amount to persecution.

[86] The Authority has rejected entirely the appellant’s accounts of his past experiences of detention as not credible on the basis of evidence which was not available to the refugee status officer at the time. Had this evidence (referred to above) been available, the refugee status officer would not have accepted that the appellant objected to military service on the basis of his anti-regime views and because of his past persecution at the hands of the Iraqi authorities. This is new evidence. Furthermore, in answer to counsel’s submission, having rejected the appellant’s credibility concerning his experiences at the hands of the regime (which was the principal plank of the refugee claim) the decision cancelling refugee status does not offend against the causality principle as enunciated in



“Note on Cancellation of Refugee Status” *op cit* at paragraph [22], in particular, the acknowledgement contained therein that:

“Since misrepresentations in regards to these elements are important and will raise issues as to the overall credibility of a claim, they are in principle decisive factors in determining the applicant’s status.” (Underlining added)

[87] The Authority finds that the appellant’s lack of credibility as to the central planks of his refugee claim are determinative in deciding that his claim to refugee status was obtained by fraud.

## **10. Illegal departure**

[88] The appellant’s evidence in support of his initial claim was that he had possessed only one Iraqi passport which he had renewed in 1993 or 1996. He said he had been unable to use this to travel abroad because he was refused a travel permit in 1997.

[89] When the refugee status officer accepted the appellant’s evidence that he had departed illegally, she did not have available for consideration the information provided by UNHCR Jordan or the copy of the appellant’s second passport issued in Jordan in 1998.

[90] The UNHCR evidence from his father’s file showed that the appellant had entered Jordan on an Iraqi passport in 1997 which passport was due to expire in 1998. This information on its own would not have been conclusive. However, it is supported by the further evidence of a copy of two pages of his Iraqi passport issued in Jordan in 1998, soon after the expiry date of the first passport. The Authority has rejected the appellant’s story that the existence of this second passport was unknown to him at the time of his application for refugee status and had been obtained by his father without his knowledge. The appellant concedes that he had misled Immigration New Zealand authorities in this regard but asserts that he had not done so intentionally because the passport had not been obtained by him. Had the refugee status officer known of the legal Iraqi passport issued in the appellant’s name in 1998 along with the information of the appellant’s travel to Jordan she would not have accepted his story of illegal departure across the border into Turkey because he was unable to obtain a travel permit.

## **Summary of findings**

[91] The Authority rejects the appellant's account of having been detained and persecuted by the Iraqi authorities for his own or his family's political opinion. He did not leave Iraq to escape persecution for reason of his political views or his objection to military service.

[92] The reasons identified above sufficiently establish that the grant of refugee status may have been procured by fraud. We go further and record that we are satisfied it was procured by fraud.

[93] On the evidence the Authority has heard it is satisfied that the appellant deliberately advanced a fraudulent claim to refugee status based on facts he knew to be untrue. He did so to receive the benefits which recognition of refugee status would bring, knowing that he had no legitimate entitlement to these.

[94] The Authority now moves to the second stage of the test which concerns whether the appellant should cease to be recognised as a refugee, that is, whether or not the appellant currently meets the criteria for refugee status.

## **THE ISSUES**

[95] 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."

[96] 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?

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

[97] The Authority reiterates its findings that the appellant was of no interest to the authorities in Iraq and did not legally depart from Iraq for the reasons he has advanced. In addition to the refugee claim advanced in 2002, the appellant now claims to have a well-founded fear of being persecuted on other grounds. (See para [53] above).

[98] The appellant's counsel in oral submissions remarked that the recent UNHCR guidelines for assessing Iraqi asylum claims advised against return to Iraq, however he submitted that the appellant's fear is not simply of random violence or of the general lack of security in Iraq. Because he is a person not supporting any of the three Almadhi, Badar, and Sadri groups he would therefore be perceived by each of them as hostile or may be forced to support them. In addition, as a member of his family he will be targeted by other hostile family groups.

[99] Even if there is some truth in the evidence regarding his father's cousin's death and his brother's kidnapping and release in 2007 (which we do not need to find), neither incident occurred in Baghdad where the appellant's family home is situated and where his mother currently resides. Neither event (even if true) is relevant beyond indicating the widespread unrest in Iraq, of which there is a plethora of evidence.

[100] The appellant has not lived in Iraq since before the fall of the Saddam Hussein regime and the consequent emergence of the three groups he now claims to fear. He is unknown to them. The death of his father's cousin in Alnasriah at the hands of the Almadhi group is not any indication that the appellant, who has always lived in Baghdad, is at any real risk of serious harm. Other than the biological relationship to the deceased (which is not significantly close) there is no evidence that the predicament facing his father's cousin is related in any way to the appellant's circumstances.

[101] Similarly, the kidnapping and subsequent release of his brother in Najaf in approximately mid-2007 is not indicative of any risk to the appellant himself. In any event, the kidnapping appears to have been undertaken for financial reward which is not recognised as a ground on which a claim to refugee status may succeed.

[102] These two incidents do not indicate that the appellant's family is being targeted by any of the three groups mentioned or any other family groups. Accordingly, the appellant is not at risk of being persecuted because of his family membership. There is no evidence that there is a real chance of the appellant being forced to join any of the three groups abovementioned or being targeted because he is not a member of them. This is mere speculation on his part.

### **Country information**

[103] Baghdad remains in an unstable state. The armed conflict between sectarian groups continues, fuelled by Sunni/Shi'a rivalry. Civilians may be random victims of suicide bombs and certain groups are particularly singled out by insurgent groups. In this regard the UK Home Office in its Operational Guidance Note *Iraq* (12 February 2007) reported that:

“... armed groups also targeted alleged supporters or supporters of the Iraqi government, such as politicians and government workers and their families, tribal or religious leaders, members of religious or ethnic minorities, journalists, doctors and lawyers as well as Iraqis working with the MNF and foreign construction companies.”

[104] Recent decisions of this Authority have recognised specific groups such as women alone without male protection, Christians, and individuals with a political profile as having a well-founded fear of being persecuted in Iraq (refer, for example, *Refugee Appeal No 75879* (12 February 2007); *Refugee Appeal No 75653* (23 March 2006); and *Refugee Appeal No 75656* (10 November 2006). However, the Authority has not granted refugee status to Iraqis solely because of the currently unstable circumstances and the possibility of random violence. That is a view with which we respectfully agree.

[105] The appellant has none of the characteristics of those described above targeted by insurgent groups or otherwise having a well-founded fear of being persecuted. The possibility of him being a victim of serious harm for a Convention ground does not rise to the real chance level. The Authority finds that the first issue as framed must be answered in the negative and the second accordingly does not arise.

**CONCLUSION**

[106] The following determinations are made.

- (a) Refugee status may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.
- (b) It is appropriate to cease to recognise the appellant as a refugee.

[107] The appeal is therefore dismissed.

"J Baddeley"

J Baddeley  
Chairperson