

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76163

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairman) M A Roche (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	8 January 2008
<u>Date of Decision:</u>	18 February 2008

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Iraq.

INTRODUCTION

[2] The appellant has just turned 18 years of age. He is a Shi'a Muslim who was born in Basra but has spent most of his life in Baghdad. He has not completed his schooling and has never worked. He is unmarried. Both parents remain in Baghdad. His two elder siblings were killed in unrelated bombings. He arrived in New Zealand on 1 April 2007 and claimed refugee status at Auckland airport.

[3] The appellant was detained under s128 of the Immigration Act 1987 and has been transferred to the Mangere refugee resettlement centre where he has remained. He was interviewed by a refugee status officer on 20 May 2007. His

claim for recognition was declined by the RSB in a decision dated 16 November 2007. He then appealed to this Authority on 19 November 2007.

[4] The nub of his claim is that he predicts he will be persecuted on return to Iraq because of his family associations with an important Shi'a religious figure and subsequent threats to the appellant's family, including his parents in Baghdad. Oral evidence was heard from the appellant and one witness, AB. A videotape of a service at a mosque in Basra, conducted by the appellant's grandfather, was viewed by the Authority, with partial interpretations by the interpreter and explanations from the appellant. Additional documents and submissions were received from counsel after the hearing and have been taken into account.

[5] For the reasons that follow, the issues arising have been found in favour of the appellant and refugee status is granted.

THE APPELLANT'S CASE

[6] The outline of the appellant's case has been established through statements made by him in his initial claim in April 2007 and further statements on 1 May 2007, 15 October 2007 and 27 December 2007. The RSB rejected his credibility substantially because of concerns relating to his travel, identity, knowledge of Baghdad, his relationship to his grandfather and the religious position of the grandfather. The Authority had before it fresh material that was not before the RSB, consisting of the evidence of the witness, AB, translated copies of the death certificate and funeral service of the appellant's paternal grandfather, Sayed H, further documentation relating to Sayed H and the family, and further country of origin information.

[7] The Authority also noted that the appellant had recently been referred to a psychiatrist, Sarah Weeks. The reference had been made because of concerns about his mental health which appeared to arise from his youth and difficulties encountered at the Mangere camp. We have noted Dr Weeks' report of 9 January 2008.

[8] The appellant's parents are first cousins are from a well-known and respected Shi'a religious family in Basra. His parents had spent their lives in Basra until approximately 1991 when they moved to Baghdad with their three children, including the appellant who was then only approximately one year old.

The appellant is unaware of the reasons for this move. His father worked as a taxi driver in Baghdad. His elder sister and brother were much older than him, being born in 1970 and 1979 respectively.

[9] The appellant's maternal grandfather was Sayed H, a senior religious figure in the AH mosque, one of the major mosques in the Basra district. The mosque is also commonly known by the appellant's family name (which of course is shared by both his mother and father). Sayed H was a representative in Basra of Grand Ayatollah al-Sistani, the most significant Shi'a cleric in Iraq (based in Najaf). Sayed H had also represented the predecessor of the current Grand Ayatollah, who was executed under the instructions of Saddam Hussein. The appellant claimed that Sayed H was assassinated in August 2007 by an extremist Sunni group (followers of Adnan Al Dulaymi (Adnan)).

[10] The appellant's schooling consisted of five years' education only. The school was some 15 minutes' walk from his home. In approximately 2001, the acting principal of the school had asked the appellant to have his father attend the school for a meeting. His father did this and was told a decree had come from people high up in the Saddam Hussein administration which said that the appellant, as the son of a person who supported the Al Dawaa Party, should not be allowed to attend school. The appellant's elder brother was prevented from obtaining an education for similar reasons.

[11] The appellant had no idea why his father was accused of being a supporter of the Al Dawaa Party. He understood that the Al Dawaa Party were a political group who supported an Islamist Shi'ite administration of Iraq which was fundamentally opposed by Saddam and rigorously suppressed by him. His father never spoke about his background, if he had one, in the Al Dawaa Party. Additional penalties placed on the family at that time were the unavailability of food rations and, as he now understands from explanations given recently by his father, there were several detentions and beatings of the father by the Ba'athist authorities. The appellant had been told, by his mother, that when his father had gone away for periods of up to two weeks, he had been in Basra on business. He now understands that that was not correct as he was actually detained.

[12] The appellant was then home-schooled by his mother and lived a very closeted existence, mainly staying inside with his mother and other family members and not associating with his ex-school friends. He did not attend a

nearby mosque, although the appellant understood his father and elder brother did attend. He was given religious teaching by his parents.

[13] The appellant's married sister was killed, along with her daughter and a group of other women who had gone to a market some 55kms south of Baghdad, in 2005. The sister had lived with her husband and child in an apartment near the appellant in Baghdad. The sister's husband, who is also related to the family, had returned to Basra, after the death of his wife, to undertake religious studies. He is the son of Sayed M who has now taken over as the leader of the AH mosque, formerly led by the appellant's grandfather, Sayed H.

[14] The appellant's brother was also killed in a bombing incident, approximately one year after his sister. His brother was attempting to enrol in the Iraqi police force. This incident was also at a distance from the appellant's home in Baghdad. The brother had gone to another city to enrol because he considered the family name would not be so well-known in the district he went to, as compared to Basra and Baghdad.

[15] The appellant provided copies of the death certificates of his brother, his sister and grandfather, Sayed H.

[16] In 2004, the appellant and his family travelled to Basra to visit his maternal grandfather and other family members. At that time, he attended the AH mosque and met with many of his cousins, uncles and aunts. The purpose of the visit had been to celebrate the fall of Saddam Hussein. It was then that the appellant obtained a copy of the DVD, which he produced and which was shown to the Authority. This DVD showed his grandfather, Sayed H, conducting a full session of prayers and ceremony at the AH mosque.

[17] After the death of the appellant's brother in late August 2006, his parents became protective of him and tried not to cause him to be more terrified or stressed. In March 2007, however, his father came to him and told him that arrangements had been made for him to leave Iraq. The appellant was taken in a car by a smuggler (ZZ) to Syria where he remained for two days and then flew to Dubai and on to Sydney, after transiting in Thailand. In Sydney, ZZ left him after putting him on a plane to New Zealand. He was not informed by his father of the real reasons for his flight before he left.

[18] However, since arriving in New Zealand, he has had several telephone calls with his parents and has been given a considerable amount of additional information. Through these calls he has learned that in approximately February 2007, his parents received threatening letters from a group led by a Sunni radical, Adnan Al Dulaymi. These letters had threatened the safety of the appellant's parents and the appellant himself. The threats followed an approach made to his grandfather, Sayed H, by the Adnan group requesting support for radical plans for the separation of Shi'ite and Sunni populations in Iraq. Because his grandfather had refused to go along with these radical plans and suggestions, the grandfather and the appellant's parents had been threatened by the Adnan supporters. As a result of these threats, his parents now live apart, in hiding, in Baghdad with respective male and female friends.

[19] In September 2007, the appellant was informed by his father that his grandfather had been assassinated and that the family considered this was the work of the Adnan supporters. He was also told that his grandfather had specially requested, in an oral will given before his death, that if he was assassinated, such an explanation should not be given as he did not want to be the cause of retaliation attacks and the escalation of conflict between Shi'ites and Sunnis. He said it was for this reason he assumed that reports of his grandfather's death on the internet were conflicting, some stating that he had been killed while in Iran, others implying that he had died of natural causes. The family, however, were certain that he had been targeted. The appellant's father told him that his grandfather had been shot by supporters of Adnan. The copy of the death certificate of Sayed H, in August 2007, stated the cause of death was "Assassination (caused by or as a result of bullets in the head)". The appellant explained that there were details of the funeral of his grandfather available and supplied the Authority with a special commemoration document distributed there. His parents, he understood, had travelled to Basra to attend the funeral.

[20] The appellant understands that after the death of his grandfather, his maternal uncle, Sayed M, has now taken over the leadership of the AH mosque in Basra, thus keeping it still in the family name and leadership.

[21] When asked why either the appellant's parents and/or the appellant himself should not stay in Basra since he provided no apparent evidence of problems for the many other relatives there, the appellant stated that it would be dangerous for

them to go to Basra and he had no idea of what the situation was for his various relatives in Basra who may also be at a similar level of risk.

[22] The appellant also explained that, although not now part of his claim, soon after the fall of Saddam Hussein, the family had been threatened by people associated with Moqtada Al Sadr, who had also been in dispute with his grandfather at that time. He stated, however, that the Al Sadr group, followers of the Shi'ite leader, Moqtada Al Sadr, appeared to have changed their attitude towards his grandfather recently but that Moqtada Al Sadr was so volatile that the situation could change again at any time.

[23] He claimed that his risk on return related primarily to his being a significant member of the family. The assassination of his grandfather and ongoing targeting of his own nuclear family placed him in a position where he would be at serious risk wherever he returned to in Iraq.

THE EVIDENCE OF THE WITNESS, AB

[24] AB is a Shi'a Muslim who was born in Kuwait and is a bidoon. His family was originally Iraqi but became stateless in the 1960s. After the invasion of Kuwait in the 1990s, his family returned to Iraq and lived in Basra and Nasiriyah (where he pursued academic studies). AB came to New Zealand in January 2003 and his father was granted refugee status. He now works in Auckland as a security guard and at the Al Mustafa Charity Centre in Auckland, associated with the Al Mustafa Hussymia mosque. The charity provides assistance to Arab migrants and refugees, helping them to understand New Zealand laws and way of life and to find employment. They also teach Arabic language and the principles of Islam and the Koran.

[25] AB stated that he had come to know the appellant several months ago after meeting him at an Auckland mosque. They had further contact both at the mosque and at the refugee hostel. Soon after the initial contact, his organisation received a telephone call from the appellant's father in Baghdad. He presumed this came about because the details of the Al Mustafa centre are posted on the internet and there are connections with similar support organisations overseas. During the short telephone call (which had a poor connection) with the appellant's father, he recognised the famous family surname from Basra. The appellant's father had asked AB to give what assistance he could to the appellant, who was a very young man who had just come to New Zealand on his own. The father had

explained that his son was in “prison” in New Zealand and asked AB to give every assistance possible, stating that the [appellant’s] family would be grateful. AB undertook to visit and help the appellant as best he could.

[26] By way of background, AB told the Authority that he had lived in Basra for considerable periods of time during the period 1997 to 2000, when he had been studying arts and literature in that city. He, along with colleagues, had attended a number of mosques there and in districts surrounding the city. He did not know Sayed H personally but knew of him by reputation as he was the leader of the significant AH mosque in one of the Basra districts. He said he knew he was a significant religious leader but was unaware if he had any other associations outside Basra. He stated that everyone in Basra knows the AH mosque and the family because they are famous religious clerics.

[27] He told us that he had recently heard that Sayed H had been killed. As a result, he contacted the mosque in Basra and spoke to the receptionist to tender his condolences. He had heard the information through other people in the Iraqi community in New Zealand, although he was unsure of how the appellant’s grandfather had been killed. Since the death of Sayed H, AB understood that the eldest son, Sayed M, had taken over the running of the mosque.

[28] He further explained that the appellant came to the Mustafa centre and gave particular assistance in reading from the Koran and other matters of Shi’a interpretation of the Koran. His knowledge and ability went well beyond that of many other Muslim migrants in New Zealand. He presumed that the appellant was home-schooled but that he had an excellent religious upbringing. The appellant’s knowledge was of great value to the mosque in Auckland.

[29] AB remained in the hearing room while the DVD was played. He explained that he recognised the mosque as that of the AH or the [appellant’s family’s] mosque.

THE DVD

[30] The appellant stated that the Sayed leading the religious ceremonies was his grandfather and that the writing at the commencement of the DVD explained his full name and the details of the ceremony. The passport photograph of Sayed H appeared consistent with that of the person in the DVD.

THE ISSUES

[31] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

[32] 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?

[33] Because the issue of internal protection arises in this case, the decision of this Authority in *Refugee Appeal No 71684/99* (29 October 1999) requires a third and final issue to be addressed:

- (c) Can the appellant genuinely access domestic protection which is meaningful?

In particular:

- (i) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (ii) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of

the kind that might give rise to the risk of return to the place of origin?

- (iii) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

ASSESSMENT OF THE APPELLANT'S CASE

The witness, AB

[34] Before turning to our own assessment of the concerns raised by the RSB and our own overall assessment of the appellant's credibility from which the facts as found can be assessed, it is important to consider the evidence of the witness, AB, which was given after his viewing of the DVD. We note, of course, that AB did not give evidence to the RSB and that there was no transcript of the DVD provided, in English, to the RSB. The Authority had the benefit of AB's evidence and the explanations by him, the appellant and the interpreter, of the DVD showing Sayed H preaching at the AH mosque in June 2003.

[35] The evidence of AB was open, honest and of assistance to us. We accept his credibility. From AB's evidence, we note particularly that he had been contacted by the appellant's father and a brief request to assist the appellant had been made at that time, as well as a recognition by AB of the family name. AB has spent time in Basra and was able to positively identify both the mosque and the claim that Sayed H was a very well-known Shi'a cleric in Basra and the south of Iraq. The interpretation of several parts of the wording and speaking on the DVD established, to our satisfaction, that Sayed H was leading the mosque which was clearly a substantial one, attended by a considerable number of men, in a well-known district of Basra. The tone of Sayed H was clearly one of balance, caution and moderate leadership from a senior Muslim cleric whose views would be seen as a voice of reason on both the rule of law and mainstream Shi'a philosophy. These views would, on our assessment of the country of origin information relating to the views and philosophies promoted by Adnan, be fundamentally opposed by Adnan.

The appellant's credibility

[36] At the outset, it is necessary to assess the credibility of the appellant. As noted, the RSB had significant concerns about the appellant's credibility. Although we were conducting a *de novo* hearing, we addressed the areas of credibility concern held by the RSB. We reached similar conclusions on general credibility that is that, despite his youth, the appellant was forthcoming in his answers to us and was generally consistent with his written statements. The RSB's adverse credibility findings, however, arose from evidence given by the appellant that they considered inconsistent with available country of origin information and their interpretation of that information. As noted, however, new information was before the Authority.

[37] From an assessment of the evidence given by AB and the totality of the appellant's evidence, we are satisfied that the appellant's grandfather, Sayed H, was a well-known, respected leading Muslim cleric from Basra. The family and family name are very well-known in southern Iraq. The philosophies held by Sayed H and his family members are fundamentally opposed to those of Adnan and thus there is no implausibility in the claims made by the appellant that members of the appellant's family had been threatened by Adnan. There is a real chance, in our view, that when Sayed H refused to co-operate with Adnan, he was assassinated in retaliation by the supporters of Adnan.

[38] It is also logical, based on the philosophies of the Al Dawaa Party, and the views expressed by Sayed H and other members of the family, that the appellant's family were supporters of Al Dawaa. Even if not actively involved, for them to be attributed with views that would support or promote governance in Iraq by and through leading Shi'a clerics, including the Grand Ayatollah al-Sistani and his predecessors is again logical and consistent with the country information. The country information reflects that the Al Dawaa Party were in direct conflict with the Ba'ath Party of Saddam Hussein and indeed, a previous Grand Ayatollah had been killed by Saddam. It is therefore accepted that the appellant's father was highly likely to have been accused of belonging to the Al Dawaa Party under the Saddam regime and to have suffered discrimination at least under the Saddam regime, including the dismissal of the two boys from school and the withdrawal of rations. We find no implausibility in this evidence.

[39] We are also satisfied that any evidence that the appellant may have given that the Al Dawaa Party was a supporter of Saddam Hussein has either come about through confusion or faulty interpretation. The evidence of the appellant to

us certainly did not reflect such confusion. We are satisfied that there has been an unfortunate confusion in evidence relating to the death of Sayed R, the brother of Sayed H, before the RSB and that whilst Sayed R may have been killed by a supporting party to the administration of Saddam Hussein, that party was not the Al Dawaa Party.

[40] In relation to the appellant's knowledge of geography and direction in Baghdad, which the RSB counted against him, we noted that the appellant did appear to have some confusion in this regard. However, this is unsurprising given his lack of education and that he was largely confined to his home and the immediate district around it for a considerable part of his youth. Some confusion with names, particularly that of the River Tigris (also known as Djila), also caused difficulties in the assessment by the RSB. Given the age and knowledge of the appellant, we are able to accept that he lived in a very closeted situation in a suburb of Baghdad for most of his life.

[41] We found nothing inherently illogical in the explanations the appellant gave relating to the places and manner in which the appellant's brother and sister were killed in random bombings.

[42] We carefully considered and examined the appellant's claims in relation to his arrival in New Zealand and the method by which he left Sydney, along with his involvement with the smuggler, ZZ. We are satisfied that the claim made by the other smuggler, who came to New Zealand with the appellant and, it appeared from the evidence, had purchased a ticket for the appellant in Sydney some days prior to their departure, does not impugn the appellant's credibility. The activities of the original smuggler, ZZ, who brought the appellant to Sydney, the manner in which the boarding pass to travel to New Zealand had been given to him by way of a second smuggler, who accompanied him to Auckland, when that second smuggler had met ZZ airside in Sydney, revealed the totality of the scam but did not undermine the appellant's evidence.

[43] In order to clarify doubts we had in respect of these claims, which arose because the appellant was unable to give us information about the safety or otherwise of his other family members in Basra, and the fact that his mother and father have not been subjected to direct attention by supporters of the Adnan group, we asked the appellant for explanations. His replies were simply that he did not know the situation of family members in Basra, nor the detail of his parents' situation, apart from the fact that they were living in hiding, because his contact

with them since arriving in New Zealand had been primarily directed to obtaining documentation to support his refugee application and appeal.

[44] The appellant made no attempt to manufacture evidence in this regard and stated simply that he just did not know. As noted above, we find it logical, in an assessment of the country of origin evidence, that the moderate views of his grandfather, Sayed H, and the refusal of Sayed H to co-operate with extremist Sunni pressures or suggestions such as those put up by Adnan supporters, is fully sustainable and consistent. We are thus in the situation that, after noting the relevant country of origin information and accepting the appellant's credibility on virtually all of his other evidence, any lacuna in his evidence in regard to risks to the other family members can be accepted as credible. His claims, assessed in the round, have consistency and the ring of truth to them. We accordingly accept the appellant's credibility on the core of his claim.

Well-founded fear of persecution

[45] In summary, therefore, we find that the appellant is a young man who has just turned 18, with little formal schooling and who has led a very protected and closeted life in a suburb of Baghdad for the formative years of his upbringing. The detail and accuracy of his family background and political allegiances must be judged against the reality of the appellant's situation, not against that of a sophisticated, well-educated, mature adult.

[46] On the totality of the evidence, particularly including that of AB, we are satisfied that the appellant's grandfather, Sayed H, was a very well-known cleric in Basra and southern Iraq. Whether he was at the level of being the only direct representative of al-Sistani and previous Grand Ayatollahs from Najaf, is not fully apparent from the country of origin information. Although we do note there is reference in an internet report (www.maktoob.com) on the "Consolation Gathering for the death of Scholar [Sayed H]" to Sayed H being "the deputy for Ayatollah al-Sistani in al-Basra province". There are also certainly references to other leading clerics, such as Sayed B, who was assassinated some 18 days after the appellant's grandfather, and was also stated to be a deputy to al-Sistani. While the appellant claimed his grandfather's position was higher than that of Sayed B, we consider this is immaterial in the circumstances because Sayed H was clearly a very significant and leading Shi'a Muslim cleric in Basra. The family have been associated with one of the major mosques in Basra for a long period of time. Indeed, this is further confirmed by the appellant's uncle (his mother's brother)

now taking over as the Sayed in the AH mosque and a research document "The Hawzas and Religious Schools in al-Eshaa", *Rasid News Network*, (undated) setting out seven "Sayeds" over the past 100 years or more, from this family .

[47] The appellant claims that he was sent out of Iraq by his parents because they had been receiving threats from the Adnan supporters and that his parents now live in hiding in Baghdad. He claims that he and his family are at risk from Adnan supporters. This is the core of his claim.

[48] Anxieties held by the appellant on the basis of generalised violence in Iraq, such as the incidents that appear to be responsible for the deaths of his brother and sister, whilst extremely tragic, do not support a claim of a well-founded fear of being persecuted on return for a Convention reason. We consider these deaths arose from tragic but random bombings when both the brother and sister were in the wrong place at the wrong time. Assessed against the current country information, and whilst random bombings unfortunately continue, albeit at a lower level, such risks do not rise to the level of being a real chance. Similarly, risks to the family, which he is now not strongly stressing, from supporters of Moqtada Al Sadr, lack sustainability at this time and are not supported by objective country of origin information which was presented to us.

[49] We are satisfied, however, if he were returned to Baghdad, or Basra, which would appear to be the only place where he would obtain other family support and could relocate to, there is a real chance of his being persecuted for political/religious views imputed to him because of his family name and position. In particular, the risk arises because he is the grandson/nephew of very senior, well-known moderate Shi'a clerics. That family have been targeted for failure to co-operate with a well-documented Sunni group and submit to the radically opposed views of that group. In the current situation in Iraq, these are risks from non-state actors which cannot be alleviated by state protection. Given the level of violence and challenges for the Iraqi administration at this time, we consider there would be a failure of state protection.

[50] The first two issues are answered in the positive and an internal protection alternative is not available.

CONCLUSION

[51] The appellant has established that he has a well-founded fear of being persecuted for one or more of the five Refugee Convention reasons. We find that he is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"A R Mackey"
A R Mackey
Chairman