

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76139

AT AUCKLAND

Before: B L Burson (Member)
Counsel for the Appellant: I Uca
Appearing for the Department of Labour: No Appearance
Date of Hearing: 14, 15 & 16 January 2008
Date of Decision: 21 February 2008

DECISION

[1] This is an appeal against a 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] By decision dated August 2002, the appellant was recognised by the United Nations High Commissioner for Refugees (UNHCR) as a refugee under its mandate based on events that occurred between 1990 and 1995 arising from his desertion from the Iraqi army. This included episodes of imprisonment and torture.

[3] At the outset of the hearing, the Authority discussed with both Ms Uca and the appellant whether, given the ousting of Saddam Hussein and the Ba'ath Party from power in Iraq in 2003, the appellant was maintaining before the Authority that he possessed a well-founded fear of being persecuted in Iraq by reason of these events. Both counsel and the appellant eschewed any reliance on these events as providing the factual basis for his present claim to have a well-founded fear of being persecuted. Rather, both stressed that the appellant's claim for refugee status is based on the risk of his being killed by his own family for breaching their conservative social customs by marrying a non-Muslim and by his 'westernised'

lifestyle. The appellant also claims a well-founded fear of being persecuted on the basis that, as a Shia, he would be targeted by Sunni extremists.

[4] What follows, therefore, is a summary of the appellant's evidence as it relates to his fear of being persecuted by his family and tribe and from some of the extremists within the Sunni community. An assessment will follow thereafter.

THE APPELLANT'S CASE

[5] The appellant was born in Baghdad in 1971. He grew up in the X area of Baghdad with his family and a substantial number of his wider family grouping comprising uncles, aunts and cousins. X area is comprised of predominantly Shia families although some Sunni families were living there as well. X area is a poor neighbourhood with the principal means of employment among its residents being casual labour. Very few children there obtained a full education.

[6] The appellant was born into a devout family. One of his uncles, UU, was the Imam of the local mosque and several of his other uncles as well as his father also recited regularly from the Koran at religious festivals and other special functions. The appellant was groomed to follow in the footsteps of his father and UU. While still a young child, the appellant began receiving religious instruction from UU and began reciting from the Koran at the Mosque in his area when he was in his mid-teens.

[7] The appellant's family were also deeply conservative. He was raised to believe in an extremely conservative set of social values and rules based on religion. These were, he explained, rules of his sub-tribe. Other sub-tribes with his main tribe did not follow these rules.

[8] In particular, his father was distrustful of a secular education. The women of the family were not allowed any education. The appellant was allowed to attend school only to give him a sufficient level of reading and writing ability. He left when he was aged about 12 or 13 and thereafter assisted his father doing various jobs before subsequently learning to be a tiler.

[9] The appellant was forbidden by his parents from watching television or listening to music. He was taught he could only mix with Shia. He was not allowed to socialise with Sunnis or Christians except where his work or business dealings forced him to do so.

[10] One important custom related to marriage, which had to be within the family with first or second cousins being the preferred choices for marriage partners. He explained to the Authority that the rules regarding marriage and other social interaction were justified in terms of religion. He recalls his uncles and grandfather referring to religious text which extolled the virtue of close family relationships. It was explained to him that only through limiting marriage to these close family relations would family unity be protected and family bonds strengthened in accordance with these passages from the Koran.

[11] When the appellant was approximately 15 or 16 years of age, his parents told him that they wanted him to marry a particular first cousin. The appellant indicated that he did not want to marry her. He was careful to explain that he was not challenging their rules regarding marrying in the family, only their choice of a particular cousin. However, in reality, by this time the appellant had already begun a journey of self-awareness which caused him to question some of the rules his family had imposed particularly those around marriage. He had noticed that some of his nephews, nieces and the children of other family members were born with birth defects which he attributed to the custom of only marrying first or second cousins. When he subsequently raised this with his father, his father became very upset and beat him. The appellant apologised and never raised the issue with him again.

[12] While in his late teens, the appellant fell in love with a distant relative. He expressed desire to ask for her hand in marriage. However, his parents objected to this. Heartbroken at his parents' outright refusal to contemplate this marriage, the appellant grew more disenchanted with the strict rules placed around his life by his parents. He began secretly attending movies on an occasional basis.

[13] The appellant left Iraq in 1995 for Jordan after a period of hiding following his last episode of desertion from the Iraq army. He remained in Jordan for the next two years and mainly worked with an older brother. While in Jordan, the appellant became more confused about his attitude towards his family. He began to secretly watch television and read magazines occasionally. He felt guilty when he did so for disobeying his family but he also began to doubt whether the things that he had been taught by his family regarding marriage and other social relations were right.

[14] Only legally entitled to stay in Jordan for six months, the appellant overstayed. He felt increasingly insecure about his immigration status in Jordan.

He learnt from an acquaintance that a person had managed to send his brother to Sweden via Sri Lanka. The appellant therefore obtained what he thought was a false Swedish passport and in mid-1997 departed Jordan for Sri Lanka.

[15] Upon arrival in Sri Lanka, he found that he had purchased a false Swedish Refugee Travel Document. The immigration official at the airport took some of the money he had with him and admitted him to Sri Lanka. This, however, left him with insufficient funds to enable him to travel to Sweden. He was advised by people staying at the mosque where he took shelter that he should approach the UNHCR office in Colombo. He did so and, following an interview, was recognised as a refugee in November 1997 on the basis of his desertion from the Iraqi army and subsequent problems.

[16] The appellant began to forge a new life for himself in Sri Lanka. He soon met other Arab people and began socialising with them. He also found employment with a company which supplied labour for employers in the Middle East. The appellant's employment consisted of assisting with the placing of suitable people into positions and providing general interpretation and translation services.

[17] In the course of his first few months in Sri Lanka, the appellant discussed, with friends, his family's rules and what he had been taught surrounding marriage. He came to realise through his social and employment interactions that the things he had been taught by his family were considered strange and even humorous by his new acquaintances. His acquaintances told him it was not the way they did things in Sri Lanka. His friends laughed and told him that those rules were not good rules. He began occasionally frequenting nightclubs where he would mix with both men and women and began to occasionally drink alcohol. Also, in the course of his employment he was required to entertain visiting clients from the Middle East in nightclubs and casinos from time to time.

[18] As a result of these interactions, the appellant began to reflect more upon the rules that he had been taught. After a few more months, the appellant realised that he had come to reject the very strict rules his parents had placed on his social life. He entered into relationships with women outside of marriage. One such relationship with a Sri Lankan female, RR, lasted for four years.

[19] The appellant was careful to hide his feelings and new lifestyle from his family. He never mentioned this to them in the occasional telephone contact he

had with them. However in his phone calls with his family the issue of his marital status was inevitably discussed. At one time he came under pressure from his father in particular to marry one of his cousins. His father proposed that the cousin be sent to Sri Lanka. The appellant told his father that he was not in a suitable position in Sri Lanka to marry and the matter was not discussed further at that time.

[20] The appellant arranged for photographs to be sent to his brother in Jordan via one of his brother's Jordanian friends who happened to be living in Colombo. He ensured that the photos only showed pictures of him walking alone or in the company of other men. If the photograph had even a part of a woman's body standing in his immediate vicinity he would not send it. In this way he would not offend his parents' sensibilities.

[21] The appellant came to realise that he too wished to be married and start a family. RR did not wish to take this step and the couple separated. They remained on friendly terms. In 2004, the appellant met a New Zealand national via the internet. This New Zealand national travelled to Sri Lanka where, after a period of courtship, the couple were married in Sri Lanka in mid-2004. The appellant applied for and obtained a visitor's visa for New Zealand on the basis of this relationship. He left Sri Lanka for New Zealand in late 2004. However, his wife was not present to meet him as had been arranged. After some effort he located his wife but she had had second thoughts about the relationship and had decided to end it.

[22] From New Zealand, the appellant contacted the UNHCR office in Sri Lanka to seek their advice. They advised him that he had no right to re-enter Sri Lanka and should consult an immigration lawyer in New Zealand. The appellant did so and was told to lodge an application for a work permit based on his skill as a tiler. No decision was ever made in respect of that application.

[23] The New Zealand Immigration Service asked for confirmation of his background and employment particulars and the appellant spent the next 15 months trying to obtain the necessary documentary material they needed. This necessitated him contacting his parents. He told them he had come to New Zealand initially for a visit but needed additional documentation from them because he was in the process of applying to become a New Zealand citizen. He did not want to tell them the truth.

[24] In the middle of 2006, the appellant made a telephone call to his family as part of this process. During this telephone conversation, his mother was very angry. She asked about his becoming married to a Christian. She informed him that she had a premonition that one of her sons had passed away and that this was what the dream had meant. The appellant tried to mollify his mother by telling her that it was not true. He then spoke to one of his brothers who also became angry with him. Again, the appellant denied that he had married a Christian. His brother informed him that they had seen photographs but would not tell the appellant which particular photographs he had seen. The appellant's brother began swearing at him and said that if the appellant returned to Iraq he would kill him. The appellant hung up the telephone.

[25] The appellant is not sure how his family found out about his marriage. He suspects that F1 and F2 who were both Iraqi nationals, friends with whom he had fallen out with, may have been the source of the information. They knew his parent's address because he had asked them to take gifts of tea to his family in Iraq when they both returned there. Both were at his wedding and had taken photographs. This, however, is speculation; he simply does not know.

[26] A couple of days later, the appellant spoke to his family to try and calm them down but to no avail. Again he was threatened by his brother. In the middle of August 2006, the appellant received a CD from his family. On the CD was a video recording of his family with messages for him. In the CD the family indicated they disowned him as a son and brother and told him they wished to have nothing more to do with him. The appellant became very distressed as a result of this development.

[27] The appellant consulted another lawyer who advised him that he should make an application for refugee status and the appellant duly lodged his claim in September 2006. The appellant believes that if he is returned to Iraq he will be killed by male members of his family for having transgressed the social norms of the sub-tribe and having bought dishonour onto the family.

[28] Furthermore, he has adopted a westernised perspective on social relations and in particular does not accept the strict boundaries placed between males and females that he has been taught, nor does he believe that women should remain uneducated. He believes that having adopted such a westernised lifestyle and perspectives will place him at risk from members within his community who perceive these as un-Islamic behaviour.

The evidence of PP

[29] The Authority heard from PP. PP is the partner of the appellant. She told the Authority that they met at the beginning of 2006 at a bar and, shortly thereafter, they began a period of courtship. PP told the Authority that, in early 2006, during this period of courtship the appellant told her that his family was very strict and that they did not like non-Muslim women. The appellant told PP that he had always felt different from his siblings and their way of life. She also recalls the appellant telling her that his father was always telling the appellant that they should not meet with Sunni people. PP told the Authority that the appellant occasionally goes to a nightclub and she sometimes goes with him.

[30] PP told the Authority that sometime around July or August 2006 she received a phone call from the appellant in a distressed state. He asked her to come around to his house and she did so. The appellant told her that he had received a CD from his family and showed it to her on his computer. Although she could not understand Arabic the appellant told her that his family had disowned him and threatened him.

[31] She told the Authority that as a result of this CD the appellant became more depressed and was often short of breath. She told the Authority that he often cries and she has to spend a lot of time calming him down.

The evidence of JJ

[32] The Authority also heard from JJ. JJ met the appellant when he answered an advertisement for a tiler JJ had placed in a local newspaper. JJ decided to sponsor him for a work permit and they have worked together since then. They discovered a shared love of fishing and he and the appellant soon became good friends.

[33] JJ told the Authority that the appellant had explained to him some of his background in Iraq. The appellant told him that his father had been something of a respected religious figure in his neighbourhood. The appellant had also told him that he had been the one chosen from the siblings to follow in the footsteps of his father.

[34] JJ also told the Authority that the appellant was normally an outgoing amicable type but that, in the middle of 2006, JJ noticed a change in the appellant's demeanour. JJ asked the appellant if anything was wrong but the

appellant initially replied that everything was alright. However, after noticing the appellant becoming more withdrawn, JJ asked again. Eventually, the appellant confessed to JJ that he had received a package from his family regarding his marriage to a Christian woman. He played JJ the CD. JJ told the Authority that he converted to Islam some five years ago and, from his limited understanding of Arabic that he had picked up since converting, he could tell that the appellant's family were not happy with the appellant. The gist of what was said in the CD was that the appellant should not show his face in their area or he would be in "big trouble". The appellant told JJ when they were watching the CD that one of the brothers speaking was one with whom he had had a particular conflict. The appellant told JJ that this brother had threatened to kill him.

[35] JJ said he had noticed a change in the appellant since the CD arrived. He had lost weight and was always tired. As far as JJ is aware, the appellant has not had any further contact with his family since he received the CD.

SUBMISSIONS AND DOCUMENTS

[36] The CD and a partial transcript of what was said by the appellant's family in relation to his marriage are contained on the file. Additionally, on 9 January 2008, the Authority received from counsel a memorandum containing written submissions together with a supplementary statement from the appellant. Attached to counsel's memorandum were:

- (i) copies of the appellant's Iraqi ID card and military service card which had been previously submitted to the RSB;
- (ii) various certificates issued by the UNHCR in Sri Lanka confirming that the appellant remained a person recognised as a refugee by the UNHCR pursuant to its mandate;
- (iii) copies of the appellant's Iraqi passport;
- (iv) various photographs of the appellant in Sri Lanka with the New Zealand national whom he married;
- (v) various photographs of his family members including photographs of children with obvious birth defects;
- (vi) photographs of pictures of the appellant with various friends in Sri

Lanka including F1 and F2;

- (vii) a copy of the false Swedish refugee travel document that he used to enter Sri Lanka;
- (viii) a copy of a letter from the appellant's parents to him that he received in Sri Lanka together with its envelope;
- (ix) a photograph and postcard of well-known Shia shrines in Iraq with writing from his family on the back.

[37] During the hearing, counsel submitted the original of the Swedish refugee travel document, a further photograph of the appellant's mother and a translation of a letter from the appellant's father, which had been tendered with her written submissions.

[38] At the conclusion of the hearing, counsel addressed the Authority orally. Counsel was granted a period of two weeks to file a psychological report in relation to the appellant and other documentary material relating to his life in Sri Lanka. On 1 February 2008 the Authority received a further memorandum from counsel explaining that, due to funding issues, the psychologist had been unable to provide a full report. Counsel did enclose:

- (i) a brief letter dated 25 January 2008 from S Wadnerkar, Registered Psychologist attached to Refugees As Survivors, together with notes of interviews with the appellant. The letter states the appellant presented "with symptoms of Post Traumatic Stress Disorder" and required ongoing counselling and therapy;
- (ii) a further statement from the appellant detailing his relationships with RR and other women in Sri Lanka;
- (iii) cards from RR and another Sri Lankan girlfriend sent to him by them after he had arrived in New Zealand.

[39] On 7 February 2007, the Authority received a letter dated 5 February 2007 from the counsellor who had referred the appellant for psychiatric assessment. The counsellor stated that in the seven sessions he has had with the appellant, he could not talk about his experiences "without major distress that repeatedly ended in his re-traumatisation". A variety of physical symptoms as well as suicidal

ideation was described by the counsellor.

[40] The material has been taken into account in the reaching of this decision.

THE ISSUES

[41] 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."

[42] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[43] The Authority notes that a considerable amount of time was devoted by the RSB to the assessment of the appellant's factual claim as presented to the UNHCR in Sri Lanka. Yet these events occurred a long time ago and have no direct relevance to his claim, apart from providing some limited basis for testing his credibility, albeit on matters which did not go to the core of his claim in any event. While discrepancies did arise in his RSB interview, the Authority is satisfied after questioning the appellant about this aspect of his life that the discrepancies which arose did so as a result of a combination of the effluxion of time and the general chaos in the Iraqi armed forces during and in the immediate aftermath of the first Gulf War and do not evidence a fundamental lack of truthfulness such that might cast doubt over the core of his claim.

[44] While having some reservations about his claim, the Authority cannot, particularly given the country information (to be discussed below), say that it is far fetched or inherently implausible. The Authority notes the core of his claim about his marriage, and subsequent discovery by his family was clear and overwhelmingly consistent. The Authority further notes the evidence of the witnesses in this matter. Both presented as credible witnesses and spoke of a clear and powerful sense of distress and personality change in mid-2006 in the appellant as a result of his receiving the CD from his family. The Authority further notes that the photographic evidence and letters and communication from his family that have been received in evidence point to their being a family with a strong sense of religious identity. While a discrepancy arose between his evidence to the Authority and various communications with Immigration New Zealand regarding his marriage, this has been satisfactorily explained.

[45] Weighing everything in the round, and having seen and heard from the appellant and noting his demeanour, the Authority finds the appellant to be a credible witness and accepts his account of his past experiences. Specifically it accepts his evidence that as a result of his marriage to a Christian woman from New Zealand, male members of his family have threatened to kill him for violating a strict social code that is enforced in his sub-tribe regarding marriage.

A well-founded fear of being persecuted

The Authority's jurisprudence on Iraq

[46] It scarcely needs articulating that the overthrow of the Ba'ath regime following the invasion of Iraq in 2003 by a United States-led coalition of military forces has resulted in human suffering and death on a widespread scale. Figures vary for the number of persons killed. One recent report estimates that some 151,000 Iraqi civilians have been killed in the period to June 2006 – see S Bosley “151,000 killed since Iraq Invasion” *The Guardian* (10 January 2007). The Authority's jurisprudence on Iraq has recognised that within this generalised malaise of human misery, certain categories of person may, depending on their individual circumstances, face a well-founded fear of being persecuted as a result of various internal conflicts exacerbated or spawned following the collapse of the former regime. Thus, based on country conditions at the time of determination, the Authority has, for example, recognised claims for refugee status by the following classes of persons:

- (i) Unaccompanied women and female heads of households – see *Refugee Appeal No 75656* (10 November 2006) and *Refugee Appeal Nos 75903, 75904 and 75905* (19 December 2006);
- (ii) Christians from Baghdad and the Mosul area – see *Refugee Appeal No 74686* (29 November 2004), *Refugee Appeal No 75023* (20 December 2004), *Refugee Appeal No 74019* (21 February 2005) and *Refugee Appeal No 75879* (12 February 2007);
- (iii) Persons employed in professional occupations – see *Refugee Appeal No 75900* (21 November 2006);
- (iv) Senior Shia clerics – see *Refugee Appeal Nos 75755, 75756, 75757 and 75758* (3 April 2006);
- (v) Informers for the Ba'ath Party – see *Refugee Appeal No 75675* (19 December 2005);
- (vi) Persons engaged in the business of selling alcohol – see *Refugee Appeal No 75803* (19 May 2006).

In *Refugee Appeal No 75803*, the Authority traversed country information relating to the attacks on sellers of alcohol – see paras [57]-[67]. At paragraph [61] the Authority cited an Amnesty International report, *Killings of civilians in Basra and al-'Amara* (May 2004) which noted that the violence extended:

“...not only to those involved in the alcohol trade, but also shops selling music and videos and barbers and beauty parlours, all of which are described by the attackers as being morally offensive and un-Islamic practices.”

Country information on persons with “un-Islamic” lifestyles

[47] Country information submitted by counsel supports the proposition that some persons who, through their actions, have been perceived as adopting “un-Islamic” lifestyles have been targeted. The European Council on Refugees and Exiles *Guidelines on the Treatment of Iraqi Asylum Seekers and Refugees in Europe* (April 2007), at page 19, states under the heading “particular groups at risk” that men are being subjected to “attacks and killings by Islamic groups or militias for behaviour such as mingling with women in public or having western haircuts”.

[48] The United Nations Assistance Mission for Iraq *Human Rights Report*

1 May-30 June 2006 (2006) observed at that time, a growing climate of intolerance which saw an Iraqi tennis coach and two of his players shot and killed in Baghdad simply for wearing shorts. It noted that similar threats have been made to men at a neighbourhood level regarding facial hair and hairstyles – see page 8.

[49] The UNHCR's *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers* (August 2007) (the August Guidelines) note, at page 128, that:

“As part of the ongoing stricter interpretation and implementation of Islamic values and traditions in Iraq, persons that appear not to dress or behave in accordance with Islamic rules have been subjected to discrimination, threats, kidnappings, mutilation and killings. Both sexes have become victims of such attacks, as have liberal Muslims and members of religious minorities. Perpetrators of such acts are militant Islamists, both Sunni and Shi'a. There have been reports from several cities, such as Baghdad, Basrah and Fallujah, of religious edicts being made public banning a range of activities.”

[50] The August Guidelines then detail a number of incidents similar to that noted by UNAMI. A feature of these reports is that there are reports of intra-familial murder in the name of protecting the family's honour. That such attacks have occurred is unsurprising given the closing of the secular space within which Iraqi society has been organised in the aftermath of the overthrow of the Ba'ath regime – as to which see International Crisis Group *The Next Iraqi War? Sectarianism and Civil Conflict* (27 February 2006) at pp 21-22.

[51] Yet the position is far from static. A recent report by the International Crisis Group: *Iraq's Civil War, The Sadrist and the Surge* (7 February 2007) charts something of the fluidity of the situation. It describes (see pp 8-10) how, after a period of territorial expansion from its core base amongst the urban Shi'ite poor to other areas of Baghdad, Basra and elsewhere, the Sadrist movement had, by mid-2007, become increasingly ill-disciplined. Cadres from the Sadr-aligned Mahdi Army engaged in an organised campaign of sectarian killing, looting and other abuses, not just of Sunnis but also of sections within the Shia population. This resulted in a loss of support amongst Shia which has made it easier for the coalition forces to arrest and detain members of the Sadrist Mahdi army as part of the so-called “surge”. This, coupled with Muqtada al Sadr's declaration of a cessation of armed activities in late August 2007 following clashes with the rival Shiite movement, the Islamic Supreme Council of Iraq, has seen the Mahdi Army assume a lower profile which has contributed to a decrease in the levels of violence in Baghdad.

[52] What is significant for present purposes is that the Mahdi Army has been mentioned by UNHCR and other sources as a perpetrator of some of the attacks on persons for “un-Islamic behaviour”. However, the February 2008 International Crisis Group report (at page 18) states that, as part of this process of retrenchment by the Sadrist movement, not only has the Mahdi Army curtailed some to its armed activities, but the work of the social committees established by the Sadrist movement to enforce strict notions of Islamic morality has also been suspended – at least in some areas of Baghdad in relation to certain activity such as the selling of alcohol and the playing of music.

[53] The UNHCR August Guidelines were updated in *Addendum to UNHCR’s Eligibility for Assessing the International Protection Needs of Iraqi Asylum Seekers* (December 2007) (the December 2007 Addendum) in the wake of developments between February and December 2007. These developments are stated, at p6 to include the much publicised deployment of additional US military forces in Baghdad known as “the surge”; the development of the “awakening” movements in which Sunni tribal groups have turned against the actions of Al Qaeda in Iraq and the freeze on the activities of the *Jaysh Al-Mahdi* (Mahdi army) loyal to Muqtada al-Sadr – as to which see also “Iraq’s turnaround” *Jane’s Terrorism and Security Monitor* (16 January 2008); M Howard “A Surge of their own: Iraqis take back the streets” *The Guardian* (20 December 2007) Further impetus to a de-escalation in some of the violence may be given by the recent introduction of legislation in the Iraqi parliament allowing for many thousands of members of the former Ba’ath regime to take up public sector employment, effectively overturning the decision by the Coalition Provisional Authority in April 2003 to dismiss such persons from their government jobs – see P Beaumont “Iraq opens door to Saddam’s followers” *The Observer* (13 January 2008).

[54] It remains to be seen quite how durable these developments are. Certainly, the Mahdi Army is not the only Shia militia, albeit that it is one of the most powerful. The International Crisis Group observes in the February 2008 report that tensions exist which could lead to a resumption of violence – see pages 19-20. Moreover, while the UNHCR acknowledges that recent developments have resulted in a “significant decrease in the number of sectarian killings and overall civilian casualties”, the UNHCR conclude in the December 2007 Addendum, at page 6, that:

“Political sectarian assassinations, abductions and killing of journalists, other professionals, members of religious and ethnic minority groups, persons not considered to be following “Islamic” rules and former Ba’athists remain a reality.

The Iraqi Security Forces continue to face serious challenges in maintaining law and order.”

[55] It would be a mistake, therefore, to conclude that these fragile improvements in the security situation mean that the environment of intolerance has abated to such an extent that the appellant’s family may feel less inclined to seek to cause him serious harm for offending their honour.

[56] As to the challenges the appellant would face in securing protection from this harm, some measure of the difficulty he would face can be gleaned from the latest commentary of Anthony H Cordesman, the Arleigh A Burke Chair in strategy at the Centre for Strategic and International Studies, periodically issued in response to the legislatively mandated reports by the United States Department of Defence as to progress in Iraq. In his most recent commentary *Progress in Iraq: The December report on Measuring Stability and security in Iraq* (Working Draft: revised 20 December 2007) Cordesman, at pages 9-11, is highly critical of the official report’s assessment of the capacities of the Iraqi security forces in the context of the securing of the rule of law. What is important for present purposes is his criticism, at p11:

“The report describe (*sic*) both some reassuring progress by CPATT in helping the Ministry of the Interior (Mol), as well as some important warnings about the serious problems that remain in the Ministry of the Interior...but does not fully address the serious manpower quality, vetting and training problems in the police, or potential new budgeting and accounting problems in Mol spending.

What is far more serious, is that the description of the police effort focuses solely on the central government efforts and touches briefly on the reality that much of the police remain local or with limited and ineffective training and vetting and that real-world policing and security activity is increasingly sectarian, ethnic (*sic*), local and regional, and impacted by tribal auxiliaries and a wide range of local security forces and militias.”

Conclusion on well-foundedness

[57] The essence of the appellant’s claim is that, by marrying a Christian he will be perceived by the male members of his immediate and extended family as having brought shame on the family by transgressing their strict social codes which have been justified and maintained by reference to religion. They will kill him for it. While the threats to kill the appellant were made during a time when levels of targeted killings in Baghdad were generally higher, and at a time when Sadrist social committees charged with enforcing strict Islamic moral codes in areas under their control were free to operate with impunity, this does not mean that the appellant’s “transgression” will have been forgotten by his family. The Authority has no reason to disbelieve the appellant when he states that his family

will not be mollified by the fact the marriage no longer subsists.

[58] Given the problem of “real-world” policing at a local level continues to be impacted upon by sectarian and tribal loyalties, the Authority can have little confidence that the police would provide him with such protection as to reduce the risk of his being killed or suffering some other form of serious harm to below the real chance threshold. His predicament is, therefore, appropriately categorised as being persecuted for the purposes of the Convention. The first principal issue is answered in the affirmative.

CONVENTION GROUND AND NEXUS

[59] In *Refugee Appeal No 72635/01* (6 December 2002) at paragraph [173] it was held that the standard of causation for establishing the required nexus between the predicament of the claimant and the Convention ground was that the Convention ground must contribute to the cause of the risk of being persecuted. In this case it is argued on the appellant’s behalf that the Convention grounds of political opinion and religion contribute to his risk of being persecuted.

[60] In this case, the appellant’s predicament is that his family and wider sub-tribe have imposed strict rules around marriage based on their interpretation of what the Koran requires; rules that the appellant does not share. In other words, belief as to what his religion requires of him directly contributes to the risk of serious harm that he faces. The Convention ground (religion) and nexus requirements are established and the second principal issue is also answered in the affirmative.

CONCLUSION

[61] For the reasons set out herein, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

“B L Burson”

B L Burson
Member