

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 75101

AT AUCKLAND

Before: B Burson (Chairperson)
P J Andrew (Member)

Counsel for Appellant: I Chorao

Appearing for NZIS: No Appearance

Date of Hearing: 10, 11 and 26 May 2004

Date of Decision: 5 November 2004

DECISION DELIVERED BY P J ANDREW

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of Iraq.

INTRODUCTION

[2] The appellant is a Chaldean Christian from Baghdad. He fled Iraq in November 2003 following a serious altercation with members of the Al-Sadr clan. Members of that clan had sought to kidnap the appellant's sister outside their local church in Central Baghdad. The appellant intervened and, in the ensuing fight, broke the arm of one of the Al-Sadr attackers. The attackers subsequently sought to seek revenge against the appellant, and have actively sought to find him on a number of occasions. The critical issue in this case is whether the appellant would face a real chance of persecution should he return to Iraq.

[3] The appellant arrived in New Zealand on 13 January 2004 and made application for refugee status the following day. That application was declined by the RSB in a written decision dated March 2004. It is from that decision that the appellant appeals to this Authority.

[4] In addition to the evidence of the appellant, the Authority heard evidence from a number of other Iraqi Chaldean Christians, including a local Chaldean Catholic Priest.

[5] The delivery of this decision has been delayed pending an assessment and consideration of the very fluid and unstable security situation in Iraq. Since the hearing in May 2004, there have been a number of significant developments within Iraq, including the hand over of formal power by the Coalition Provisional Authority (CPA) to the interim Iraqi Government on 28 June 2004. In the last four to five months there have been a number of violent attacks against Christians in Baghdad. The Authority has been monitoring these developments closely.

[6] What follows is a summary of the evidence of the appellant, followed by that of the other two witnesses. We later assess the credibility of the accounts given.

THE APPELLANT'S CASE

[7] The appellant is a single man, aged 28 years. He spent all of his life in a predominantly Christian suburb of central Baghdad before coming to New Zealand in 2003. His Chaldean Christian family were originally from Northern Iraq. The family moved to Baghdad in 1972 after their village in Northern Iraq was destroyed by the Ba'ath Party regime.

[8] The appellant's parents still live in Baghdad, as do his two sisters. His two brothers are both now dead. His younger brother, S, died in hospital in May 2004 after having been violently attacked by members of the Al-Sadr clan. His older brother was killed by the former Ba'ath Party regime in 1994, having been accused of desertion during his compulsory military service.

[9] The appellant and his family regularly attended their local Chaldean church in central Baghdad. They continued to do so after the fall of President Saddam Hussein and his Ba'ath Party regime.

[10] The appellant completed his high school studies in 1995, graduating with a general secondary school certificate. He avoided having to complete his military service by paying the Iraqi authorities 1 million Iraqi dinars. He then began

working at his father's supermarket in central Baghdad. In 1997 he moved to a job at a local bakery owned by a Muslim. He continued working at the bakery until shortly before he left Iraq.

[11] In 1998 the appellant, and approximately 15 other men and women from his local church, formed a Christian brotherhood. The brotherhood, essentially a chorus group, would meet regularly at their local church every Friday.

[12] In 1999 members of the Iraqi security forces closed down the Christian brotherhood and arrested the appellant and a number of other brotherhood members as they were leaving the church after a practice session. The appellant and his colleagues were accused by the security forces of distributing religious circulars and attending religious meetings. The appellant was held in custody for 15 days, during which time he was tortured. The authorities sought to extract confessions from him. He was not charged with any offence and was released following the payment of a bribe by his father. Apart from this one significant incident, the appellant did not experience any other difficulties going to church, or practising as a Christian, prior to the fall of the Ba'ath Party regime.

[13] Following the fall of the Ba'ath Party regime, and the invasion of the Coalition forces, in early 2003, the appellant and his family began to experience difficulties on account of their being Christians. In particular, local Shi'ites started swearing and abusing the Christian women, and attempted to force them to wear the Hijab. The Shi'ites would frequently call the Christians infidels, and would threaten them by saying that the Christian women would be killed if they did not wear the proper Islamic dress. The appellant's mother and his two sisters experienced harassment of this kind on a number of occasions. On one such occasion, at the local market, the mother and sisters were slapped by Shi'ites.

[14] As a result of the harassment and intimidation, the appellant's mother and his sisters were reluctant to go outside of the home.

[15] At this time the Imam at the local mosque began broadcasting anti-Christian propaganda over the loudspeaker at Friday prayer sessions. The Imam would accuse Christians of selling alcohol and of Christian women failing to wear the Hijab. The propaganda broadcasts would also refer to Christians as infidels, and associates of President George W Bush.

[16] Whereas previously many of the Muslim women in Baghdad did not wear the Hijab, this practice changed dramatically following the fall of the Ba'ath Party regime.

[17] As Christians, life for the appellant and his family became increasingly perilous. There were rumours of Christian liquor store owners being killed, as well as the kidnapping of Christian women and children. What had previously been a relatively secular society, where religious minorities could freely practice their religion, had become one increasingly dominated by Shi'ite fundamentalist ideas. The appellant and his family had no faith or belief that the coalition forces located close by, might protect the family and other Christians from attacks by Shi'ite Muslims. Indeed, one of the Christian liquor store owners in the appellant's neighbourhood closed his shop down as a result of the intimidation he experienced. On one occasion, at the bakery he worked at, the appellant was accused by a Shi'ite of being a "Bush follower".

[18] On a Sunday in approximately mid-November 2003, the appellant and his family went to their local church as usual. At approximately 7:00pm, and following a church service, the appellant's sister, S, left the church with a friend. A car stopped nearby and two Shi'a men stepped out and tried to force the sister and her friend into the car. The appellant intervened and prevented the sister and her friend from being abducted. An altercation then ensued between the appellant and the Shi'a attackers. One of the assailants had a long knife and attempted to stab the appellant. There was hand-to-hand fighting. One of the Shi'a men fell onto the kerb and appeared to have broken his arm. By this time a large crowd had gathered around. The two Shi'a men then took off in their car, claiming that they would take revenge against "you Christians".

[19] The appellant recognised the two Shi'a men as members of the Al-Sadr clan. He had seen the two men on a number of occasions previously, elsewhere in Baghdad.

[20] The appellant was very concerned at the threats that the Shi'a men had made as they left the scene. He was aware that the Al-Sadr clan are a very strict religious sect, who would likely exact their revenge against a Christian for having fought with them and forced them to flee.

[21] The appellant did not go home but went to stay with some friends elsewhere in Baghdad. The next day he came to learn from a friend that a group of Shi'a men had visited the appellant's home, identified themselves as being from the Al-Sadr clan, and advised the appellant's family that they would seek revenge against him. The men had threatened the appellant's family and said that they would kill the appellant if they found him. There were approximately 15 men who visited the appellant's home. The men also claimed that Christians are traitors.

[22] Over the next few days the appellant remained with friends elsewhere in Baghdad. During this time he received further reports from his family that members of the Al-Sadr clan had come searching for the appellant at his home and at the local church.

[23] The appellant was very concerned at the news, and made arrangements to flee Iraq. He travelled to Northern Iraq by bus (the first time he had ever been to that part of the country), and remained there for several days looking for an agent to help him to cross the border into Turkey.

[24] With the assistance of an agent, the appellant travelled from Northern Iraq into Turkey in late November 2003. He travelled to Istanbul and stayed with friends.

[25] In January 2004 the appellant departed Turkey and flew to New Zealand. He arrived in New Zealand on 13 January 2004 and made application for refugee status the following day.

[26] Since his arrival in New Zealand the appellant has received news of his family via a friend in Baghdad, who is in contact with them. He has no direct contact with his family because there is no operative telephone service in the appellant's neighbourhood.

[27] In a telephone conversation with his friend approximately a week before the commencement of the appeal hearing in May 2004, the appellant was advised that his brother, S, had been beaten and badly injured by members of the Al-Sadr clan, following the appellant's departure from Iraq. He was also advised that his sisters had left the family home and gone to live elsewhere in Iraq with relatives. He currently does not know their exact whereabouts.

[28] The appellant believes that the attack upon his brother was part of the attempt by the Al-Sadr clan members to exact revenge upon him. He believes that his brother was targeted when the Al-Sadr members came to learn that the appellant had fled Iraq.

[29] The appellant produced to the Authority a copy of a translation of a medical forensic report relating to the brother. The report, dated 25 April 2004, records that the brother was in a very critical condition and was admitted to hospital on account of a serious, bleeding wound from his head.

[30] Between the initial days of hearing on 10 and 11 May 2004, and the resumption of the hearing on 26 May 2004, the appellant received further disturbing news from his friend in Baghdad. His friend advised him that his brother, S, who had been admitted to hospital in April 2004, had died. The appellant produced a copy of a translated death certificate to the Authority recording the death of the brother, and the cause of death as brain damage.

[31] The appellant was extremely distressed at receiving this news. He believes that the death of his brother has confirmed just how dangerous it would be for the appellant himself, were he to return to Baghdad.

[32] The appellant further believes that the situation in Iraq is even more unstable than when he left. He is familiar with the way in which members of the Al-Sadr clan operate and, in particular, how they are intent on exacting revenge. He does not believe it would be safe for him to live anywhere else in Iraq. He notes that the Al-Sadr clan has extensive networks and claims that there is no effective law enforcement authority within the country that can control Al-Sadr activities. He also believes that the Al-Sadr clan would regard one of their members having been beaten up by a Christian as an affront or attack on Islam itself. Christians are very much associated with the American campaign in Iraq.

[33] In these circumstances, the appellant fears that if he returns to Iraq it is likely he would be killed by members of the Al-Sadr clan.

[34] In coming to its decision, the Authority has also had regard to the further country material filed by counsel on 3 November 2004.

EVIDENCE OF MR X

[35] Mr X is an office bearer of the Chaldean Assyrian Society Inc. in Auckland. He is a New Zealand citizen. He knows the appellant and the appellant's family. Mr X attends the same Apostle Chaldean Catholic Church in South Auckland as the appellant.

[36] Mr X's family were originally from Northern Iraq and from the same village as the parents of the appellant. Like the appellant's family, his own family had moved to Baghdad.

[37] Mr X left Iraq some 15 years ago, and has not been back since. He is, however, in regular contact with friends and colleagues in Baghdad.

[38] Since the fall of the Ba'ath Party regime, Mr X has received reports of increasing difficulties for the Christian community in Baghdad. The Shi'a Muslim fundamentalists are very much in the ascendancy. Mr X has received news of Christians being abducted, and being repressed by the Shi'a Muslim majority. Mr X also knows of a number of Christians having fled Baghdad because of the difficulties they have experienced at the hands of Shi'a Muslims.

EVIDENCE OF MR Y

[39] Mr Y is a Chaldean Catholic priest. He arrived in New Zealand in May 2003.

[40] The appellant is known to Mr Y.

[41] Mr Y has recently been in Sydney where he met with members of the Iraqi Chaldean community living in Australia. The message he received from his contacts in Australia is that the situation for Chaldean Christians in Iraq is very precarious. There are reports of Christians being kidnapped, and being unable to go outside after dark because of security concerns. Mr Y has also received reports that Christians in Iraq are very much seen by the Shi'a Muslim majority as being on the side of the occupying American forces. Mr Y has read a number of

newspaper reports recording that, whenever the Americans attack a mosque, there are Shi'a Muslim retaliations against Christian churches.

EVIDENCE OF Z

[42] Mr Z is a Chaldean Christian from Baghdad. He lived in Baghdad for 62 years before coming to New Zealand, where he now lives, in 2003.

[43] Mr Z recently visited Iraq, namely in March 2003. His brother still lives in Baghdad.

[44] Mr Z does not know the appellant personally.

[45] Mr Z described to the Authority the climate of fear amongst Chaldean Christians living in Baghdad. He referred to Christians being threatened by Shi'a Muslims and, in particular, those regarded as members of the Al-Sadr clan.

[46] Mr Z was not able to go to church when he was in Baghdad. The Christian community is very much considered to be on the side of the Americans.

[47] Mr Z referred to Christians being easy targets. He also noted that there is a great deal of anti-Christian propaganda broadcast from various mosques. Mr Z also heard reports of undetonated bombs being found at a local church.

THE ISSUES

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

"... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[49] 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

[50] Before considering the above issues, it is necessary for the Authority to make an assessment of credibility of the appellant and that of the other witnesses.

(i) Credibility

[51] The Authority accepts as credible the evidence given by the appellant and the other witnesses.

[52] The appellant answered the Authority's questions openly and directly, and the account he gave is consistent with country information. His account is thus accepted in its entirety.

[53] The evidence given by the other witnesses was equally plausible and, again, consistent with country information. We therefore also accept the evidence they gave.

[54] The Authority now turns to consider the critical issue of whether the appellant would face a real chance of persecution should he return to Iraq. An assessment of this fundamental issue obviously requires an analysis of the security situation in Iraq. We therefore begin our analysis with an assessment of the relevant country conditions.

(ii) Country Information

[55] It is clear, from numerous contemporary press reports and reliable sources of country information, that the security situation in Iraq is fluid and unstable. For example, the report of the United Nations High Commissioner for Refugees, Geneva, entitled *UNHCR Return Advisory Regarding Iraqi Asylum-Seekers and Refugees* (September 2004) para 1, page 2, notes that despite the hand-over of power and restoration of Iraqi sovereignty on 28 June 2004 “Iraq continues to be extremely unstable, with a dangerous security situation”. The report also refers to the inability of Iraqi security bodies and foreign troops to provide adequate physical protection, and to a general lack of law and order being exacerbated by the absence of a properly functioning judicial system. A *BBC News* article notes that some 2½ months after the hand-over of sovereignty the interim Iraqi Government and multi-national troops are not in control of several major cities in the country and that, in Baghdad, parts of the city are no-go areas for these forces. (“Iraqi Security Picture” *BBC News*, (4 October 2004)).

[56] In this milieu, paramilitary and insurgent groups, such as armed supporters of Al-Sadr, and his so-called “Mahdi Army”, have been able to carry out indiscriminate, violent attacks with relative impunity. (See UNHCR *Advice on Internal Protection Alternative for Iraqi Asylum-Seekers* (3 August 2004) AULCA/MISC/274; “Sadr City Targeted by US Forces” *BBC News* (5 October 2004); “Ancient Customs Now Being Abused in Iraq” *The Miami Herald* (14 November 2004); and “A Religious Militia Muscles In” *Time Magazine* (1 March 2004)). Attacks by groups such as Al-Sadr have included revenge killings. (“Iraq: Insecurity and Lawlessness”, web.amnesty.org/web/web/nsf/print/irq-article5eng). This is, of course, an inevitable consequence of the absence of an effective authority and the rule of law.

[57] The UNHCR *Advice on Internal Protection Alternative for Iraqi Asylum-Seekers* (3 August 2004) notes that to fall into disfavour with paramilitary or insurgent groups such as the Al-Sadr group is definitely a situation presenting serious risk. The advice notes the importance of the Al-Sadr, both in numbers as well as in its actions.

[58] The circumstances and aspirations of Muqtada Al-Sadr and his supporters are well documented: Muqtada Al-Sadr has a militia of young, angry Shi'ites

challenging coalition forces across Iraq. The cleric has no senior Islamic standing, but is the son of a revered Grand Ayatollah killed in 1999. Following the fall of President Saddam Hussein, Al-Sadr tried to set up his own government, but support did not materialise. The Al-Sadr power base is Sadr City, a very poor neighbourhood in Baghdad, inhabited by disgruntled Shi'a. In early 2004, the US closed Muqtada Al-Sadr's newspaper, accusing it of inciting anti-American violence. ("No Easy Options" *Time Magazine* (19 April 2004); "Call to Arms by Muqtada Al-Sadr, Young Shi'ites Turning Their Anger Against the US, Here is Why" *Time Magazine* (19 April 2004), page 30; "Iraq's Transition: On a Knife Edge" *International Crisis Group Middle East Report No. 27* (27 April 2004) at pages 21-22).

[59] Very recent press reports indicate that, in response to calls by the interim Iraqi Government for Al-Sadr and his followers to lay down their arms and to join the country's political process, Al-Sadr has instructed his armed supporters across Iraq to observe a cease fire. ("Radical Cleric Calls Iraq Truce" *BBC News* (30 August 2004)). The interim Iraqi Government wishes to restore security in Sadr City, and other insurgent strongholds, for national elections to take place. In return for the hand-over of weapons, the Government suspended raids and harassment of Al-Sadr's followers in Sadr City. The Government also agreed to commit more than 500 million dollars to rebuilding the slum. ("Sadr Peace Deal Could Bolster Iraq Election Plan" *Iraq Net* (10 October 2004); see also "Iraq's Sadr Militia Given Five Days to Turn Over Arms" *Iraq Net* (11 October 2004)).

[60] Claims that the disarmament program has been a success (see, for example, "Iraq PM Extend Weapons Amnesty" *BBC News* (18 October 2004)) need to be put in context. As noted by *The Economist*, such deals will not end Iraq's anarchy overnight. ("A Chunk Amid The Gloom" *The Economist* (16 October 2004)). The same article notes that some Sadr splinter groups have already rejected Al-Sadr's decision to stop fighting. These accounts are, of course, entirely consistent with the generally fluid security situation.

[61] Also of relevance to the appellant's claim to refugee status are reports of violent attacks against Christians and Christian churches in Baghdad during the past four to five months. See, for example, "Mortar Hits Baghdad Stadium Just Before Prime Minister Visit" *New York Times* (17 October 2004), which notes that five Christian churches in Baghdad were fire-bombed on 16 October 2004 in what

“appeared to be co-ordinated attacks”. These attacks are said to be the latest effort by insurgents to terrorise the population of Christians in Iraq. (See also, “Iraq Insurgents Hit Churches, Kill Four US Troops *Reuters* (16 October 2004); and “Exodus of Iraqi Christians in Full Flood as Targeted Killings Grown” *The Independent (UK)* (12 October 2004)).

[62] The United Nations High Commissioner for Refugees, General, *Country of Origin Information – Iraq Report* (August 2004) notes that Christians are seen by many Iraqis as de-facto supporters of the coalition invasion of Iraq. They are also said to be regarded as “infidels” by the more Islamic fundamentalist and/or extremist elements of Iraqi society (page 7).

(iii) Real Chance of Persecution

[63] Against the background of this country information, and having regard to the particular facts of this case, the Authority concludes that the appellant would face a real chance of persecution should he return to Iraq. The reasons for this finding are as follows:

- (a) There is clear evidence that members of the Al-Sadr clan have actively sought to exact revenge against the appellant for having injured one of their members. The Authority accepts that, within the current political climate in Iraq, the Al-Sadr clan members would regard the appellant’s attack on one of their own as a very serious and hostile act. In these circumstances, the threat the appellant faces remains a real and on-going one.
- (b) Despite the tentative steps taken towards disarming members of Al-Sadr’s militia, the unstable and fluid security situation allows them to operate with relative impunity. There is no effective authority capable of protecting the appellant from the revenge attacks of the kind he fears.
- (c) The killing of the appellant’s brother, apparently because of the activities of the appellant himself, demonstrates the relatively high

degree of risk the appellant himself would face should he return to Iraq.

- (d) The appellant is a Christian and identifies as such. While not necessarily, in itself, decisive, the deteriorating situation for Christians in Iraq generally can be said to contribute to the degree of risk that this appellant faces. The appellant is, of course, known to his attackers to be a Christian.

[64] In the Authority's view, there is no real prospect of the appellant avoiding the real risk he faces by relocating elsewhere in Iraq. This is confirmed by the UNHCR *Advice on Internal Protection Alternative for Iraqi Asylum-Seekers* AULCA/MISC/274 (3 August 2004). The UNHCR advice notes that if a person were blacklisted by groups such as the Al-Sadr group, it would nevertheless be possible for such group to track a person down wherever he or she went in Iraq. In the view of the UNHCR this would mean that relocation would simply result in the person being constantly on the run, living in constant fear of being tracked down.

[65] In coming to our conclusion on the issue of a real chance of persecution, it has not been necessary for us directly to address the vexed question of whether being a Christian *per se* in Iraq, can be said to give rise to a real risk of persecution. A decision on that issue must await another case before the Authority where the issue is squarely raised.

[66] The Authority also finds any persecution the appellant would face would be by reason of his Christian faith. The appellant's religious identity is plainly known to his would-be attackers. Because he is a Christian, his having injured one of their members, would only encourage a greater desire on their behalf for revenge. We accept, in this regard, that the Convention ground of religion (i.e. Christianity) is a contributing cause to the risk of being persecuted. (*Refugee Appeal No. 72635/2001*, 6 September 2002, at para 173).

[67] The Authority concludes, therefore, that the above two issues must both be answered in the affirmative. The result is that the appeal must succeed.

CONCLUSION

[68] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

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P J Andrew
Member