

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 74838

REFUGEE APPEAL NO 74839

AT AUCKLAND

<u>Before:</u>	V J Shaw (Member)
<u>Counsel for the Appellant:</u>	S Laurent
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	10 February 2004
<u>Date of Decision:</u>	14 July 2004

DECISION

[1] These are appeals against decisions 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 appellants, nationals of the Republic of Iraq.

INTRODUCTION

[2] The appellants, a married couple, arrived in New Zealand on 25 December 2002. They filed applications for the grant of refugee status on 21 January 2003 and were interviewed by the refugee status officer in respect of their claims on 26 February 2003. Their claims were declined in decisions dated 31 July 2003.

THE APPELLANTS' ACCOUNTS

[3] The appellants, both aged in their late 50s, are from Mosul. The husband's family is of Turkish origin and the wife's family Kurdish. Both are Chaldean Christians. In Mosul the husband, along with a brother, operated a restaurant first started by their father in 1945. They have six adult children: a daughter living in Baghdad, a son in Jordan, a daughter in Syria and a son and two daughters in New Zealand.

[4] When initially filed, the appellants' claims were based on their fears of being persecuted arising from ongoing harassment they experienced over the years at the hands of the Ba'athist regime relating to the wider family's support for the illegal, Democratic Assyrian Party. Over time, the majority of family members left Iraq; six of the wife's eight siblings now live outside Iraq and six of the husband's eight siblings, including two brothers who deserted from the Iraqi army during the first Gulf war. One of the appellants' sons fled Iraq in late 1997 because of problems with the security forces and he was later granted refugee status in New Zealand. A brother of the husband was killed by the security forces in 1994.

[5] At various times over the years the appellants were taken for interrogation concerning the departure of their siblings. In 1994, following the killing of the husband's brother, both he and his wife were detained and physically assaulted. Due to the severity of the blows to his head the husband suffered permanent damage to his left eye. Both were again detained following the departure of their son in late 1997. The husband was severely beaten around the head resulting in temporary facial paralysis, impaired hearing in his right ear and memory problems. Following ongoing intermittent visits from the security forces, the appellants made the decision to leave Iraq and join their son in this country.

[6] By the time the refugee status officer published his decision, the US-led coalition had accomplished the overthrow of Saddam Hussein's Ba'athist regime and a new era in Iraq's political development was unfolding. Before this Authority, it was acknowledged that changed circumstances in Iraq had removed the risk to the appellants from the former regime because of their family associations and opposition to the Ba'athists. However, counsel submitted that the current security vacuum and rise in Islamic – especially Shi'ite – extremism placed the appellants at risk of serious harm because of their minority Christian status. The Authority

therefore questioned the appellants about their religious background and practices and what they had been able to learn about the situation for Christians in their home city of Mosul.

[7] The husband told the Authority that there had been a sizeable Christian community in Mosul but that following the first Gulf war it had steadily declined in number. This reflected a general animosity towards Christians because of an assumed link with the United States, a Christian country. The appellants had attended a Chaldean church situated not far from their home. It was a large and architecturally fine church, serving a congregation of up to 200, though numbers would swell to some 700 to 800 people for special services. The congregation had declined by approximately one-third since 1990 with most leaving to live abroad.

[8] The last decade or so had seen a growing and more strident Islamism in Iraq which had left many Christians apprehensive. Typically, Christians experienced increasing harassment by Muslim youths. On one occasion, some four to six years ago, the wife, while walking on her way to church, was confronted by three Muslim youths, one of whom snatched the cross from her neck. Out of caution she ceased attending evening services in her own church in favour of a service in a Latin church situated closer to her home. She explained that other Christians shared her security concerns about being out in the street at night so that progressively evening services in their local Chaldean church became more sparsely attended. Some years ago there was an arson attack on the church during the night but fortunately little damage resulted.

[9] The appellants maintain regular contact with their remaining family members in Mosul and Baghdad. The family report feeling insecure because of the general break down in law and order following the collapse of the previous regime. They have also been adversely affected by the poor economic climate. The wife's sisters in Baghdad have had to close their restaurants because of attacks on Christian-run restaurants and other premises where alcohol is sold. During the war, the appellants' daughter and her family, also living in Baghdad, left the city. When travelling home they were robbed of their jewellery and money by a gang. They also found that their house had been burgled in their absence. The daughter's husband, who formerly worked in the post office, has been without income for almost a year and expects that, as a Christian, it will be difficult for him to find a new position.

[10] Family members in Baghdad report being afraid to attend church services because of their fear that churches could be a target for bomb attacks.

[11] In Mosul the situation is much the same. The appellants' church has been the subject of one attack by stone-throwing Muslims which resulted in much damage to the stained glass windows. The wife's brother also reported a bomb attack on the church prior to Christmas 2003 which, although no service was in progress, nevertheless injured two people. Most of the congregation were too afraid to attend the Christmas service for fear of a further such attack. The appellants have also been informed of a bomb attack during the last few months on a local convent.

[12] The appellants are afraid to return to Iraq. The situation for Christians is insecure and many have chosen to leave Iraq rather than risk attacks from Muslim extremists. The appellants do not wish to live in daily fear and would prefer to remain with their three New Zealand-resident children.

[13] The Authority received from counsel written submissions accompanied by a selection of media reports. At the completion of the hearing, leave was granted to counsel to undertake further country research. Additional written submissions and accompanying country material was duly received on 22 March 2004. This material was supplemented by the Authority's own research and copies of relevant material provided to counsel. Counsel's comments on this additional material and the unfolding political Iraqi scene were received on 5 July 2004. All submissions have been carefully considered.

THE ISSUES

[14] 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."

[15] 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 APPELLANTS' CASE

[16] Both appellants were open and sincere witnesses. Their accounts are accordingly accepted.

[17] That the appellants feel apprehensive about the prospect of returning to Iraq is understandable. They are members of an increasingly small Christian minority. Most of their family members, including five of their six children, have left Iraq. Reports received from remaining family members of attacks on churches, convents, Christian restaurants and the like by Islamic extremists naturally engender fear.

[18] The key issue for the Authority is whether or not the prospective risk of harm to the appellants, by virtue of their Christianity, reaches the real chance threshold for well-foundedness as opposed to being merely a random or speculative risk.

[19] The history of Christianity in Iraq dates from the earliest Christian communities and the Christian contribution to the culture of the region has been significant. The Christian community is estimated at around 3% out of a population of between 22 to 28 million. They are comprised predominantly of Assyrians and Chaldeans – considered distinct ethnic groups concentrated in Baghdad, the north and in Basra – along with Roman Catholics and Armenians. The US Department of State *International Religious Freedom Report 2003 – Iraq*, December 18, 2003, notes that under Saddam Hussein, Christians, especially the Chaldoassyrians, experienced repression and exclusion. The fall of the Ba'athist regime has, therefore, opened up new opportunities for Christians in Iraq's political reconstruction; see the report from Human Rights Without Frontiers Int. *The Chaldoassyrian Community In Today's Iraq Opportunities And Challenges*

(November 2003).

[20] However, the post Saddam environment has also brought new stresses for the Christian community. The last year has seen regular reports of violence, including killings of Christians, attacks on Christian churches, schools and monasteries and harassment and intimidation of Christians should they not give up their “western leanings”, renounce alcohol or, if women, cover their heads. Church attendance has dropped because of fears of bomb attacks and amongst the Christian community generally there is uncertainty as to their future in the face of growing religious - especially Shi'ite - extremism. Christians remain apprehensive as to the role of Sharia in the future constitution and the willingness of radical Shia organisations to accept constitutional guarantees of religious freedom and equal rights for women.

[21] The Authority has carefully considered the evidence of ongoing insecurity in Iraq and the political uncertainties surrounding the present transition to sovereign representative government. At the very least, it is incontrovertible that the immediate future will see further violence in Iraq.

[22] In determining the extent to which further violence is likely to be directed at the Christian community, a useful first starting point is to look at the extent to which Christians and, in particular, the Chaldoassyrian community – which comprises a large percentage of Christians as well as being a distinct ethnic population – has succeeded in advancing their interests within the process of political reconstruction as well as the nature, scale and source of harm experienced by Christians in the post-Saddam period.

[23] The report from Human Rights Without Frontiers Int. at pp5-6 identifies some successes and potential opportunities for Christians in the new political environment. A Christian Chaldoassyrian was appointed to the Iraqi Governing Council. Christians also held the Transport and Immigration Ministries. At a conference held in Baghdad during October 2003, the Chaldoassyrian community proclaimed its unity and formulated demands including recognition in the permanent constitution of Chaldoassyrians as an indigenous people with corresponding rights and privileges. In February 2004, five Christian parties

participated in a convention of Iraqi religious and tribal leaders.¹ A Christian has also been appointed Minister of Immigration and Refugees in the interim Iraqi Government².

[24] Importantly, the interim constitution known as the Transitional Administrative Law (TAL), guarantees freedom of conscience, religious belief and practice. While Islam is designated the official religion of the state, it is to be considered “a” source of legislation rather than “the” source.

[25] While Christians remain concerned about the aspirations of radical Shi'ites to impose Sharia and have voiced disappointment at having only one Christian in the new interim Iraqi government, Mr Laurent concedes that the above demonstrate that Christians have been able to participate in the process currently underway to eventually establish a representative government.

[26] Summarising the media reports before the Authority of violence against the Christian community, the majority of reports refer to incidents that took place in the period up to the end of 2003. Targets of bomb attacks mentioned include a Baghdad church targeted around Christmas with no-one injured³, St George's monastery in Mosul where a bomb was diffused before detonating at New Year⁴, a missile attack on an unidentified convent in October 2003 (no casualties mentioned)⁵, a Christian school in Baghdad and another in Mosul where bombs were diffused in early November⁶.

[27] Reports of killings of Christians include five liquor sellers killed in Basra by

¹ “Christians seek greater role in government, Ulemas condemn Terrorism” *Asia News* (16 February 2004)

² Interim Iraqi Government, *BBC News*, 1 June 2004 and *15 killed in car bombs as Christians flee* 6/9/04 Iraq (ANS) http://www.persecutions.org/news/index_news.html

³ Barnabas Fund *Christmas for Iraqi Christians: Three bombs And a Fatal Shooting* 6 January 2004. <http://www.barnabasfund.org/New/Archive/Iraq/Iran-2040106.htm>; “Iraqi Christians Celebrating Christmas in an Atmosphere of Fear and Hope” *Asharq Al-Awsat* (26 December 2003); “Celebrations mooted for Christians in Iraq: Rockets, grenades shake Baghdad” *Chicago Tribune* (December 26, 2003).

⁴ Barnabas Fund (*supra*)

⁵ *Mainstream Political Leaders Denounce Attacks on Christian Minority* (13 January 2004) <http://www.barnabasfund.org/New/Archive/Iraq/Iran-2040113.htm>

⁶ “Bombs found in Christian schools in Iraq” *Southern Cross* (21 November 2003) www.anglicanmedia.com.au/news/archives/002916.php

the end of 2003⁷, five restaurant goers celebrating New Year killed by a car bomb in a predominantly Christian area of Baghdad⁸, a Christian judge killed in Mosul in November⁹, one killed during Christian/Muslim clashes in Ramadi during October-November¹⁰ and four killed in a machine gun attack on workers at Habaniyah US military base although they may well have been targeted for collaborating with the US occupiers rather than because of their being Christians *per se*¹¹. The Authority also notes the killing of a Democratic Assyrian Movement representative in Basra during November 2003 and shots having been fired at the home of the Syro-Antiochan bishop of Mosul during November 2003¹².

[28] A report in *The Washington Times* "Iraqi Christians fear Muslims' wrath", 7 April 2004, quotes the estimate from a member of the Bethahrain Patriotic Union, one of several Christian political parties, that up to 200 Iraqi Christians had been killed by Islamic extremists since the war began. It was acknowledged, however, that many had been killed because of their employment as interpreters with the coalition and that their killing had no apparent religious motive.

[29] Additionally, the cited reports refer to numerous threats being made against Christian liquor store owners and attacks on their premises especially in Basra where several hundred liquor outlets were ordered closed by Shia clerics. Similar *fatwas* have been issued by clerics in other areas. Menacing demands that women wear the veil and Christians generally convert to Islam have also been made by Shia militia groups.

[30] Like other Iraqis, Christians have been adversely affected by the lawlessness and insecurity that has plagued Iraq generally. While the above incidents have added to the tensions within the Christian community, the activities of Shi'ite fundamentalists groups, including the establishment of Islamic committees to enforce Islamic law, have especially contributed to an atmosphere of intimidation and fear amongst many Christians. Reportedly many have left

⁷ "Shades of the Riviera at Sinbad's port enjoy southern comforts" *Guardian Weekly* (8 January 2004)

⁸ Barnabas Fund (*supra*)

⁹ "Radical Muslims Spark Fear in Iraqi Christians" *Christian Broadcasting Network* (15 December 2003) www.persecution.org/news/Breaking_news_9_65.htm

¹⁰ "Christian families in Iraq targeted" *The Washington Times* (5 November 2003) <http://www.washingtontimes.com/world/20031105-122737-7310r.htm>

¹¹ *Four Christian women killed going to work* (26 January 2004) <http://www.barnabasfund.org/New/Archive/Iraq/Iraq-2040126.htm>

¹² "Bombs found in Christian schools in Iraq" (*supra*)

Basra since the war because of these fears. There are also fears that Saudi-backed Wahabi Sunni groups may have been behind some of the bomb attacks on Christian targets.

[31] It is accepted that the above-mentioned incidents are by no means all the incidents of killing and attacks that would have occurred in the post-war period. However, they are the result of a comprehensive search by both the Authority and counsel of available news sources and websites and, to this extent, probably represent a fair portion of, at the very least, the more serious incidents.

[32] The violent incidents must be considered against the background that Christians have not been excluded from advancing their interests in the political reconstruction. The number of incidents to date, even acknowledging a fair degree of under-reporting, is sufficiently low that it could not be said that Christians in Iraq presently face a real chance of being persecuted by virtue of their being Christians. Rather, the chance of serious harm for Christians in the post-Saddam period has remained at the level of a remote or random chance only.

[33] The enquiry into refugee status requires a prospective assessment of the risk of harm. While evidence of past harm can be a useful indicator of future risk, in the peculiar circumstances of Iraq, Mr Laurent cautions that although the present level of violence against Christians may not be overwhelming, there nevertheless remains "the potential" for serious harm from non-state agents – possibly with the acquiescence or connivance of a future state authority. While many Islamic leaders have denounced attacks on Christians, their views are not those of Islamic extremists. Concerning the new Interim Government and the TAL, Mr Laurent notes that "one can only speculate on the level of protection of common rights that will ensue", while "it is difficult to say whether the handover will result in stabilisation". This must bear particularly on the situation of religious minorities who are vulnerable in terms of political power and access to state support. In these circumstances and given that recent history gives little ground for optimism, Mr Laurent submits that the Authority is required to extend the benefit of the doubt to the appellants as to a real chance of serious harm should they return to Iraq.

[34] It is acknowledged that there is potential for ethnic, religious and political conflict to impede Iraq's transition to sovereign representative government. Iraq's

future is the subject of intense debate amongst political actors and informed commentators the world over. The complexity of the situation and the potential impact of unforeseen events makes it unwise, indeed impossible, for this Authority to speculate about what form Iraq's sectarian tensions might take and the ultimate outcome.

[35] On the basis of events to date, it cannot be said that presently Iraqi Christians are experiencing persecution. Like most Iraqis, they are having to cope with general insecurity and some have been the victims of Islamic extremists motivated by anti-Christian sentiments. As best can be determined, this situation is likely to continue into the immediate future. Any other possible future scenario is in the realm of speculation or conjecture while the consequences of any particular scenario for any individual Christian is even more problematic. I therefore conclude that there is a remote rather than a real chance of any individual Christian in Iraq suffering persecution by reason of their religion.

[36] Of course, the degree of risk confronting any particular individual Christian could alter depending on that individual's political and religious profile and circumstances, including history of conflict with Islamic extremists. Each case will ultimately turn on its specific facts.

[37] In respect of the present appellants, they are from Mosul - a relatively large city with the sizeable Chaldoassyrian community recorded in *Human Rights Without Frontiers Int. (ibid)* at p10 to number some 80,000 out of a total population of 1 million. The appellants can fairly be described as typical Christians – regular church-goers but not otherwise having any special profile or duties within the parish or wider church community. There is no history of conflict with local Islamic extremists apart from the wife experiencing one opportunistic and random snatching of a cross from her neck some years ago. Despite a number of anti-Christian incidents in Mosul in recent months, including an attack on the appellant's parish church, none of their family members still living in that city have come to any harm, nor have the appellants received reports of any member of their congregation coming to harm apart from those individuals who suffered some injuries during the bombing attack. The situation of the appellants' family members living in Mosul would seem to be representative of the overwhelming majority of Christians in that city. Similarly, Christian family members living in Baghdad – like the majority of Christians in that city – have not come to harm.

This pattern is consistent with a remote rather than a real chance of persecution for ordinary Iraqi Christians.

[38] Two matters pertaining to the appellants require consideration: the fact that the husband is a restaurateur and the couple's previous support for the Assyrian Democratic Party.

[39] The husband's restaurant – which he operated jointly with his brother – was closed during 2001, leaving the husband effectively without employment for most of the year prior to he and his wife leaving Iraq. He attributes the reason for the closure not to difficulties with Islamists but rather ongoing harassment from officials of the former regime who refused to renew licences and the like, following his coming under renewed suspicion because of the political activities of his son who fled Iraq and eventually came to New Zealand.

[40] The restaurant had been operated by the family since 1945. As the husband's occupation has only ever been that of a restaurateur and assuming that the fall of the old regime has removed any official impediment to his again being so, the question arises as to whether his involvement in such an activity elevates the risk of harm.

[41] The country material establishes that there have been instances of restaurants either owned or frequented by Christians being the target of attack. Such attacks in the main seem to be linked to the selling of liquor and by extension their association with western social norms – an anathema to Islamic extremists. In Basra and other areas, *fatwas* have been issued by conservative Islamic clergy against such practices and fanatics have responded by killing a number of Christian liquor sellers. During last year, the wife's two sisters living in Baghdad both closed their restaurants, only one of which sold liquor, out of fear of attack. The Authority concludes that the country material does not support a finding that merely operating a restaurant gives rise to a real chance of persecution. However, it does suggest that the sale of liquor commonplace in restaurants - depending on the area and whether there have been *fatwas* issued against such activities – could potentially expose the seller to a real chance of serious harm.

[42] The Authority has not sighted any evidence of Christian liquor-selling restaurateurs in Mosul being killed. Prudence, however, would dictate that the

husband, in order to reduce the risk of harm to below that of a real chance, should exercise caution in respect of the sale of liquor should he choose to re-open his restaurant. Restrictions on the sale of liquor in the form of local *fatwas* may well be unlawful and, for a non-Muslim, irksome. However, the inability to sell alcohol is not, in itself, persecution.

[43] The appellants have always been supporters of the Assyrian Democratic Party. The fall of Saddam has meant that this and other Christian political parties may now operate legally. In the prevailing climate of insecurity, prominent political figures may become the target of assassination. However, there is no evidence to suggest that merely being a supporter or member of the Assyrian Democratic Party exposes an individual to a real chance of persecution.

[44] Having considered conditions generally in Iraq and the appellants' particular circumstances, the Authority concludes that, in the event of their being returned to Iraq, they face a random or remote rather than real chance of being persecuted by reason of their Christianity. Their fears in this regard are not well-founded

[45] This finding should not be taken as denying or underplaying the undoubted subjective feelings of apprehension and vulnerability that many Iraqi Christians, including the present appellants, entertain. However, whether a fear is well-founded requires an objective test. Even in situations of generalised insecurity or conflict, the Refugee Convention requires that a refugee claimant establishes, in relation to him or herself, a well-founded fear of being persecuted; see *Refugee Appeal No 72462/99* (27 September 1999).

[46] Mr Laurent has also drawn the Authority's attention to the recommendations of UNHCR and Iraqi government officials that countries refrain from repatriating Iraqi nationals, including failed asylum-seekers. The broad humanitarian considerations which underlie such recommendations, while a necessary complement to refugee determination procedures, are not determinative of refugee status in terms of Article 1A(2) of the Refugee Convention.

CONCLUSION

[47] For the above reasons, the Authority finds the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

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V J Shaw
Member